

## **THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

M/s Sri Banke Bihari Ispat Pvt. Ltd.  
Vill. Kishanpur, Kichha Road, Kichha, Distt. Udham Singh Nagar.

Vs

1. The Managing Director, Uttarakhand Power Corporation Ltd. (UPCL), Urja Bhawan, Kanwali Road, Dehradun.
2. The Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Rudrapur, Distt. Udham Singh Nagar, Uttarakhand.
3. M/s B.T.C. Industries Pvt. Ltd. Kishanpur, Kichha, Distt. Udham Singh Nagar.

Representation No. 06/2009

### **Order**

M/s Shri Banke Bihari Ispat Pvt. Ltd. (applicant) has filed this representation to challenge the order of Consumer Grievance Redressal Forum (Forum), Kumaon passed in Complaint no. 188/2008 on 04.04.2009. The impugned order the Forum had set aside (UPCL) respondent no.1's order dated 18.08.2006 raising a demand for Rs. 31,15,388.10 against M/s BTC Industries Pvt. Ltd.( respondent no. 3 in these proceedings). The representation was opposed by all the respondents on the ground that the applicant was only a respondent in the proceedings before the Forum and therefore cannot file this representation. All the parties were heard on this preliminary issue and an interim order was passed on 16.09.2009 rejecting this objection. On 23.11.2009 respondent no. 3 requested for an adjournment for 15 days as it wanted to challenge the interim order passed more than two months back. The request, though unusual, was accepted. However no directions from any higher court pertaining to this matter have been received. Respondent no. 3 was again absent on the next date of hearing. A categorical notice that should the respondent be absent again, the matter will be heard in his absence had already been given. The matter was therefore heard in its absence.

2. The undisputed facts are that the applicant is a consumer of UPCL and is being supplied electricity through an independent feeder the cost of which has been borne entirely by the applicant. Respondent no. 3 approached UPCL for an electric connection which was given as per the agreement entered into on 07.02.2006 between UPCL and respondent no.3. This connection was given through the independent feeder of the applicant. The terms and conditions for giving new connections through existing independent feeders had been laid down by UPCL in the O.M. dated 30.05.2005 and the same were replaced by those contained in O.M. dated 29.01.2006. The dispute behind the applicant's grievance is about the following issues:

- a) Whether supply of electricity to respondent no.3 through applicant's feeder is to be governed by OM dated 30.05.2005 or OM dated 29.01.2006
  - b) If OM dated 30.05.2005 applies, whether respondent no. 3 had obtained a No Objection Certificate for tapping the applicant's feeder after paying it a sum of Rs. 5,00,000.00
3. In the impugned order the Forum has decided both the above points in favour of respondent no. 3.
4. Before coming to the merits of the matter one needs to chronologically look at the litigation that has already taken place on these issues and the findings and orders that have already been passed by these courts. Litigation that has already taken place on these issues as per the papers on record is as enumerated below.
- a) A Civil Suit was filed by the applicant seeking injunction against supply of electricity to respondent no. 3 through applicant's existing feeder. This request for an injunction was rejected by the Civil Court on 02.02.2006. Aggrieved by this rejection, the applicant filed an appeal no. 7/2006 before the First Additional District Judge (FADJ), Udham Singh Nagar. This appeal was allowed and the matter was remanded back to the Civil Court on 20.03.2006 for fresh decision.
  - b) Aggrieved by the above order of the FADJ, respondent no. 3 filed a writ petition in Hon'ble High Court No (M/S) 415/2006 which was dismissed on 27.04.2006. Another writ petition against the same order of the FADJ was filed by Shri P. K. Agarwal, Executive Engineer UPCL, against whom strictures had been passed by the Hon'ble Judge. This writ petition no. 897 (M/S) of 2006 was disposed off by the Hon'ble High Court on 15.07.2006.
  - c) Yet another writ petition no. 1859 of 2007 (M/S) was filed by respondent no. 3 before the Hon'ble High Court challenging UPCL's demand for payment of Rs. 31,15,388.10. The Hon'ble High Court disposed off the said WP vide their order dated 29.08.2008.
5. During the course of these proceedings the parties have presented arguments in support of their respective claims. However before any other action, one needs to through the findings and orders already given by courts on these two issues.
- a) In the order dated 20.03.2006 the First Additional District Judge had come to the conclusion that OM dated 29.01.2006 was applicable in the present matter and went on to pass strictures against Shri P.K. Agarwal, the Executive Engineer for giving the electric connection to respondent no. 3 without complying with the directions contained in this particular OM. These strictures in turn prompted Shri P.K. Agarwal to file the WP no. 897 (MS) of 2006 before the Hon'ble High Court which has been referred to above.
  - b) UPCL's demand of Rs. 3115,388.10 was challenged by respondent no. 3 before the Hon'ble High Court in WP 1859 of 2007. In the order passed on the said WP, the Hon'ble High Court were pleased to observe that:

*“First of all it has to be seen as to when the petitioner became a consumer of the Power Corporation and whether the provisions of Office Memorandum dated 30-5-2005 were applicable to its case or the Office Memorandum dated 29-1-2006 has been enforce at the relevant time.*

*At the outset, it may be mentioned that the petitioner itself has made averment in the writ petition in paragraph no. 13 as under:-*

*“13 That after the formalities for installation of electric connection was completed the respondents entered into a memorandum of understanding/agreement executed with the petitioner on 7.2.2006. As a consequence of the agreement the electric connection was installed and the petitioner’s unit became operational and is in production.”*

*In reply to the above averment, the Power Corporation in paragraph 9 of the counter affidavit has stated as under:-*

*“9. That in reply to the contents of para 13 of the writ petition it is submitted that after the execution of agreement dated 7-2-2006 the electric connection was released to the petitioner on 11-2-2006.”*

*The petitioner has filed rejoinder affidavit in reply to the counter affidavit filed on behalf of the Power Corporation and in paragraph 10, which is in reply of paragraph 9 of the counter affidavit, the following averments have been made by the petitioner:-*

*“10) That the contents of para 9 of the counter affidavit are based on records and need no reply however the contents of para 13 of the writ petition may be reiterated. Even from the chronological dates and events which has chanced goes to show that as matter of fact admittedly after the deposits made on 7.1.2006 and after execution of agreement on 7.2.2006 the relationship of consumer with respondent nos. 1 & 2 stood settled as per the agreement dated 7.2.2006, hence also any subsequent policy decision which has taken place by the office memorandum dated 29.01.2006 will be applicable to the subsequent prospective consumers who may apply for grant of electricity, it will not be applicable on the consumers whose application has already been processed under the existing policy decision of 30.5.2005, hence the policy decision dated 29.1.2006 will not have a retrospective effect being administrative in nature, hence also the stipulations of the office memorandum no. 106 dated 29.1.2006 will not govern the terms of providing electricity to the petitioner.”*

*Thus, from the averments made in the writ petition, the counter affidavit and the rejoinder affidavit, it clearly comes out that the petitioner became a consumer of the Power Corporation only as a consequence of execution of agreement dated 7-2-2006. Since it is admitted to the petitioner itself that the petitioner has got an electric connection on the strength of agreement dated 7.2-2006, there can be no hesitation to hold that the provisions of Office Memorandum dated 29-1-2006 have been in force on the date of execution of agreement, because it has been mentioned in the Office Memorandum dated 29-1-2006 (Copy Annexure No. 8 to the writ petition) that the OM dated 30-5-2005*

*stands superseded with immediate effect. In my view, the provisions of Office Memorandum dated 29-1-2006 are applicable to the electricity connection of the petitioner as a consequence of agreement dated 7-2-2006.”*

The said order further states that :

*“To sum up, the controversies- what is the amount of cost sharing can only be determined by the Power Corporation and whether the amount of cost sharing had been paid by the petitioner to respondent no. 3 are disputed questions of fact and this Court in exercise of writ jurisdiction cannot adjudicate upon the disputed questions of fact, for which appraisal of evidence is necessary.*

*In the peculiar facts and circumstances of the case coupled with the fact that only notice has been issued against the petitioner vide Annexure No. 11 and also considering the fact that statutory remedy is available to the petitioner for redressal of his grievance before the Consumer’s Grievances Redressal Forum constituted under Section 42(5) of the Electricity Act, 2003, therefore, it would not be proper to enter into the merits and to decide the case by this Court.”*

It is clear from above that the Hon’ble High Court had decided the issue of applicability of the OM dated 29.01.2006 but refrained from examining the factual issue of cost apportionment between the applicant and the respondent no. 3 and validity of the payments claimed to have already been made to the applicant. This the Hon’ble Court left for the lower court / Forum to examine and decide.

6. After the above order, the only issue to be decided by the Forum was that of cost sharing between the parties and the claim of the respondent no 3 of having paid the applicant a sum of Rs. 5,00,000.00 Lac. For reasons not known, the Forum has not only examined the legal issue once again but has also come to the conclusion that OM dated 29.01.2006 is not applicable in the present case, contradicting Hon’ble High Court’s orders reproduced above. Forum has gravely erred in its action.
7. Coming to the issue of NOC having been given by the applicant after receiving a sum of Rs. 5,00,000.00, this issue has also been examined by the Courts earlier. This is brought out hereafter:

The First Additional District Judge in her order had observed that

*“प्रत्याक्षी/प्रतिवादी न० 5 ने बहस के दौरान बताया कि वादी कम्पनी के डायरेक्टर श्री जगदीश चावला को पाँच लाख रुपये कॉस्ट शेयरिंग के अदा की गयी तभी अनापत्ति प्रमाण-पत्र जारी किया गया। जब कि अपीलार्थी/वादी के विद्वान अधिवक्ता ने बहस करते हुये कहा कि अनापत्ति प्रमाण-पत्र देने से पूर्व कोई कॉस्ट शेयरिंग, प्रतिवादी न० 5/प्रत्यर्थी न० 5 द्वारा नहीं ली गयी एवं जो रसीद पाँच लाख रुपये की जगदीश चावला द्वारा निष्पादित है, वह न्यायालय में दाखिल हुई है, उस पर जो हस्ताक्षर जगदीश चावला के हैं, वह एग्रीमेंट विद्युत विभाग पेपर संख्या-40ग एवं वादी कम्पनी के डायरेक्टर के अधिकृत नमूना पेपर संख्या-60ग/9 से भिन्न है। अतः उक्त रसीद फर्जी है। मैंने उक्त संदर्भ में पत्रावली का अवलोकन किया। पत्रावली पर पेपर संख्या-60ग/9 वादी की कम्पनी के डायरेक्टर्स के अधिकृत हस्ताक्षर के नमूने के बावत है एवं पेपर सं० 40ग/2 तथा 40ग/11 (एग्रीमेंट जो वादी कम्पनी एवं विद्युत विभाग के मध्य हुआ) पर वादी कम्पनी की ओर से हस्ताक्षर जगदीश चावला द्वारा कर रखे हैं। इन दोनों प्रपत्रों में जगदीश चावला के पूरे*

हस्ताक्षर हैं जब कि कथित पाँच लाख रुपये की रसीद पर लघु हस्ताक्षर हैं। इसके अतिरिक्त जो वादी कम्पनी का अनापत्ति प्रमाण-पत्र पेपर सं० 55ग/1 प्रतिवादी नं० 5 द्वारा दाखिल किया है, उसका लेटर पैड, कथित रसीद पाँच लाख रुपये पेपर संख्या 55ग/2 से भिन्न है अर्थात् अनापत्ति प्रमाण-पत्र 55ग/1 पर लेटर पैड पर दाहिनी साइड में टेलीफोन नंबर प्रिंट है जब कि 55ग/2 पर वादी कम्पनी के लेटर पैड पर दाहिनी साइड पर टेलीफोन नंबर अंकित नहीं है, अर्थात् यदि रसीद पाँच लाख रुपये एवं अनापत्ति प्रमाण-पत्र एक ही दिन अर्थात् दिनांक 8/8/2005 को निष्पादित हुये तो उस दिन ऐसी वजह नहीं हो सकती थी कि दो तरह के लेटर पैड वादी की कम्पनी के द्वारा प्रयोग किये जाये। एक ही दिन, दो लेटर पैड प्रयोग होने का तथ्य, पाँच लाख रुपये की संदाय होने के कथन को संदेहास्पद बना देते हैं। इसके अतिरिक्त पाँच लाख रुपये की एक बड़ी रकम होती है एवं जहाँ विद्युत कनेक्शन, कॉस्ट शेयरिंग की पूर्व शर्त पर आधारित हो एवं समस्त कार्यवाही लिखित हो रही हो तो ऐसी दशा में मुव० पाँच लाख रुपये की बड़ी रकम को कैश में दिये जाने का कथन अविश्वसनीय लगता है।”

8. The above order has not been interfered with the Hon'ble High Court in spite of two writ petitions having been filed against it by respondent no. 3 and by the Executive Engineer Shri P.K. Agarwal. The Hon'ble High Court had directed that the Civil Court which was considering the matter of issue of injunction sought by the applicant need not be bound by the findings of the appellant court, i.e. that of FADJ. This never happened as the civil suit was later withdrawn. If respondent no. 3 had agitated and the Forum had examined the undecided issue of cost sharing and claimed payment to the applicant, like the civil court, it would have been bound by these directions given by the Hon'ble High Court. This has not been done. Instead respondent no 3 has agitated and the Forum has examined and erroneously decided the issue of applicability of the OM dated 29.01.2006, already decide by the Hon'ble High Court.
9. As stated earlier the legal issue of applicability of the OM dated 29.01.2006 having already been decided by the Hon'ble High Court, there remained no need or scope for the Forum or any other lower court to re examine this. The Forum has wrongly done so. Accordingly, Forum's impugned order dated 04.04.2009 is hereby set aside.

Dated: 21.01.2010

Divakar Dev  
Ombudsman