

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s BTC Industries Pvt. Ltd., Kishanpur, Kichha, District
U.S.Nagar, Uttarakhand.

Vs

1. Uttarakhand Power Corporation Ltd. through its Managing Director, Urja Bhawan, Kanwali Road, Dehradun.
2. The Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Rudrapur, U.S.Nagar.

Representation No. 03/2011

Order

M/s BTC Industries Pvt. Ltd., Kishanpur, Kichha, Distt.- Udham Singh Nagar (Petitioner) filed a petition in the office of Ombudsman on 27.04.2011 through its Director, Shri Navneet Aggarwal against the Assessment Bill raised by Uttarakhand Power Corporation Ltd. Rudrapur for the month of April 2010.

2. The petitioner had earlier approached the Consumer Grievance Redressal Forum, Kumaon region, Haldwani (Forum). The Forum vide its order dated 31.03.2011, rejected the petitioner's complaint on the ground that the petitioner was unable to satisfy the court that his consumption of energy for the period under dispute was less as his Furnace had been closed for maintenance. It was declared the bill raised by the respondents was correct. Aggrieved by the order of the Forum, the petitioner filed a petition in the office of Ombudsman, against Uttarakhand Power Corporation Ltd. through its Managing Director, Dehradun and Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd. Rudrapur, U.S.Nagar (Respondent). The petition was received on 28.04.2011 and was admitted on the same date as it was within the time limit of 30 days from the Forum's order.
3. The brief facts of the case are that the petitioner company is in the business of manufacturing TMT bars since 2006. The petitioner stated that they had a connection since 2006. Initially they were manufacturing TMT bars and their load was 3000 KVA. From October 2009 after getting their load enhanced to 5000 KVA, they started

a Furnace while continuing manufacture of TMT bars. Since 2006 the company had been provided electricity by UPCL through the 33 KV BB Ispat Feeder emanating from 132 KV substation Kichha. Three consumers are connected to this line viz M/s BB Ispat, M/s BTC Industries & M/s Bhamri Steels. The cause of action for this case arose when the respondent issued an assessment bill dated 16.05.2010 to the petitioner for the month of April 2010 without giving any opportunity of hearing to the petitioner.

4. The Director (Project), UPCL sent a letter dated 10.05.2010 to the DGM, UPCL, Rudrapur with reference to a letter of EE (Test), Rudrapur on the subject of line loss observed at 33 KV BB Ispat independent feeder, Kichha from 10.04.2010 to 17.04.2010. Mentioning that the line loss of the feeder had remained around 0.5% during 04/09 to 12/09 which was satisfactory, it was observed that the line losses suddenly increased to around 20% from 10.04.2010 to 17.04.2010. Further it was mentioned that the consumption of petitioner company during this period was found decreased from 70,000 to 10,000 KVAH/day and a check meter was installed at the consumer's (petitioner) factory on 21.04.2010 and again line losses/day decreased and the consumption of petitioner company increased to around 30,000 KVAH/day. It would appear that the Director (Project) had been misinformed or had misread as the check meter was installed on 02.04.2010 and only intermediate checking was carried out on 21.04.2010.
5. It was also observed in the letter that demand of the petitioner was only 900 KVA or less during the disputed period and thus no production or running of steel factory was possible and obviously there may be some pilferage during this period. The Director (Project) ordered that tamper report of the above meter may be made available. He also ordered that metering of the above three consumers connected to BB Ispat feeder needed thorough checking and assessment as per bill to be raised.
6. As per records, the meters of all the 3 consumers viz M/s BB Ispat (5500 KVA load), M/s BTC Industries (5000 KVA load) and M/s Bhamri Steels (5500 KVA load) are connected to the same 33 KV BB Ispat feeder emanating from 132 KV substation, Kichha. During the said period there was a line loss of 5.17% (for the month of 04/2010 and around 20% from 10.04.2010 to 17.04.2010) on the feeder which otherwise happened to be of the order of 0.5% only.

7. In pursuance to the order of the Director (Project), the DGM, Rudrapur issued instructions to Executive Engineer, Distribution Circle Rudrapur (respondent) that the metering system of the consumers connected at BB Ispat feeder from 132 KV substation, Kichha needed thorough checking and assessment as per bills to be raised. He also mentioned that the Director (Project) had informed that the demand of petitioner company observed during the month of April was 900 KVA or less, which was not possible for running the steel unit. Therefore in compliance of the above instructions he stated that “it was mandatory, that on the basis of consumption as per meter installed at sending end BB Ispat Feeder, assessment may be raised from the petitioner and Headquarters, Dehradun as well as his office be informed accordingly for further information and necessary action.
8. The respondent (Executive Engineer) in compliance of these instructions of DGM issued a bill, on the basis of sending end meter consumption after deducting the energy recorded in the meters of other two consumers M/s BB Ispat and M/s Bharamri Ispat and after allowing 0.41% line losses to petitioner amounting to Rs. 54,61,054.00. The petitioner protested this and proposed a self prepared bill based on the energy recorded in their meter and based on MRI Report dated 01.05.2010 of actual consumption amounting to Rs. 40,83,275.00. Respondent did not agree to this and insisted the petitioner deposit the full amount of the bill dated 16.05.2010 amounting to Rs. 54,61,054.00 as served upon the consumer by them. The petitioner submitted an amount as per their calculation of Rs. 40,83,275.00. This was accepted provisionally, after the approval of senior officials of respondent, while maintaining the demand of balance Rs. 13,77,779.00 along with interest (late payment surcharge).
9. The petitioner moved an application to Hon’ble High Court, Nainital for intervention. The Court directed the petitioner to file a complaint before Consumer Grievance Redressal Forum. Accordingly the petitioner preferred a complaint before the Forum with the prayer that the assessment bill as well as the demand letter sent by UPCL be quashed. The Forum gave its judgement dated 31.03.2011 against the petitioner and asked them to pay the balance amount of Rs. 13,77,779.00 along with interest to UPCL. The petitioner under threat of disconnection paid the balance amount along with interest total amounting to Rs. 15,67,224.00 vide receipt no. 49/056383 dated 02.06.2011. Aggrieved by the Forum’s orders the petitioner filed a petition before the Ombudsman. Along with his application, the petitioner has attached copies of the

letter of Director (Project), DGM Rudrapur, copy of the assessment bill issued by UPCL dated 16.05.2010 and copy of MRI book of UPCL dated 01.04.2010 & 01.05.2010.

10. In their reply the petitioner stated that while proper bill for the month of April 2010 was not issued, although MRI book for 03/2010 dated 01.04.2010 and that for 04/2010 dated 01.05.2010 were issued by the respondent instead an assessment bill dated 16.05.2010 amounting to Rs. 54,61,054.00 for the month of April 2010 based on the consumption recorded at 132 KV substation i.e. the sending end was raised by UPCL on the petitioner without giving opportunity of hearing. As per the petitioner on the basis of reading recorded at the petitioner's end as well as the MRI reading provided by the respondent's officials for the month of April, the amount on the basis of the actual energy consumed by the petitioner, came out to be Rs. 40,83,275.00. Without giving the petitioner an opportunity of hearing, the respondent corporation on its own raised an 'assessment bill' for the month of April 2010 as mentioned above. The petitioner alleges that he was therefore saddled with an excess amount of Rs. 13,77,779.00 plus interest.
11. The petitioner further contends that the assessment bill dated 16.05.2010 was raised in contradiction to the Director (Project)'s instruction dated 10.05.2010 for getting the meters of all the 3 consumers connected to the feeder checked and making available the Tamper Report of the meter of the petitioner. Simply on the basis of arbitrary instructions of DGM, Rudrapur contained in his letter dated 15.05.2010, in contravention of instructions of highest authority i.e. Director (Project) as also without informing Director (Project) the department raised the assessment bill.
12. The petitioner has also raised a legal question about the 'Assessment bill' issued by the UPCL instead of the regular monthly bill for the month of April 2010. He has drawn attention to the word 'assessment' and claimed that if it is an assessment bill then it should have been issued in accordance with Section 126 of the Electricity Act, 2003, which provides the consumer an opportunity of hearing to explain their point of view and submit such documents and records as may be necessary. The Assessing Officer after affording a reasonable opportunity of hearing to such person shall pass a final order of the assessment within 30 days from the date of service of such provisional assessment. In his case, the petitioner alleges that the specific and categorical provision of the Section 126 of the Electricity Act, 2003 have been given a

complete go-by by the respondent authorities. He has stated that the arbitrariness of the respondent authorities is further seen by the fact that the assessment bill was given to him on 16.05.2010, the same date as mentioned for payment and 31.05.2010 as the date for disconnection. The petitioner has claimed that the Forum has not examined all the aspects and facts of the case and has requested that the order of the Forum be set aside and the respondent corporation be directed to pay the petitioner, the amount of Rs. 15,67,224.00 or the same amount may be adjusted in the future bills of the petitioner company.

13. The respondent in their reply dated 24.05.2011 claimed that the fall in energy consumption on the feeder from 10.04.2010 to 17.04.2010, was due to the decrease of consumption recorded in the meter of the petitioner only, as consumption of the other two consumers connected on this feeder remained of the same order as it happened to be before the period preceding and succeeding the period under question. They have held their action of raising assessment bill dated 16.05.2010 as right mainly on the following grounds:

- (i) That three industries are connected to the BB Ispat feeder. During 10.04.2010 to 17.04.2010 the difference, in the units recorded in the meter of the feeder and the total of units recorded in the meters of the consumers, increased many times.
- (ii) To reconcile the differences, the consumption pattern of all the said three industries was observed and it was found that the consumption recorded in the meters of M/s Bankey Bihari Ispat and M/s Bharamri Industries was as per their normal consumption, while the consumption recorded in the meter of the petitioner was abnormally less during the period i.e. 10.04.2010 to 17.04.2010.
- (iii) That a comparative statement of daily consumption recorded in the meters at substation end and of the three industries for the month of April, was prepared on the basis of MRI of all the meters.
- (iv) That taking average line loss of 0.41% of the Feeder, the consumption recorded in the meters of M/s Bankey Bihari and M/s Bharamri Steels was deducted from the consumption recorded in the meter at substation, it was discovered that the meter at the petitioner Industries recorded less consumption during 10.04.2010 to 17.04.2010. Accordingly the bill was raised for the units recorded less in the meter of the petitioner.

- (v) Prior to 10.04.2010 and after 17.04.2010 the daily consumption recorded in the meter of the petitioner was much higher (in the range of 40,000 to 60,000 units daily). The difference in sending end meter recording and the total of the three consumers was in the range of 2,000 to 5,000 units, while during the period in question the consumption recorded in the meter of the petitioner was in the range of 8000 to 10000 units only and the difference in sending end meter recording and the total of the three consumers increased in the range of 30,000 to 35,000 units during this period.
14. In response, the petitioner filed a rejoinder on 15.06.2011 in which they have submitted the daily production figure from 01.02.2010 to 30.06.2010 to substantiate their contention that the fall in consumption from 10.04.2010 to 17.04.2010 was due to repair and maintenance work being done in the factory and not due to any Unauthorized Use of Electricity by any unfair means by them. The statement submitted by them shows 0 (zero) production from 07.04.2010 to 18.04.2010. They have also submitted that the demand of 900 KVA during the period under question as also the energy consumption is on account of their other process of manufacturing TMT bar being in process, while Furnace was under periodical maintenance/repair. Besides requesting for the relief asked for earlier, they have also requested that the petitioner be awarded costs.
15. Arguments of the two parties were heard on various dates starting from 15.06.2011, and final arguments were held on 21.10.2011. On 30.08.2011, while reply of respondent was submitted, both parties were directed to submit certain documents. The petitioner was asked to submit the production figure of April & October for last three years duly certified by Govt. Authorities and photocopies of electricity bills of these months of previous years as issued by respondent. The respondent was asked to submit the following documents:
- a) The thorough checking report of meters of all three consumers connected to the feeder along with the meter at the sending end, as per DGM's letter dated 15.05.2010.
 - b) The date of installing check meter at the premises of the petitioner and the date of removing the check meter along with its Sealing Certificates.
 - c) Tampering Report of petitioner's meter.

16. On the next date, however, despite certain documents being submitted by both parties, it was found that relevant documents still needed to be provided by them. They were therefore asked to provide specific answers to queries raised. As respondent was not giving direct answers to the queries raised they were once again asked specifically whether checking of the meters was carried out as directed by Director (Project). Similarly checking report of the meter at the substation end, was asked for. In the absence of thorough checking report, meter tampering report, any adverse check meter report, how did respondent come to the conclusion that this consumer had used the excess energy bypassing the two meters installed at his premises. Could respondent give a certificate that no other 33 KV line emanating from the same 132 KV substation remain connected to this industrial feeder (feeding the petitioner and other two consumers during the period 10.04.2010 to 17.04.2010) for any maintenance or any other reason and why negative line losses before and after these dates for eg. on 01.04.2010 – total consumption of the three industries is shown as 193193 while at the substation end total energy sent out is shown as 188890. This is only illustrative as the same discrepancy is seen on all days preceding and succeeding the period under dispute.
17. Lastly Director (Project) in his letter on 10.05.2010 had questioned the line losses and stated that “demand observed in BTC Industries had gone down. Obviously there may be some pilferage during these periods. Tamper report of above meter may be made available. Metering of all above consumers needs thorough checking.” On 15.05.2010 DGM however records that on the basis of consumption as per meter installed at sending end, assessment may be raised from petitioner. How did the department decide that the culprit was petitioner company.
18. In reply to the above, respondent informed that no checking of all the meters of the three consumers on the BB Feeder had been carried out after the instructions of Director (Project). Similarly no checking report of the meter at the substation end or tamper report of the petitioner’s meter was provided. Respondent was unable to give any explanation as to why it was decided that the petitioner alone was responsible for the excess use of electricity beyond their already asserted claim that as the consumption shown in the meter of the petitioner was well below his normal usage, it was decided that he must have made use of the excess energy. How he bypassed the meters, could not be explained by the respondents. They also informed that no other

33 KV line emanating from the same 132 KV substation was connected to this Industrial feeder during this period.

19. I have carefully gone through the petition/written statement of the respondent, rejoinder of petitioner and reply to it given by respondent and heard the arguments. I have arrived at the following conclusions:
20. As regards the question of applicability of Section 126 and the violation of the provisions therein as raised by the petitioner, the respondent has not categorized the use of energy leading to higher line losses on the feeder as unauthorized use of electricity under Section 126, neither has assessment been made under the provisions of this section of the Act. It is therefore felt that this is not a case of unauthorized use of electricity under Section 126 of the Act.
21. The Director (Project) in his letter dated 10.05.2010 has referred to the intimation sent to him about abnormally high line losses at the 132 KV substation Kichha and given instructions for assessment of all three consumers and asked for a tampering report of the meter of petitioner. The DGM, Rudrapur vide his letter dated 15.05.2010 however, ordered to raise assessment on petitioner on the basis of consumption recorded in the meter at sending end.
22. These instruction issued by DGM, Rudrapur went against the specific instructions issued by Director (Project). The respondent was not able to produce any record as to why such action had been taken by the DGM, Rudrapur. In response to the specific demand of the Court, they have submitted the MRI reports and load survey report generated by the computer. They also informed that no thorough checking, as required under the instructions of Director (Project) were carried out. They have also clearly stated that there was no meter tampering report of the petitioner. The respondent has submitted sealing certificates for installation and removal of check meter which shows that the meter was installed on 02.04.2010 and removed on 18.11.2010. Thus during the period of dispute i.e. 10.04.2010 to 17.04.2010 a check meter was already installed at the premises of the petitioner. Intermediate checking was carried out by the officers of the respondent on 21.04.2010, the difference between the normal and the check meter consumption was only 0.10% in KVAH consumption. For the total period that the check meter was installed on the premises of the petitioner, the difference between the normal and the check meter was only 0.086% in KVAH

consumption. Therefore the existing meter (normal meter) was recording correctly as per the sealing certificates submitted by the respondent themselves.

23. The reading shown is within the permissible limit and therefore meter working was accurate. A remark recorded on the sealing certificate dated 21.04.2010 states 'R phase CT was replaced as minor crack was observed on the CT'. During hearing the respondent's placed emphasis on this remark to highlight this as the reason for less recording in the meter from 10.04.2010 to 17.04.2010 leading to higher line losses and raising the bill under dispute. However this does not appear to be logical because had this been the reason for less recording of energy by the meter from 10.04.2010 to 17.04.2010, the same phenomenon should have continued up to 21.04.2010 when the said CT was removed and meter functioning should have been the same from 18.04.2010 to 21.04.2010 i.e. it must have continued to read less from 18.04.2010 to 21.04.2010 also because the defect developed in the CT could not have been set right on its own after 17.04.2010 but should have persisted up to 21.04.2010 when the CT was removed and this defect on CT was observed by respondent's authorities and CT was changed. Illustrative of the above fact is the consumption record submitted by the respondent that shows the reading for the KVAH consumption by the petitioner ranges from 98 to 162 from 10.04.2010 to 17.04.2010. However on 18.04.2010 it records consumption of 502, 19.04.2010 – 460, 20.04.2010 – 319, 21.04.2010 – 112 thus showing continued fluctuation. The higher recording on April 18, 19 and 20, 2010 are unexplainable, if the plea of the respondent that lower consumption was being recorded due to fault in the CT is established.
24. The petitioner on the other hand has been able to show that the fall in consumption during the period under reference was because of their furnace being under periodical routine maintenance/repair, which they carry out each year in the month of October/November and April starting from the year 2010. The Furnace started production from October 2009. The first maintenance was undertaken in April 2010 and the consumption during this period as well as 900 KVA demand were on account of their MMT bar manufacturing portion of the Industry being operative during this period. They have submitted the production figures from April 2009-July 2011 duly supported by monthly electricity consumption bills issued by the respondent which also shows a corresponding decrease in their energy consumption during these months when repair/maintenance was taken up during last 2 years including the period under

reference. For instance the normal energy (KVAH) consumption of the petitioner's factory is between 9,92,700 (June 2010) and 16,84,710 (July 2011). However during the months when the Furnace is reported to be under maintenance, the consumption falls and is recorded as 8,38,890 (November 2010) and 8,33,760 (April 2011). In fact by his own self assessment the consumption in April 2010 is 10,11,330, consumption based on the MRI reading dated 01.05.2010 issued by the respondent. The petitioner therefore was willing to pay the amount calculated on this. The respondent have not challenged or questioned the fall in consumption thereafter for the months when routine maintenance/repair was taken up.

25. Regarding certified copies of the production by the concerned government authority the petitioner vide their reply dated 21.10.2011 has submitted a copy of circular no. 757/73/2003-CX dated 22.10.2003 issued by the Central Board of Excise and Customs, Govt. of India, through which 'New Industrial Units setup in Himachal Pradesh & Uttaranchal on or after 07.01.2003 or the existing units undertaking substantial expansion of the installed capacity' are exempted from central excise registration and from payment of excise duty. Hence no production record has been kept by the Excise Department.
26. From an examination of all the documents submitted by the respondent it appears that assessment bill dated 16.05.2010 has been raised simply on the basis of hypothesis and without establishing beyond doubt that the extra energy has been consumed by the petitioner.
27. The respondent has also overlooked the provisions of the relevant rate schedule RTS-7 of the Tariff order for the year 2010-11 issued by UERC, which was the tariff in force during the period under reference. This order provides under **Specific Conditions of Supply** that:

"(iii) Supply to Steel Units shall be made available at a voltage of 33 KV or above through a dedicated individual feeder only with check meter at sub-station end. Difference of more than 3% between readings of check meter and consumer meter(s), shall be immediately investigated by the licensee and corrective action shall be taken".
28. In the instant case rather than investigation and taking corrective action as per above mentioned provisions of the tariff the respondent (licensee) has arbitrarily assessed the

petitioner simply on the hypothesis that excess energy must have been dishonestly abstracted by the petitioner by means which were never investigated and established from tariff provisions point of view.

29. In view of above discussions and explanations I conclude that the respondent has not been able to prove thorough investigation and proper check before raising the assessment bill. It would appear that the bill was raised arbitrarily without any justified grounds and without proper checking to establish beyond doubt that the energy that is being billed as assessment has been consumed by the petitioner by creating some obstruction or somehow preventing the flow of energy through the meter. The bill is therefore unjustified and against law and is therefore quashed.
30. I also do not agree with the conclusion of the Forum that the petitioner has not been able to prove his case on the basis of records produced during this case. The order of the Forum is hereby set aside.
31. The respondent is hereby directed to either refund the amount of the bill, a sum of Rs. 15,67,224.00 already deposited by the petitioner with the respondent vide receipt no. 49/056383 dated 02.06.2011 or adjust the amount in the next bill. The plea of the petitioner for costs is not accepted.
32. I would also like to mention here that the UPCL as a supplier should not only be fair but be seen to be fair and just in dealing with their consumers while at the same time ensuring that no unfair business practice is allowed.

Dated: 23.12.2011

Renuka Muttoo
Ombudsman