

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Himgiri Ispat Pvt. Ltd.,
E-27-28-39&40, UPSIDC, Jasodharpur,
Kotdwara, Distt. Pauri Garhwal, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.,
Kotdwara, Distt. Pauri Garhwal, Uttarakhand

Representation No. 13/2012

Order

M/s Himgiri Ispat Pvt. Ltd., E-27-28-39&40, UPSIDC, Industrial Area Jasodharpur, Kotdwara, Distt. Pauri Garhwal (petitioner) filed a petition before the Ombudsman on 17.06.2010 (representation no. 05/2010) challenging the order of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 07.05.2008 in complaint no. 12/2008. Being time barred, the representation was not admitted by the Ombudsman. The petitioner then approached the Hon'ble High Court of Uttarakhand, who did not admit his petition. Thereafter the petitioner filed a review petition before the Division Bench of the Hon'ble High Court and this time the Hon'ble Court passed an order on 21.03.2012 that the petitioner would deposit Rs. 10,000.00 with Uttarakhand Power Corporation Ltd. (hereinafter referred to as UPCL) and further directed the Ombudsman to admit and hear the petition, if filed after depositing the aforesaid amount with UPCL.

2. Accordingly, the petitioner filed a representation, before the Ombudsman, dated 18.04.2012 (as representation no. 13/2012) which was received on 23.04.2012 along with the Hon'ble High Court order dated 21.03.2012 and a receipt no.15 dated 11.04.2012 for Rs. 10,000.00 in token of depositing the amount with UPCL in compliance of the order of the Hon'ble High Court. The case was examined in the light of the order of the Hon'ble High Court dated 21.03.2012 and an interim order was passed admitting the petition and fixing 27.08.2012 to hear the representation on

merits. The respondent, Executive Engineer, Electricity Distribution Division, UPCL, Kotdwara submitted a written statement on 26.05.2012 and a rejoinder was filed by the petitioner on 11.07.2012. Arguments were heard on different dates and concluded on 04.12.2012.

3. The petitioner in his fresh representation (13/2012) referred to his original representation (05/2010) filed earlier before the Ombudsman against the order of the Forum dated 07.05.2008 in complaint no. 12/2008 and requested that pursuant to the Hon'ble High Court order dated 21.03.2012 he had deposited a sum of Rs. 10,000.00 with UPCL and therefore his representation no. 05/2010 be reopened and an opportunity of hearing be given to the petitioner and fresh orders passed in accordance with law.

4. In his petition (05/2010) the petitioner had submitted that he was a consumer of UPCL having a contracted load of 3000 KVA and was engaged in manufacturing of MS ingots. A bill dated 05.10.2007 amounting to Rs. 7,71,276.00 was served upon him by the respondent towards peak hour penalty for using power in excess of 15% during peak hour and during the period of load shedding. On receipt of the bill he contacted the respondent and MRI report was given to him by the respondent showing that the petitioner had used electricity during peak hour on 05.02.2007. The petitioner claimed that neither the respondent nor the UPCL had published any notice for implementation of restrictions on the use of power. The amount was, however, deposited under protest. The petitioner claimed that the demand made by the respondent was illegal, unwarranted and uncalled for and was not payable by the petitioner. Complaint was filed before the Forum for refund of the penalty demanded on the ground that the respondent was not entitled to recover the amount of Rs. 7,71,276.00 from the petitioner. The complaint was dismissed by the Forum on 07.05.2008. The petitioner then approached the Ombudsman with his representation against the order of the Forum on the ground that the Forum had not gone through the records and evidence in the case. Neither the respondent nor the UPCL had published any notice with regard to restriction of use of electricity in peak hours and hence the respondent was not entitled to levy any penalty for use of electricity during peak hours. The demand of penalty was alleged to be illegal. The forum had wrongly concluded that the penalty bill was raised in accordance with the Tariff Regulations

approved by the Uttarakhand Electricity Regulatory Commission (UERC). The petitioner prayed that the order of the Forum dated 07.05.2008 be set aside and the representation of the petitioner be allowed.

5. The respondent in their statement dated 26.05.2012 denied the allegations levelled by the petitioner before the Forum and pleaded that the Forum had gone through the entire records and evidence and had considered and discussed the contention of the petitioner as well as the documents placed on record and hence the orders passed by the Forum were legally correct.
6. The respondent further submitted that the programme of scheduled rostering and restriction on use of power by industrial consumers during 1700 hrs to 2200 hrs from 10.01.2007 to 15.03.2007 was duly published in newspapers (01.01.2007 in Dainik Jagran and on 14.01.2007 in Amar Ujala, Dainik Jagran and Shah Times). It was also uploaded on the UPCL's website. They have also made reference to a letter of M/s Bharat Electronics Ltd. Kotdwar dated 27.11.2007 confirming that they had come to know about the load shedding schedule applicable from 10.01.2007 to 15.03.2007 through UPCL's website.
7. As per the respondent's statement, the petitioner complied with the load shedding schedule except on 05.02.2007, by using power in excess of 15% of the contracted load. This was clearly shown in the Load Survey Report through MRI. Except for this one day the petitioner had complied with the load shedding schedule for restriction on all the other days during the period 10.01.2007 to 15.03.2007 and hence the petitioner's version that respondent had not published any notice regarding restrictions is false and misleading and he was fully aware about these restrictions. The penalty bill raised against the petitioner for violation of load shedding schedule during restriction hours was in accordance with UERC approval and clause 6 of RTS-7 of the Tariff applicable from 01.04.2006. Hence, according to the respondent, the penalty bill raised was correct and in accordance with tariff provisions, with the approval of UERC. Thus the Forum's order passed in the matter was correct and the petitioner was not entitled for any relief.

8. In his rejoinder submitted by the petitioner on 11.07.2012, the petitioner reiterated his original argument and drew attention to a similar case of M/s HRJ Steels (representation no. 12/2008) in which the Ombudsman vide his order dated 24.10.2008 had set aside the penalty raised by UPCL. Relevant provisions of the Ombudsman's order dated 24.10.2008 were reproduced by the petitioner in his rejoinder.
9. The petitioner having drawn attention to the case of M/s HRJ Steels Pvt. Ltd. claims that the same has been accepted by the respondent and on these grounds the representation of the petitioner should be allowed. The petitioner denied all the points submitted by the respondent in their written statement giving reference to the Ombudsman's order dated 24.10.2008 in the case of M/s HRJ Steels Pvt. Ltd. He claims that after accepting the order of the Ombudsman in the case of M/s HRJ Steels, the respondent cannot now contend that the petitioner was in full knowledge of the restriction imposed in usage for HT/LT industrial consumers during peak hours from 1700 hrs to 2200 hrs and that the petitioner observed the restriction during that period from 10.01.2007 to 15.03.2007 except for one day i.e. 05.02.2007. It was also wrong to claim that the petitioner was aware of the notice dated 10.01.2007 published in various newspapers. Here the petitioner once again drew attention to the order of the Ombudsman in the case of M/s HRJ Steels Pvt. Ltd. wherein the Ombudsman had held that *"The Forum has erred in concluding, that the publication dated 01.01.2007 and 10-14.01.2007, were proper and sufficient intimations of these restrictions to the petitioner. In absence of any proper publication/notification of these restrictions the petitioner cannot be held guilty of their violations and penalized for the same. The representation is accordingly allowed and the penalty imposed on the petitioner in this regard is hereby set aside."*
10. Regarding the argument of the respondent that the penalty against the petitioner has been raised in accordance with the Tariff approved by the UERC in clause 6 – Restriction in usage, the petitioner admitted that the penalty for violation of peak hour is approved by UERC, but stated that the respondent had failed to take into consideration the fact that the penal clause does not apply to the petitioner in light of the fact that the order for restricted use had not been published or communicated to the petitioner.

11. Brief facts of the case have been given in para 4 above.
12. As per the papers put up before this office, the UPCL approached the Commission vide their letter dated 08.01.2007 with a programme for load shedding from January to March 2007. UERC sent its approval u/s 23 of the Electricity Act, 2003 vide their letter dated 09.01.2007 and desired that it should be prominently published in leading newspapers of the state, a copy of the schedule be placed on the website of UPCL and a copy of the schedule be sent to SLDC to ensure that no load shedding was done over and above the approved schedule. The schedule was from 10.01.2007 to 15.03.2007. The schedule was duly published in the newspapers on 14.01.2007. The publication merely mentioned 'Schedule of load shedding for the month of January, February and March 2007 giving the different timings on different dates and the areas affected. The schedule also carried a request from the UPCL to all consumers to reduce consumption of unnecessary electricity so that power cuts may be reduced. There was no direction to consumers to reduce their consumption to below 15% of their sanctioned load during these hours.
13. Later on 19.01.2007, giving reference to the UERC approval for the proposed load shedding programme for January to March 2007 UPCL applied to UERC stating that the load shedding program had been implemented in the whole of the State. As per the schedule, all industries fed by industrial feeders emanating from 132 KV and 33 KV substations were not being supplied power during 1700 hours to 2200 hours daily. However, such feeders were being opened from substations but HT/LT industries fed by mixed, town and rural feeders were using electricity in this period causing overdrawal of energy from the grid. UPCL, therefore, in this letter specifically proposed that all industries may be restricted to use only 15% of their sanctioned load in evening hours (during load shedding period) from 1700 hours to 2200 hours till further review. UERC vide their letter dated 25.01.2007 approved this proposal, which UPCL communicated to its different offices on 27.01.2007, but, UPCL did not make any publication of the approval of UERC for restricted usage of power. The difference between the two orders issued by UERC had been clearly spelt out in the order of the Ombudsman in the case of M/s HRJ Steels Pvt. Ltd.

14. During arguments, the respondent pleaded that proper publication of the restricted usage had been done and for this purpose quoted the publication done by the department in newspapers on 01.01.2007 and 14.01.2007. The counsel for respondent also informed that the petitioner's contention, that the order of the Ombudsman in the case of M/s HRJ Steels Pvt. Ltd. had been accepted by UPCL, was incorrect as UPCL had filed a writ petition against the order of the Ombudsman in the Hon'ble High Court of Uttarakhand. The respondent gave a copy of the order dated 17.12.2008 of the Hon'ble High Court staying the order of the Ombudsman. He felt that in view of this order there was no point in proceeding further in this case as the case of the petitioner, M/s Himgiri Ispat Pvt. Ltd. was similar to the case of M/s HRJ Steels Pvt. Ltd. and the order in the case of M/s HRJ Steels Pvt. Ltd. had been stayed. He also drew reference to an earlier case of M/s Air Liquide North India Pvt. Ltd. having similar facts wherein the Ombudsman had decided that:

“UPCL's order imposing on the petitioner cash penalty of Rs. 2.60 crore is not sustainable and the same is hereby set aside. UPCL is however free to consider this matter afresh, but only after giving the petitioner proper opportunity of being heard and after taking into account and evaluating all factual and legal issues relevant to this case. Keeping in mind the manner in which this matter has been dealt with in the past, fresh consideration of this case shall be done by an officer not below rank of a full time Director of UPCL. Fresh penalty may be imposed on the petitioner if it is found that the petitioner has knowingly and deliberately violated the relating restrictions on usage of electricity by industrial consumers. In such an event, the petitioner will also be free to seek due relief from the Forum and if necessary from this office.”

15. I have gone through the petition, written statement, rejoinder and other documents placed before me as well as the case file of M/s HRJ Steels Pvt. Ltd. (case no. 12/2008) and Ombudsman order dated 24.10.2008 passed in the case of M/s HRJ Steel Pvt. Ltd. and also the case of M/s Air Liquide North India Pvt. Ltd. (case no. 08/2008) and order dated 11.05.2009 passed in that case.

16. We shall deal with the first point i.e. whether the case of M/s Himgiri Ispat Pvt. Ltd. should be dealt with in view of the Hon'ble High Court order of 2008 staying the order of the Ombudsman in the case of M/s HRJ Steels Pvt. Ltd., which is similar to the present case. The staying of the order does not affect hearing/decision in the present case because the case has been referred to the Ombudsman by the Hon'ble High Court in the Special Appeal no. 17 of 2012 filed by the petitioner before the Division Bench of the Hon'ble High Court of Uttarakhand wherein, the Hon'ble High Court has given directions to the Ombudsman to hear 'the appeal on its merit' in its order dated 21.03.2012. Moreover, in case the respondent is not satisfied with the decision of the Ombudsman they can appeal against this decision as well.
17. The next point raised by the counsel for the respondent relates to the decision given by the Ombudsman in the case of M/s Air Liquide North India Pvt. Ltd. and the submission that a similar decision be given in the present matter. The case of M/s Air Liquide North India Pvt. Ltd. is different from that of the petitioner's as in the referred case, the industry had applied for a continuous supply of power whereas in the present case the petitioner falls under the category of non continuous industry. In fact in the order for Air Liquide North India Pvt. Ltd., the Ombudsman had stated:

"The Petitioner had requested for continuous supply even in the original application for electric connection. The Petitioner therefore claims that it had already opted for drawing continuous supply and therefore the higher tariff applicable to such consumers should only have been charged from him. Having repeatedly requested for such supply, he is not guilty of any violation of the restrictions on supply or usage and therefore the penalty imposed is unwarranted and should be struck down. It has also been argued on behalf of the Petitioner that the penalty of Rs. 2.60 crore has been imposed without considering all relevant facts and without giving the Petitioner an opportunity to explain his case and thereby even the basic principle of natural justice has been violated." Drawing attention to the rule position in the Tariff Order para 6 of RTS-7, the Ombudsman had stated: *"The above provision does not visualise any permission to be sought by the Consumer either from UPCL or from the Commission. What is stipulated in this provision is that the Consumer wishing to draw continuous supply should opt for it and the consequence of such option is that such Consumer has to pay the higher tariff as stipulated above. If instead of doing so, he surreptitiously*

uses power during such periods, then the penalty stipulated above gets attracted. The Petitioner has claimed that the requirement of continuous supply had been clearly indicated in the original application filed in 2005 and the same has again been done in the letter dated 24.01.2007 addressed to the CMD. This amounts to the petitioner indicating its option more than once and it was for UPCL to start charging higher Tariff in view of this option". In the present case, the petitioner has nowhere asked for continuous supply and hence it is felt that the decision given in the case of M/s Air Liquide North India Pvt. Ltd. is not applicable in this case.

18. In the case of the petitioner I am convinced that the matter is identical to the case of M/s HRJ Steels Pvt. Ltd. and I am in full agreement with the order dated 24.10.2008 passed by the Ombudsman in that case. The difference between the two approvals sought by the UPCL from the UERC are clearly spelt out in the order of the Ombudsman dated 24.10.2008 which is reproduced below:

"Para 9 In the present case the Commission has exercised its powers u/s 23 in two stages. On 09.01.2007 the Commission has approved the schedule for load shedding for the period 10.01.2007 to 15.03.2007 proposed by UPCL. Later on i.e., on 25.01.2007 the Commission has approved UPCL's proposal for restricting usage of electricity by industrial consumers between 1700 hrs to 2200 hrs. The difference between these two orders needs to be understood and appreciated. The order dated 09.01.2007 has authorized UPCL, the Licensee, to regulate supply to different areas in accordance with the approved schedule, which stipulates stoppage of supply between 5:00 pm to 10:00 pm everyday to industrial Feeders emanating from 132 KV and 33 KV substations, Sidcul Haridwar, Sidcul Pantnagar, Muni ki Reti etc. understandably this schedule clearly states that when sufficient power is available from the grid, the declared load shedding shall not be done. This order of the Commission relates only to UPCL, and authorises it to regulate supply in the manner approved by the Commission in view of the prevailing power shortage. This order does not contain any directions for usage or consumption by consumers. The need for restricting consumption by industrial consumers was felt and placed before the Commission for the first time by CMD UPCL's letter dated 19.01.2007. This was considered and approved by the Commission on 25.01.2007. Since this order of the Commission placed certain obligations on consumers, the fact whether the affected

consumers were made aware of such obligations or not is relevant and important. While it is appreciated that it may not be possible for UPCL to inform each and every consumer of his obligations, at the same time UPCL is expected to take reasonable steps to notify the affected consumers. The restrictions dated 25.01.2007 were not notified in the official gazette nor were they publicised through news papers. The two notifications published in the news papers precede imposition of these restrictions and are dated 01.01.2007 and 14.01.2007. The notice dated 01.01.2007 could not have and does mention the restrictions subsequently placed by the Commission on 25.01.2007. Therefore this particular publication cannot be deemed to have notified consumers or the restrictions u/s 23, which as stated earlier, were placed only on 25.01.2007. UPCL's claim in this regard is factually incorrect and misconstrued. This at the best can be treated as an administrative directive, but its violation will not attract the penalty stipulated in the Tariff Order.

19. On the subject whether the restrictions had been properly publicised, I agree with the decision of the Ombudsman in the order of M/s HRJ Steels Pvt. Ltd.

“Para 10. Coming to the publication dated 10.01.2007 / 14.01.2007, this again precedes Commission's order dated 25.01.2007 placing restrictions on consumption even if supply was there in the feeder. Further the notice as carried by the news papers notifies only the schedule for load shedding during the period 10.01.2007 to 15.03.2007. As per this schedule certain industries fed from 132 KV and 33 KV substations were to be denied supply during 1700 hrs to 2200 hrs every day. This obviously was to be done by UPCL and certainly not by the affected consumers. This publication therefore does not and could not have notified the industrial consumers of restriction on consumption during these hours imposed only on 25.01.2007. Apart from these two, no other notification/public notice has been filed by UPCL.

Para 11. It is obvious from the above discussion that the restrictions on drawl of power, approved by the Commission u/s 23 of the Act on 25.01.2007, were not notified/publicised or intimated to the affected consumers in any reasonable manner. The issue remained confined to the files of UPCL and the Commission, while these consumers were expected to exercise self discipline, follow the discipline and restrict their drawls to 15% of the connected load. UPCL has not been able to show how this

obligation placed on the consumers but kept confined to its files, was supposed to be known to these consumers for compliance. In absence of any such knowledge how can the consumers be held responsible for violating these restrictions and penalised for the same. Failure to intimate directly or through a notice published in the official gazette or even in the leading news papers, amounts to withholding this information from the very consumers, who were expected to comply with them and regulate their consumption. It is therefore neither logical nor just to subsequently find fault with the consumer and punish him for such non compliance. In absence of any knowledge of these restrictions, finding fault with the petitioner and penalising him for not complying with the same is clearly unfair and unjust. The Forum has erred in concluding that the publications dated 01.01.2007 and 10/14.01.2007, even though they predate the Commission's approval dated 25.01.2007, were proper and sufficient intimations of these restrictions to the petitioner. In absence of any proper publication/notification of these restrictions the petitioner cannot be held guilty of their violations and penalised for the same. The representation is accordingly allowed and the penalty imposed on the petitioner in this regard is hereby set aside."

20. It is clear from the records that vide their approval dated 09.01.2007 UERC had approved a load shedding programme for a period 10.01.2007 to 15.03.2007 in consideration of UPCL's proposal for the same in exercise of their powers conferred under section 23 of the Electricity Act, 2003 and which was published in the news papers on 14.01.2007 and under which the responsibility for regulating the supply was solely on UPCL as it was a scheduled load shedding programme meaning thereby that the feeders as per approved schedule were to be opened by the respondent company and the consumers had nothing to do with regard to implementation of this approval. It was only after receipt of the second proposal of UPCL dated 19.01.2007 that UERC, in exercise of their powers conferred u/s 23 of the Act, approved restrictions on use of power beyond 15% by industrial consumers drawing power from 132 and 33 KV substations, SIDCUL Haridwar, SIDCUL Pantnagar, Muni ki Reti etc from 1700 hrs to 2200 hrs. These restrictions imposed a responsibility on the consumers and were to be observed by the concerned consumers themselves. It was, therefore, necessary and the duty of UPCL to make its consumers aware about these restrictions if not individually at least through publication in newspapers.

21. UPCL/respondent have drawn attention to the publication on 01.01.2007 and 14.01.2007. The publication on 01.01.2007 is not relevant to the case as it has been published by the UPCL without taking the approval of UERC. The second publication on 14.01.2007 does not talk about restriction in usage of power by consumers but appeals to consumers to restrict unnecessary usage of electricity during the period mentioned. Thus, in the absence of any publication that restrictions were to be observed by industrial consumers beyond 15%, the concerned consumers cannot be expected to observe these restrictions and where these restrictions were not observed, the concerned consumer cannot be held guilty of such violation and cannot be penalized for the same.
22. No documents \ records have been placed before me by the respondent to establish that UERC's order dated 25.01.2007 imposing restriction u/s 23 on use of electricity by certain category of consumers during 1700 to 2200 hours were notified in newspapers or brought to the notice of the concerned consumers. In view of non publication the order dated 25.01.2007 of UERC the same remained confined between UERC, UPCL and its divisional officers. In the absence of any publication/notification of the restrictions imposed by UERC on 25.01.2007, on or after this date, the petitioner cannot be held guilty of violation of such restrictions and penalized for the same.
23. The respondent was not very clear on the difference between load shedding, restriction and rostering and informed vide his letter dated 29.11.2012 and 03.12.2012 that as these terms were not defined in the Electricity Act, Supply Act or any other relevant Act/Rules, the matter had been referred to UERC and a reply was awaited. During the final hearing on 04.12.2012, the respondent continued to be unclear regarding the difference between these various terms. It is not necessary to await any reply from the UERC as the difference between the load shedding and restricting use of electricity by consumers, has been clearly spelt out by the Ombudsman in his order dated 24.10.2008 and has been reproduced above in Para 18. It has been clearly stated that while load shedding relates to action to be taken by the respondent to regulate supply, restriction in use by consumers, places an obligation on the consumer and hence the consumer has to be made aware of the obligation before penal action can be taken for any violation of the restriction imposed.

24. The representation is accordingly allowed. The penalty imposed is hereby set aside as is the Forum's order. The respondent is further directed to refund the penalty amount already paid by the petitioner along with interest at bank rate in accordance with section 62 (6) of the Electricity Act, 2003 by way of adjustment in the future bills.

Dated: 12.12.2012

Renuka Muttoo
Ombudsman