

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Kama Metals & Alloys Pvt. Ltd.,
Village Raipur, Bhagwanpur, Roorkee,
Distt. Haridwar, Uttarakhand.

Vs

The Executive Engineer,
Electricity Distribution Division (Rural),
Uttarakhand Power Corporation Ltd.
Civil Lines, Roorkee, Distt. Haridwar, Uttarakhand.

Represntation No. 23/2012

Order

The petitioner, M/s Kama Metals & Alloys Pvt. Ltd., Village Raipur, Bhagwanpur, Roorkee, Distt. Haridwar filed a petition before the Ombudsman on 08.10.2012 against the order dated 19.09.2012 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) ordering payment of additional security demanded by the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent).

2. The petitioner has stated that he has a contracted load of 4500 KVA and has been making payment of electricity bills as sent to him by the respondent. He states that he received a bill for the month of October 2010 in which security deposited was shown as Rs. 23,20,547.62 and additional security required was shown as Rs. 72,60,650.38. In the bill for the month of November 2010 security deposited was shown as Rs. 47,20,547.62, however additional security required was shown as Rs. 72,60,650.38. The petitioner states that as he was not served with any notice to deposit the same and the amount payable in the bill was shown for only the monthly consumption charges both in the bill for October and November, he did not raise any objection. He claims that the respondent never gave any notice to deposit the additional security and hence he took no action in this matter.

3. The respondent had taken no action against the petitioner for not paying the additional security during the year 2010-11, however, the petitioner alleges that the respondent threatened to disconnect the electricity supply if the petitioner did not deposit the additional security amount Rs. 67,06,458.81 shown in the July 2011 bill. The petitioner alleges that no notice was served on him regarding payment of the amount and the respondent did not give any basis of calculation of the additional security. The petitioner maintains that the calculation of the additional security amount was incorrect as the same could not be more than the difference of the maximum electricity bill raised in the previous year for any month and the security amount already deposited. The petitioner states that he is willing to pay a reasonable amount of the additional security if as determined by the respondent as per law and relevant regulations and provided notice of demand is raised with an option to the petitioner to deposit the same in 12 installments as per the orders of the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC).
4. The petitioner filed a complaint before the Forum on 09.09.2011 with the request that the respondents be restrained from realizing the additional security amount of Rs. 67,06,458.00 or disconnecting the supply. The Forum however in their order dated 19.09.2012 dismissed the complaint of the petitioner and ordered payment of the additional security as shown by the respondent. The respondent in pursuance of the order sent a letter to the petitioner dated 27.09.2012 and another communication dated 01.10.2012 asking the petitioner to deposit the amount of additional security by 05.10.2012 failing which the supply would be disconnected.
5. The petitioner states that the complaint before the Forum was with respect to the previous year i.e. 2011-12 and for the current year i.e. 2012- 2013, the respondent had in the bill for the month of August 2012 shown security deposited as Rs. 51,07,533.48 and additional security required as Rs. 93,67,120.00. This show that the additional security has been revised by the respondent for the current financial year rendering the past requirement of additional security as redundant. When the petitioner tried to pay the current bill for August 2012, the respondent was unwilling to accept the same and tried to

coerce the petitioner to deposit the required additional security of 2011-12 first. The petitioner moved an application to the respondent dated 23.08.2012 pointing out that bills were now being raised and paid for 15 days periods and hence the additional security requirement should be reassessed.

6. The normal billing cycle for industrial consumers is for one month. Thus the consumer is sent a monthly bill. In 2012, the respondent changed the billing cycle from one month to 15 days. The petitioner has appended bills issued in a different format by the respondent for 15 day periods from February 2012. The respondent started sending a fortnightly bill stating '15 days bill on average of the previous months bill' as well as the full months bill in which the amount paid as per the '15 days bill' was deducted from the total amount due.
7. The petitioner claims that in a meeting with the respondent he had shown that the total security could not exceed Rs. 69,00,000.00 as per the calculations of the respondent himself on the basis of 15 day billing cycle. As Rs. 5107533.48 was already deposited, the additional security requirement could not be more than approximately Rs. 17,00,000.00. The petitioner also contended that other industries were not required to give additional security for more than one month consumption and has appended bills of other industries for the same period to prove his contention.
8. The petitioner states that the respondent agreed with the contention of the petitioner and directed the cashier to deposit the amount of the current bill and Rs. 17,83,161.00 as additional security and made an endorsement regarding the same on the petitioner's bill for August 2012. The said amount of required additional security was deposited by the petitioner vide receipt dated 24.09.2012. However subsequent to this a letter dated 27.09.2012 was sent by the respondent demanding additional security of Rs. 67,06,458.00 in pursuance of the order of the Forum. A reminder was also issued by the respondent vide letter dated 01.10.2012. The petitioner has prayed that the order of the Forum dated 19.09.2012 be set aside and the respondent be restrained from realizing the

amount of Rs. 67,06,458.00 pertaining to additional security for the year 2011-12, respondent be restrained from disconnecting the supply of electricity to the complainant.

9. The Forum have made reference to the complainant's plea that the respondents have routinely recorded the additional security to be deposited in the monthly bill raised but they never gave any notice to the complainant to deposit the same as required by the Act and also did not include the amount in the amount payable. In their order the Forum has maintained that the Electricity Act, 2003 (section 47) and the relevant provisions of the Supply Code do not prevent the supplier from charging additional security on the basis of maintaining a sum equivalent to the estimated average consumption of two billing cycles or the existing security deposit with the licensee, whichever is higher, as security deposit towards any delay or default in payment. The Forum was satisfied with the calculations for additional security for the year 2011-12 as provided by the respondent and were of the opinion that the calculated additional security of Rs. 67,06,458.00 was correct and payable by the complainant. Taking cognizance of the fact that the complainant has not approached the respondent for payment of the additional security in installments, the Forum ordered that the respondent may take decisions regarding installments and their mode of payment.
10. In their statement the respondents maintained that while initial security is realized at the time of giving connection, additional security is demanded every year after the end of the financial year i.e. April to May of the next year. The calculation are based on total amount of bill in the financial year $X 2 \div 12$, in case of monthly billing. Further the respondents maintained that the demand for the additional security has been mentioned in every bill and this in itself is a notice and no separate notice is necessary. The respondents maintained that the average monthly bill for the year April 2010 to April 2011 was 57,76,157.33 and the additional required security was based on this figure. The Forum had considered the billing cycle provided by the respondent and given the additional required security to be deposited as per the demand of the respondent for Rs. 67,06,458.00. As far as the demand of the petitioner that he has a right to deposit the security in installments, in case the petitioner made a request the same would be

considered by the respondent. The respondents have also drawn attention to clause 2.3.1 (1) of the Supply Code *“the consumer is required to maintain a sum equivalent to estimated average consumption of two billing cycles or the existing security deposit with the licensee, whichever is higher, as security deposit towards any delay or default in payment.”*

11. The respondent stated that it is wrong to allege that by demanding additional security in the bill for August 2012, the past requirement of additional security had become redundant and ineffective. The demand for additional security was legal and in case the deposit was not made, then the licensee was not obliged to continue the supply of electricity to the petitioner. The respondent states that the ‘alleged’ application dated 23.08.2012 was an afterthought measure. The application ‘allegedly’ given during the pendency of the case before the Forum is misleading. No such case was taken before the Forum. It is wrong to allege that the respondent agreed with the contention of the petitioner by accepting the deposit made by the petitioner towards the bill and towards additional security. It was wrong to allege that the order passed by the Forum and the demand of additional security made by letter dated 27.09.2012 was redundant after fresh ascertainment of additional security for the current year made by the respondent. The respondent felt that it was wrong that after March fresh ascertainment of additional security had to be done as per current consumption and the additional security as per consumption of previous year had become redundant. The respondent again quotes clause 2.3.1 (1) of Supply Code and states that this shows that demand of additional security of the previous year does not become redundant.
12. I have gone through the facts of the case. The petitioner is a HT consumer of the respondent. At the time of initial connection he had paid a security to the respondent. In the year 2010 he received bills showing additional security required as Rs. 72,60,650.38. As the petitioner did not pay the charges, the demand continued. A discrepancy arose in the amount of security deposited which was initially being shown as Rs. 23,20,547.62 in the bills for May to October 2010, however in the bill for November the security deposited changed and was shown as Rs. 47,20,547.62. The additional security though

remained the same Rs. 72,60,650.38. It is not clear whether the petitioner paid any money towards the additional security or how the amount of security deposited changed while the additional security required remained the same. The respondent however took no action against the petitioner for non deposit of additional security. In the bill for May 2011 the security deposited showed an increase probably due to interest and was shown as Rs. 48,45,857.19. The additional security required also underwent a change and was shown as Rs. 67,06,458.81. On receipt of this, the petitioner approached the Forum on 09.09.2011. The forum in their order dated 19.09.2012 was satisfied with the calculations for additional security as provided by the respondent and were of the opinion that the calculated additional security of Rs. 67,06,458.00 was correct and payable by the complainant.

13. The petitioner has drawn attention to a large number of rules, which will be dealt first. In the first instance the petitioner claims that the respondent has acted arbitrarily and against the provision of Electricity Act and the Supply Regulation 2007. He has claimed that the additional security amount cannot be more than the difference of the maximum electricity bill raised in the previous year for any month and the security amount already deposited. Moreover if the respondent wants to raise a demand the security can only be ascertained once in a year and it is the discretion of the respondent to raise or not raise the amount. He has claimed that if the respondent wants to raise a demand he must send a notice of the demand to the consumer. The petitioner claims that no amount of reasonable security has been determined by the respondent in the month of April 2011 and neither has any demand notice for the same been sent to him. The petitioner has also claimed that under the UERC (Release of HT and EHT Connections, Enhancement and Reduction of Loads) Regulations 2008, the additional security demand on initial security becoming invalid or insufficient is only equal to amount of reasonable security fixed and not higher than that, and which in case of HT consumer is Rs. 1000/KVA.
14. The subject of additional security deposit is dealt with in the Supply Code which provides as under:

“2.3.1 Additional Security Deposit

- (1) The Licensee shall review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year. Consumer is required to maintain a sum equivalent to estimated average consumption of 2 billing cycle or the existing security deposit with the Licensee, whichever is higher, as security deposit towards any delay or default in payment.*
- (2) Based on such review, if the security deposit falls short by not more than 10% of the existing security deposit, no claim shall be made for payment of additional security deposit. In case the security deposit falls short by more than 10% of the existing security deposit, the Licensee shall issue the demand in the ensuing electricity bill.*
- (3) If existing security deposit is found to be in excess of more than 10% of the required security deposit, refund of the excess amount shall be made by adjustment in the ensuing bills.*
- (4) Existing security deposit along with additional security deposit as above shall then become current security deposit and interest as prescribed by the Commission from time to time shall be payable on full security deposit available with the Licensee.*
- (5) Assessment of additional security deposit shall be done once a year in the month of April.*
- (6) The security deposit available with the Licensee in respect of each consumer shall be shown in the bill issued to the consumer. Refund of security to the consumer by the Licensee, as and when arises, shall be made through maximum of three electricity bills without any other formalities.”*

15. This makes it clear that assessment of additional security is to be done once in a year in April on the basis of the previous year's average consumption. The amount of additional security would be based on the average consumption of two billing cycles of the previous year minus the security deposit already available with the respondent. It is quite clear from the Supply Code provisions that the demand is to be issued in the ensuing electricity bill. There is no provision for a separate demand notice to be sent to the consumer. The Forum in their order have shown the table provided to them by the respondent on the basis of which the additional security requirement has been worked out and this is in

order and shows that the amount required for additional security for the year 2011-12 has been worked out correctly.

16. The petitioner has also drawn attention to section 47 of the Electricity Act 2003. The provisions of section 47 are given below:

“47. (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him ...

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section(2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues. ...

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.”

17. The petitioner has placed great emphasis on the words “reasonable security” mentioned in section 47 (1). He has however ignored the rest of the section which states “reasonable security, as determined by regulations”. As already mentioned above, the Supply Code 2007 section 2.3.1 has spelt out how additional security is to be calculated.

18. The petitioner has also drawn attention to section 47 (2) regarding notice to be served by the distribution licensee, however section 2.3.1 (2) of the Supply Code states that the

licensee shall issue the demand in the ensuing electricity bill, there is no mention of any separate notice to be issued to the consumer.

19. On the petitioner's reference to the HT Regulations, it is seen that section 5.10 (a) of these regulations only mention about initial security amount at the rate of 1000/KVA of contracted load. The main section dealing with additional security deposit is section 2.3.1 of the Supply Code Regulations, hence the HT Regulations are not relevant in this case.
20. The order of the Forum in the matter which was brought up before them i.e. additional security required, worked out by the respondent on the petitioner for the year 2011-12 was correct. However, on the date of the Forum's order i.e. 19.09.2012, the amount of additional security had already changed for the year 2012-13 as is seen from the bills issued to the petitioner from May 2012 when the additional security required started being shown as Rs. 93,67,120.52. On receipt of this the petitioner wrote a letter to the Executive Engineer dated 23.08.2012 that the additional security amount had to be reexamined in view of the increase in security deposited shown in the bill and based on the change in the billing cycle from monthly to fortnightly. On the August 2012 bill of the petitioner, the Executive Engineer has given an order to the Cashier "please accept payment of Rs. 41,67,733.00 against bill and additional security amount Rs. 17,83,161.00". This shows that the Executive Engineer in charge of the Division has accepted the contention of the petitioner that the security demand from him should be based as per the Code on consumption of two billing cycles and therefore in the case of fortnightly bills on the basis of average of one month consumption of previous year.
21. The respondent has tried to downplay the order of the Executive Engineer by calling the letter sent by the petitioner to the Executive Engineer on 23.08.2012 an afterthought. The respondent's counsel has also claimed that the application given during the pendency of the case before the Forum is misleading and was not taken up before the Forum. The respondent claims that his letter of 27.09.2012 shows that the contention of the petitioner that the respondent agreed to his plea for recalculation of additional security required was incorrect.

22. The fact is that the additional security as per the Supply Code has to be worked out on the “average consumption of two billing cycles of the previous year”. In the year 2011-12, it had been correctly worked out by the respondent as per the Supply Code Regulations on the basis of average consumption of two billing cycles of the previous year, which was for two months. The Forum has correctly ordered that the additional security must be paid for the year 2011-12 as worked out by the respondent. Unfortunately by the time the Forum issued the order the financial year had changed to 2012-13 and as required under the regulations, the amount of additional security requirement also changed. Therefore the order of the Forum for payment of additional security for the previous financial year became infructuous.
23. The respondent had the option of disconnection of supply at the time which they did not avail. The petitioner also cleverly used the situation and has got away with not paying the additional security charge for the year 2010-11 and 2011-12. The minute it suited him that the additional security charge was a smaller amount in the year 2012-13 because of the change in the billing cycle from one month to 15 days, he approached the respondent and made payment of the amount which was much less than the requirement shown in the previous years. When he was faced with a large amount of additional security charges, he approached the Forum but when he worked out that the amount was much less he approached the respondent despite the case still being pending before the Forum. He did not bring the facts to the notice of the Forum. Had he brought the facts relating to the order of the respondent dated 24.08.2012 to the notice of the Forum, they would have taken these facts into consideration for formulating their judgment.
24. Unfortunately there is no provision for penalizing the petitioner for nonpayment of additional security except by disconnection which was not done by the respondent. The order of the Forum though correct for the case which was brought before them, is struck down as it is no longer relevant due to the financial year having changed twice in fact since the order was issued and additional security charges having changed. It is advised that the respondent should serve the latest additional security charges, as per the

provisions of the regulations, on the petitioner and ensure compliance including disconnection, if necessary.

Dated: 17.05.2013

(Renuka Muttoo)
Ombudsman