

## **THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

M/s Uttaranchal Iron and Ispat Ltd.  
Furnace Devision (Unit II), Plot no. 5, 6, & 7,  
Jasodharpur Industrial Area, Kotdwara,  
Distt. Pauri Garhwal, Uttarakhand

Vs

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

Representation No. 27/2012

### **Order**

The petitioner M/s Uttaranchal Iron and Ispat Ltd. Furnace Devision (Unit II), Plot no. 5, 6, & 7, Jasodharpur Industrial Area, Kotdwara, Distt. Pauri Garhwal, Uttarakhand approached the Ombudsman vide a petition dated 03.10.2012 with the plea that they had filed a complaint before the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred as Forum) on 06.09.2011 regarding charge of system loading charges by Uttarakhand Power Corporation Ltd. (UPCL - hereinafter referred as respondent) and though the Forum had reserved judgment on 03.12.2011, no order had been pronounced by the Forum despite reminders sent to them. The petitioner therefore requested that the Ombudsman call for the records of the file and dispose the complaint.

2. On 07.11.2012 the petitioner informed that they had received an order dated 25.10.2012 from the Forum in which the Forum had stated that since matters relating to the case were pending before the Appellate Tribunal for Electricity, New Delhi, (hereinafter referred as APTEL) it would not be appropriate for them to pass any order as the matter was sub judice. The APTEL had however disposed all appeals filed by Uttarakhand Power Corporation Ltd. (UPCL - hereinafter referred as respondent) vide their order dated 19.10.2012. Aggrieved by the order of the Forum dated 25.10.2012 the petitioner again approached the Ombudsman to hear and decide the case.

3. The Forum was asked to send the records relating to the case and the same were received vide Forum's communication dated 22.11.2012 in which it was stated that the petitioner had informed the Forum that APTEL had disposed off all appeals filed by the respondent. The Forum had written to MD, UPCL to verify the same from the APTEL but so far no reply had been received from UPCL.

4. APTEL in their order of 19.10.2012 have observed *"After a long delay almost of 9 years the respondent has now challenged the order dated 08.09.2003, to further delay the benefit of the various orders of the State Commission, Ombudsman and the High Court to the consumers. The consumers have already suffered for a long period and they had to run from pillar to post to get justice. By filing this appeal, the applicant wants to further delay the refund of charges long overdue to the consumers.*

*Further in this appeal the main ground related to the jurisdiction of the State Commission. Having submitted to the jurisdiction of the State Commission while withdrawing the appeal before the High Court challenging the impugned order and raising the issue of jurisdiction in WP/SLPs before the High Court and the Hon'ble Supreme Court, it is not open to the applicant to again raise the issue of jurisdiction of the State Commission in this appeal. In our opinion, the applicant has not come before us with clean hands. In view of above, we do not find sufficient cause to condone the long delay of nearly 9 years. Accordingly the application is rejected and appeal is dismissed."*

5. Subsequent to the order of APTEL the respondent issued an Office Order dated 01.01.2013 wherein they have agreed to refund the system loading charges as per the orders of the Ombudsman and the Courts. The order states:

*"2. As against the recovery of system loading charges from the industrial consumers for the period from 20.09.2003 to 31.03.2005, some consumers represented their cases before the Hon'ble Ombudsman for Electricity. Hon'ble Ombudsman vide its order stated 07.02.2007 decided the cases in favour of the consumers and held that the system loading charges are not payable by the such consumers. Hon'ble Ombudsman vide its said order directed UPCL to refund the amount of system*

loading charges recovered from the complainant consumers for the period from 20.09.2003 to 31.03.2005 along with interest at Bank Rate as per section – 62(6) of the Electricity Act, 2003.

3. UPCL challenged the above order dated 07.02.2007 issued by Hon'ble Ombudsman in higher Courts but got no relief in the matter.

4. In compliance of above orders issued by Hon'ble Ombudsman and Courts, it is hereby ordered that the amount of system loading charges collected from the industrial consumers w.e.f. 20.09.2003 to 31.03.2005 shall be refunded to them along with interest at Bank Rate. The refund shall be made through adjustment by adopting the following methodology:

(i) Amount to be refunded as on 31.12.2012 including interest shall be computed in respect of each consumer. Interest will be compounded at the end of each financial year.

(ii) The amount computed in para (i) above shall be adjusted in following order of priority:

(a) Adjustment towards any arrear of electricity charges outstanding as on 31.12.2012;

(b) Adjustment towards any arrear of additional security deposits outstanding as on 31.12.2012;

(c) The remaining amount, if any shall be adjusted (Credited) in the electricity bills of the consumers in six equal monthly installments. First installment shall be credited in the bill to be issued in the month of January, 2013 and last installment in the bill to be issued in the month of June, 2013. The amount of installment shall be calculated by applying the following formula:

$$\text{Amount of each installment} = \frac{\text{Remaining Amount to be adjusted}}{5.8456}$$

5. The Bank Rate applicable from time to time is mentioned herein below:

|                          |   |            |
|--------------------------|---|------------|
| 20.09.2003 to 13.02.2012 | - | 6.00% p.a. |
| 14.02.2012 to 16.04.2012 | - | 9.50% p.a. |
| 17.04.2012 to till date  | - | 9.00 p.a.” |

6. In view of the OM dated 01.01.2013 of the respondent the matter relating to refund of system loading charges stands resolved. The petitioner has however objected to the interest being calculated at the bank rate mentioned in the OM and demanded that the interest be calculated at a higher rate as per the interest rates on loans given to customers by different banks i.e. 14.5 to 16.5%.
7. The respondent informed that the interest has been fixed as per RBI rates. The Electricity Act, 2003 in section 62 Determination of Tariff (6) provides *“If any Licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the Licensee”*.

Further the UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 shows that bank rate has been defined as under:

*“2. Definitions*

*In these Regulations, unless the context otherwise requires:*

*(2) “Bank Rate” means the Rate as notified by Reserve Bank of India u/s 49 of the RBI Act, 1934.”*

8. Hence the respondent can only make the calculation as per the RBI rates and not by any other rate of interest. In the present case the respondent has attached two communications of the Reserve Bank of India dated 13.02.2012 and 26.04.2012 to all Scheduled Commercial Banks regarding Bank Rate fixed by the RBI as a reference rate. Examination of the RBI letters shows that the respondent has fixed the interest as per the RBI rates.
9. Regarding the plea of the petitioner relating to the amount of interest, as shown above the respondent is bound under the regulations to follow the RBI rates which has been done by them.

10. The action of the Forum in keeping the matter pending after reserving judgment on 03.12.2011 for nearly a year was not correct. Further their action after being provided a copy of APTEL's order of 19.10.2012 in referring the matter to MD, UPCL instead of giving a final order in the case again delayed the whole matter so that the petitioner had to take recourse to appealing to the Ombudsman for finalizing the case.

Dated: 17.05.2013

(Renuka Muttoo)  
Ombudsman