

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Divya Yog Mandir (Trust)
Maharishi Dayanand Gram
Delhi-Haridwar National Highway,
Near Bahadrad, Distt, Haridwar, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (Urban),
Uttarakhand Power Corporation Ltd.
Haridwar, Uttarakhand

Representation No. 21/2013

Order

The petitioner, M/s Divya Yog Mandir (Trust) approached the office of Ombudsman with its petition dated 05.08.2013 against the order dated 07.06.2013 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) which was only received by the petitioner on 22.07.2013. It was disclosed the copy of the order did not reach the petitioner and he had to apply for the same on coming to know that the Forum had issued its order. The petitioner requested that delay in filing the plea before the Ombudsman be condoned and respondent be restrained from realizing the bills raised against the petitioner. The appeal was admitted condoning the delay. Stay was granted on 13.08.2013.

2. The petitioner is a consumer of the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent) and has two connections in its name, connection no. 696/0401/088820 (hereinafter referred to as connection **A**) and connection no. 696/0401/049703 (hereinafter referred to as connection **B**). The petition filed concerns both the connections.
3. Connection **A** was installed on 22.11.2004. The petitioner maintains that the bills raised by the respondent were being paid regularly and there were never any dues. After a while it was decided by the petitioner that this connection was not required

and hence they applied for permanent disconnection. After completing all requisite formalities the connection was permanently disconnected (PD) on 24.12.2010. The petitioner has emphasized that after PD on 24.12.2010 all the equipments were removed from their premises and all dues shown till that date were deposited. At the time of removal of equipments, no mention was made of any further dues nor was any sealing certificate prepared and given to the petitioner.

4. After the PD, respondent sent a letter dated 21.04.2011 claiming that Rs. 25,730.00 was due on the above mentioned connection. In their letter, the respondent stated that this amount was due from the petitioner and the same had not been paid by them within the due date. The petitioner informs that at the time of depositing the dues on 18.05.2011 the respondent stated that the dues were Rs. 37,663.00 and not Rs. 25,730.00 as informed earlier. The petitioner claims that without entering into any confrontation they deposited the amount on 18.05.2011. Subsequently the respondent raised a demand of Rs. 45,02,982.00 including a demand of approximately Rs. 15 lacs as Late Payment Surcharge (LPS). The petitioner stating that the equipments etc. had been removed on 24.12.2010 and were in the possession of the respondent therefore there was no way to ascertain the veracity of the claim for dues by the respondent.
5. Connection **B** was installed at the premises of the petitioner on 01.02.2004. The petitioner maintains that all bills raised by the respondent for this connection were being paid by the petitioner till October 2011 and no amount was outstanding. The respondent without any basis showed an arrear of Rs. 32,87,087.00 in the bill of October 2011. It was claimed that this arrear was for 7 years from May 2004 and included Rs. 10 lacs as LPS. Subsequently the respondent removed the LPS from the amount and were now demanding Rs. 22 lacs as dues on this connection. The respondent did not give any satisfactory reply to the queries of the petitioner but threatened disconnection if the amount was not deposited. The petitioner under protest deposited a sum of Rs. 12 lacs. Thereafter the petitioner approached the Forum with a complaint dated 28.02.2012. In their complaint before the Forum the petitioner stated that no amount was payable by them and the demand of the respondent was illegal and against rules and regulations. The petitioner further stated that the respondent in their statement before the Forum admitted that the billing had been done under NR/IDF/ADF/CDF from 22.11.2004 to 24.12.2010 for connection **A** and on IDF from

2004 to 2007 for connection **B** due to non application of MF. The petitioner stated that this was a poor defense raised by the respondent as he was aware that IDF billing could not be done for a period more than 3 months.

6. The petitioner states that the Forum's order dated 07.06.2013 dismissing his complaint was incorrect as the Forum failed to consider the letter of the respondent dated 27.03.2012 directing the respondents not to raise assessment for matters relating to CT, PT and MF for more than two billing cycles. The respondent however have maintained that the instructions laid down in this letter are not applicable in this case. They were meant for cases where there was a technical fault concerning the above matters, in the meter. The petitioner has also claimed that the respondent cannot demand dues for slow meter for more than 6 months and no disconnection can be made after two years as per section 56 (2) of the Electricity Act, 2003. The petitioner has also claimed that the amount of consumption assessed by the respondent was incorrect.
7. The petitioner also stated that they did not receive the copy of the said order and only came to know about it when they received a letter from the respondent dated 06.07.2013 asking them to deposit Rs. 34,18,528.00. Thereafter the petitioner moved an application before the Forum and received the copy of the order on 22.07.2013.
8. The petitioner has prayed that the order of the Forum be set aside and the respondent be restrained from realizing any of the amount raised by the respondent, Rs. 45,02,982.00 for connection **A** as per bill dated 07.05.2011 and Rs. 11,89,019.24 for connection **B** raised in bill for the month of March 2012. The amount of Rs. 12 lacs already deposited be refunded or adjusted in future bills with interest.
9. The respondent claimed before the Forum that connection **A** was a non domestic connection for 20 KW and meter no. UPCO1465/HE 12617 was installed on this connection with CT ratio 50/5. As per billing status billing was being done in NR/IDF etc. from the time of installation (22.11.2004). It was only after PD (24.12.2010) when the meter was examined that it was found that there was CT with 50/5 ratio (MF 10) installed on this meter from the time of installation. At that time the reading on the meter was 156098. MF 10 was applied to this and arrear bill was sent to the petitioner.

10. The respondent also informed that the second connection **B** was installed on 01.02.2004. This was a 12 KW industrial connection. Inspection by the SDO on 10.10.2011 showed that the connected load was 24.755 KW and meter no. UPCO1484/HE 11418 with CT ratio 50/5 was installed. The respondent further states that on examining the sealing certificate of 08.11.2004, it was found that the earlier meter had been changed and meter no. UPCO1484/HE 11418 was installed with initial reading of 972 and CT ratio 50/5. It was further seen that billing status from 2004 to February 2007 was in IDF. The respondent claims that as there was a faulty meter from May 2004 to November 2004 due to which the bills were made on the basis of average consumption. Even though a new meter was installed in November 2004, the bills continued as IDF till March 2007. In March 2007, when the billing status was examined it was seen that IDF bills were continuing, advice was given that the new meter no. UPCO1484/HE 11418 (installed in November 2004) be reflected on the bill. It was also seen that the reading on this meter was 30000 units from 08.11.2004 to March 2007. After adjusting the amount already charged under IDF, the bills for consumption of 30000 units till March 2007 was processed. However a mistake arose in the calculation of the MF which was shown as 1. Due to incorrect application of MF from 2004 till October 2011 when the checking was done by the SDO, arrears had arisen. A bill for the arrears was raised against the petitioner after the checking on 10.10.2011.
11. The Forum in their order dated 07.06.2013 framed issues relating to both the connections. After hearing arguments from both sides and examining the papers, the Forum held that in the case of connection **A** and **B**, CT 50/5 was installed on both meters. They further held that the respondent had maintained in both cases that because the petitioner was using load more than sanctioned load, hence the bills were coming as IDF and could not be prepared as per the MF. The Forum held that the bill for Rs. 4502982.00 given in the case of connection **A** is correct. They however held that the LPS should be charged as per rules and hence the bill for this connection needed to be revised. They held that in the case of connection **B** the revised bill was correct. as the respondent had already deleted the LPS charged. They have commented adversely on the fact that the billing continued as IDF etc. for such a long

period (7 years) and have recommended that the department initiate action against the concerned officials.

12. Brief facts of the case are that the petitioner had 2 connections. Connection **A** was a non domestic connection for 20 KW and meter no. UPCO1465/HE 12617 was installed on 22.11.2004. The petitioner applied for permanent disconnection and the same was carried out by the respondent on 24.12.2010. After all the equipment relating to this connection was removed from the premises of the petitioner, respondent sent a demand for dues on 21.04.2011. The same was paid by the petitioner on 18.05.2011. Subsequently the respondent raised a demand for Rs. 45,02,982.00. Connection **B** was installed on 01.02.2004. This was a 12 KW industrial connection. The petitioner was paying all bills raised by the respondent till October 2011 and no amount was outstanding. However, in the bill for October 2011, the respondent raised an arrear of Rs. 32,87,087.00. The petitioner approached the respondent but not satisfied with the explanation of the respondent, the petitioner approached the Forum. The Forum in their order decided on the basis of documents shown to them by the respondent that both meters had CTs of 50/5 installed on them and due to oversight by the respondent the correct MF was not applied in both cases. When this point came to the notice of the respondent they had applied the correct MF and raised arrear bills for both connections.
13. In their arguments the petitioner has claimed that bills issued by the respondent showed that the respondent had been regularly issuing bill with MF 10 and hence could not now claim that no MF was applied. The petitioner has also claimed that the OM of 07.05.2011 relating to PD for connection **A** is a doctored document as there is cutting in the same. He has claimed that as per clause 4.2 (4) of the Supply Code, the demand raised by the respondent should be set aside. As regards the report submitted by the respondent for connection **B**, the petitioner feels that it should have been prepared by an independent Lab and preparation of the report by the respondent and reliance on the same is against the principle of natural justice.
14. The petitioner has questioned the claim of the respondent that as the consumption on both connections was more than the sanctioned load, the bills were coming as IDF/RDF. The petitioner has claimed that the meter was not showing any reading. He

has further claimed that the law provides that under no circumstances can IDF/ADF/RDF bills be given to the consumer for a period more than 6 months. To say that the meter was not defective is incorrect.

15. Petitioner has also drawn attention to section 56 (2) of the Electricity Act, 2003 and claimed that the respondent have acted against the provisions of the section. They have also drawn attention to the Supply Code Regulation 2007 claiming that it is the obligation of the respondent to test the installation of the consumer within the specified time, which in case of HT consumers is 1 year and 5 years in other cases. They have also drawn attention to clause 4.2, clause 3.1.3 (1) & (6), clause 3.1.4 and clause 3.2 of the Supply Code 2007.
16. The respondent maintained that it was wrong to allege that IDF billing could not be given for more than 3 months without giving justifiable reason. The respondent maintains that billing under IDF was not due to defective meter but due to excessive consumption by the petitioner. Therefore the circular of the department that assessment for matters relating to CT, PT and MF should not be raised for more than 2 billing cycles was not applicable as this could only be applied if there was a technical fault. They have also denied the application of section 56 (2) of the Electricity Act, 2003 as there was nothing wrong with the meter and it was not running slow. In the case of connection **A**, the respondent has maintained that the petitioner was consuming very high load much beyond the contracted load and because of this the software system was unable to cope and produced ADF (appears defective) bills and when this continued to be repeated started sending IDF (identified defective) bills. Due to this the Multiplier i.e. MF could not be applied as there was no reading mentioned in the bills. It was only when the meter was removed on PD that the respondent realized a CT of the ratio of 50/5 with MF 10 was installed on this meter. The reading shown on the meter was 156098 KWH. The respondent also provided copies of two earlier MRIs done on this meter on 05.11.2009 and 05.06.2010. The MRI of the meter tallied with the reading and also confirmed that maximum load being drawn was much more than the contracted load.
17. The respondents have stated that in the case of connection **A** demand for Rs. 25,730.00 was sent vide letter dated 21.04.2011. However they have denied that when

the petitioner went to pay the bill he was informed that the calculation was incorrect and he owed the respondent Rs. 37,663.00 which he paid vide receipt of 18.05.2011. The relationship between the consumer and the respondent only came to an end on issuance of the OM dated 07.05.2011 and not on 24.12.2010 when PD was done. The respondent has denied any tampering with the OM due to cutting as alleged by the petitioner. The respondent claimed that the amount given in the OM i.e. Rs. 45,02,982.00 was the charge after applying MF to the units consumed.

18. In the case of connection **B** the respondent has informed that checking was done by the SDO on 10.10.2011 and it was discovered that CT of 50/5 ratio with MF 10 was installed on the meter. It was also found that though the connection was for 12 KW, a load of 24.755 KW was connected. No defect was found in the meter. In this case also it was found that IDF bills were being sent from 08.11.2004 when the new meter was installed till February 2007. In February 2007 the meter reading was taken and subsequently metered bills were submitted, however a mistake was made regarding the MF which was recorded as 1. It was only after the checking by the SDO in 2011 that it was discovered that a CT ratio 50/5 was installed on the meter with MF 10. Subsequent to this the petitioner was sent a bill for Rs. 32,05,924.00 for the period from 08.11.2004 to 01.10.2011. The meter was not found to be defective. The arrear bills issued now are not for additional consumption but on account of application of correct MF. Due to a clerical error the correct MF was not being applied till the inspection on 10.10.2011. Hence section 56 (2) does not apply as this was the first demand.
19. After hearing arguments from both sides, it is clear that the main issue relates to whether CTs were installed on the two meters at the premises of the petitioner. If CTs were installed, was correct MF being applied for billing purposes. In the case of connection **A** the connection was energized on 22.11.2004. As per the duplicate copy of the sealing certificate of 22.11.2004 prepared and submitted by the respondent, it was shown that the meter was CT connected with ratio 50/5, MF 10. Similarly duplicate sealing certificate submitted by the respondent dated 24.12.2010 mention of the CT ratio 50/5 was made (as copies of both the sealing certificate are duplicate copies, they cannot be relied upon). However the fact of the matter is that the contracted load was 20 KW and for such a heavy load CT connected meter is

installed. Moreover examination of the bills, submitted by the petitioner, shows that MF 10 is mentioned in each bill. However the MF was not applied as all these bills were IDF bills. Hence the explanation given above by the respondent that MF was not applied appears to be correct. The contention of the petitioner doubting the assessment of consumption is also shown to be incorrect as copies of MRIs have been provided showing the consumption and the load being used by the petitioner on connection **A**.

20. Connection **B** was energized on 01.02.2004. From the statements of the respondent it would appear that the first meter installed in February 2004 turned faulty and a new meter was installed on 08.11.2004. The contracted load was 12 KW. For a load of this quantum, CT connected meter is required. The checking report of 10.10.2011, signed by representative of the petitioner, shows that various tests were carried out by the SDO which proved that CT 50/5 i.e. MF 10 was installed on this meter. While the respondent claim that due to IDF bills, MF could not be applied till 2007, after 2007 metered bills were being sent and correct MF should have been applied. Non application of the correct MF shows carelessness and negligence on the part of the concerned staff of the time as they continued the mistake of MF 1 which had occurred in the beginning.

21. We shall now deal with the various issues raised by the petitioner.

- i) That the bills submitted by them show that bills being issued by the respondent were being issued with MF 10 and hence they could now not claim that no MF was applied.

Examination of the bills show that all the bills were IDF with a fixed number of units (3000) and no MF was applied and the billing was being done for the average consumption of 3000 units per month. MF 10 written on the bills only indicates that it was a CT connected meter having MF 10.

- ii) Petitioner has claimed that the contract between the supplier and the consumer for connection **A** (meter no. UPCO1465/HE 12617) was finished on 24.12.2010, the date of permanent disconnection. They have also maintained that the OM issued on 07.05.2011 is a doctored document as there is cutting on it.

The fact is that though the connection was severed on 24.12.2010 and all equipments were removed the PD only came into effect on issue of OM dated 07.05.2011. The cuttings were due to mistake in the calculations of the total amount due from the petitioner and cannot be treated as evidence of tampering with the document.

- iii) The petitioner has claimed that clause 4.2 (4) of the Supply Code would apply and the demand raised by the respondent after PD should be set aside.

Section 4.2 provides: “4.2 Disconnection on Consumer’s request/Permanent disconnection

(4) Licensee shall not raise any bill after disconnection. In case bills are raised even after disconnection, compensation as specified in the performance standards shall be paid by the licensee to the affected person.”

This clause would not apply as no fresh bill was submitted after the disconnection. A demand notice of the amount due, up to the date of disconnection as per records available up to that time, was initially sent under section 3 of Dues Recovery Act, 1958. Papers submitted by the respondent show that MRIs for connection A were carried out on 05.06.2010 and 05.11.2009. This was much before the permanent disconnection on 24.12.2010. After the PD, the earlier MRIs were consulted and the final reading as per the PD sealing certificate was taken. The calculations applying the correct MF were then made. The accounts were finalized and an OM (the final document for PD) dated 07.05.2011 showing the actual payable amount was issued. This amount (Rs. 45,02,982.00) has been further revised as per directions of the Forum and now stands at Rs. 34,18,528.00.

- iv) The petitioner has also raised the point that the checking should have been done in a private Lab as checking by the department itself does not ensure justice to the consumer.

There is however no provision for this and in all cases MRI is done by the department.

- v) The petitioner has questioned the claim of the respondent that as the consumption on both the connections was more than the sanctioned load the

bills were coming IDF/RDF. The petitioner has claimed that the meter was not showing any reading.

This is not the correct position as the MRI of both the connections has been made available and shows that the meters were taking the reading. The same was being sent to the billing section but due to drawal of excess load (the petitioner was consuming more than the sealing limit) bills were issued by the system as IDF. In the case of connection **A** this position existed from the date of installation till the date of disconnection. In connection **B** however after February 2007 metered bills were being sent but with a wrong MF.

Hence the petitioner's claim that clause 3.1.4 of the Supply Code applies in the matter is not correct as in both cases neither of the meters was defective. Clause 3.1.4 deals with cases of Meter not recording and provides

“3.1.4 (4) All new case of defective meters namely ADF, RDF or IDF, if any, shall necessarily be rectified within a maximum period of 3 months.”

- vi) Petitioner's claim that section 56 (2) of the Electricity Act, 2003 is attracted is incorrect as

Section 56 of the Electricity Act, 2003 provides as under *“Disconnection of supply in default of payment.*

Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, ... recover such charge or other sum ...

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:”

This section makes it clear that if the dues are continuously recoverable then this section limiting the period to 2 years would not apply. In the present case

in both connections the dues were continuously recoverable from the date of installation of meters and hence the limitation of 2 years would not apply.

- vi) The petitioner has drawn attention to clause 3.1.3 (1) of the Supply Code which provides

“3.1.3 Testing of meters

(1) Periodicity of meter tests - The Licensee shall observe following time schedule for regular meter testing:

<i>Category</i>	<i>Interval of testing</i>
<i>Bulk supply meters (HT)</i>	<i>1 year</i>
<i>LT meters</i>	<i>5 years</i>

CT ratio and accuracy of CT/PT, wherever applicable, shall also be tested along with meter.”

The point raised by the petitioner is correct and has been pointed out by me in a number of cases, however, this does not absolve the petitioner from paying for the consumption actually made by him.

- vii) The petitioner has also drawn attention to clause 3.1.3 (6) of the Supply Code

“(6) When the meter is found to be slow beyond permissible limits, as specified in Rule 57 (1) of the Indian Electricity Rules, 1956 and the consumer does not dispute the accuracy of the test, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within 15 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 6 months or less depending on period of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified”.

The above section does not apply the meter was not slow, there was no defect found in the meter. The arrear arose because of non application of MF.

- viii) The petitioner has drawn attention to clause 3.2 of the Supply Code 2007.

“3.2 Billing during the period defective/stuck/stopped/burnt meter remained at site

(1) The consumer shall be billed on the basis of the average consumption of the past three billing cycles immediately preceding the date of the meter being found or being reported defective. These Charges shall be leviable for a maximum period of three months only during which time the licensee is expected to have replaced the defective meter.”

As has been mentioned above, this is not a case of defective meter and hence this clause would not apply.

22. Decisions given by various Courts in similar matter of arrears been raised by Power Company due to wrong MF having been applied uphold the demand raised by the power companies for such dues. Some of the decisions are given below:

The Division Bench of the Hon’ble High Court of Bombay in Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. vs the Municipal Corporation of Greater Bombay AIR 1978, Bombay 369 held that ‘There is no limitation for making the demand by way of supplementary bill and section 24 of the Electricity Act, 1910 empowers issuance of such demand.’ Similarly in the case of Rototax Polyester vs Administrator, Administration of Dadra and Nagar Haweli Electricity Department, MANU/MH/0760/2009 the Hon’ble High Court of Bombay held that ‘In case the consumer is under billed on account of clerical mistake such as where the MF had changed, but due to oversight the department issued bills with 500 as MF instead of 1000, the bar of limitation cannot be raised by the consumer.’

23. After examining all the documents and hearing the arguments, it is established that both connection **A** and connection **B** were CT connected meters. As per the sealing certificates the ratio was 50/5 i.e. 10 MF in both cases. In both cases the power being drawn by the petitioner was much more than the sanctioned load leading to the computer recording the consumption as NA/IDF/ADF. MRI of both connections has been made available. MRI of both connections were carried out. MRI of connection **A** was done on 05.11.2009 and 05.06.2010. This was done before the meter was removed from the premises of petitioner on 24.12.2010. In the case of connection **B** MRI was done on 22.10.2009 and the day the SDO inspected the meter i.e. 10.10.2011. While the petitioner has maintained that MF has already been charged as

it was mentioned in the bill, it is seen that the bills were IDF etc. with average consumption and no MF had been applied.

24. While I agree that there have been a large number of lapses by the respondent, this does not absolve the petitioner from paying his dues. Amongst the most glaring lapses by the respondent is the fact that the mistake continued for over 6-7 years, despite instructions of the Commission that such cases should be dealt with urgently and set right within 3 months. In the case of connection **B** the mistake is even more glaring as in 2007 the IDF bills were corrected and metered bills started being sent but with the wrong MF. It is urgently required that the department examine this position and set it right so that the rules and regulations made in this connection are properly followed.
25. I find that the assessment has been correctly raised against the petitioner. Stay granted on 13.08.2013 is vacated. The order of the Forum is upheld. The petitioner should pay the arrears after adjustment of the amount already paid.

Dated: 04.04.2014

(Renuka Muttoo)
Ombudsman