

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Venkateshwara Hatcheries Pvt. Ltd.
(Earlier Known as M/s Sirni Biological Lab Pvt. Ltd.)
Attack Farm, Selaqui,
Distt. Dehradun, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (Rural),
Uttarakhand Power Corporation Ltd.
359/2, Dharampur, Dehradun, Uttarakhand

Representation No. 38/2013

Order

The petitioner, M/s Venkateshwara Hatcheries Pvt. Ltd. approached the office of Ombudsman with an application dated 08.10.2013 against the majority decision dated 16.09.2013 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) against the charges, Rs. 20,68,010.78, levied against them in the bill for the period 01.01.2013 to 31.01.2013, by Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent). The petitioner also requested for stay against realization of dues/disconnection. The stay was granted on 21.10.2013 for the pendency of the case.

2. The petitioner has stated that they have connection no. 1695 at their site situated at Attack Farm, Selaqui, Dehradun. The petitioner states that he received a bill dated 07.02.2013 for the period 01.01.2013 to 31.01.2013 for a total amount of Rs. 20,86,263.00. The bill dated 07.02.2013 contained an amount of Rs. 20,68,010.78 as an alleged Misc. charge. The petitioner claims that his average monthly bill is for Rs. 31,640.00 (last six months average). The petitioner approached the respondent on 28.02.2013 regarding the sudden increase in the bill amount and requested for details of the Misc. charge. The petitioner states that the officials of the respondent informed that these charges were old arrears for the period September 2006 to January 2013, which had not been added in the bills for the respective period due to the respondent's

mistake in showing the MF as 20 instead of 40. Aggrieved by the explanation of the respondent, the petitioner filed a complaint before the Forum. The Forum held a number of hearings and issued their order on 16.09.2013.

3. The petitioner maintains that the respondent stated before the Forum that the load of the consumer is 75 KW in which CTs with a ratio of 200/5 had been installed whereby the MF was 40 and not 20. The respondent stated before the Forum that the mistake arose when the meter was changed in October 2005 and M/s Sai Billing Agency, the contractor who generated the bills was wrongly advised the MF as 20 by the respondent and the contractor sent its input data dated 12.12.2005 showing the MF 20 instead of 40. On 24.01.2013 when officials of the respondent checked the meter of the petitioner, CTs installed on the meter were found to be 200/5 ratio. Thereafter in the bill for the period 01.01.2013 to 31.01.2013, the amount by which the bills were allegedly deficiently charged for the period September 2006 to January 2013 on account of alleged wrong application of MF i.e. 20 instead of 40, was raised as Misc. charges and sent to the petitioner. The petitioner claims that the arrears could not include the period preceding two years prior to 01.01.2013 under section 56 (2) of the Electricity Act, 2003.
4. The petitioner has also mentioned a similar case of 2007 in one of the units of a sister concern in Maharashtra. There also the company received a bill, from the Maharashtra Electricity Distribution Company Ltd., for arrears due to application of wrong MF for a period of 5 years from February 2002 to 2007. In that case, the Electricity Ombudsman, Maharashtra had held that the electricity company could not recover arrears more than the last two years. This view was upheld by the Hon'ble High Court of Bombay which held that "similar issue was dealt by the Division Bench of this Hon'ble Court in Awadesh S. Pandey vs Tata Power Company Ltd. and others, AIR 2007, Bombay 52, that if at all any recovery of arrears is made under section 56 (2) of the Electricity Act, 2003 then the limitation of 2 years for recovery of such arrears is binding." The Hon'ble High Court of Bombay reiterated its order in the case of review petition filed by the Electricity Company. The electricity company has filed a Special Leave Petition in the Hon'ble Supreme Court, however no order has been passed till date. In view of the ruling of the Court, the petitioner has urged the Ombudsman to set aside the impugned order.

5. The Forum in the majority order held that the amount raised as Misc. charges was legally recoverable and could not be quashed or set aside. The Judicial Member of the Forum gave a dissenting opinion stating that the charges on account of wrong MF calculation cannot be made by the respondent for the period prior to January 2013.
6. The petitioner maintains that the amount in respect of a demand payable to the respondent under section 56 (2) becomes first due when the bill is raised. In the present case the impugned bill was raised after the amounts which had become due for the corresponding period had already been billed and duly paid. That the Forum could not interpret the provisions of section 56 (2) in contradiction to the intention of the Law makers and allow recovery of dues. The petitioner has requested (i) to pass an interim order to restrain the respondent from recovering the charges and also against disconnecting the supply till the pendency of the present case (ii) the Misc. charges shown in the impugned bill dated 07.02.2013 for the amount of Rs. 20,68,010.78 be declared void (iii) amount equal to 25% of the said amount, which had already been deposited by the petitioner on the direction of the Forum, be refunded or adjusted in subsequent bills (iv) in case Ombudsman feels that the respondent can raise the bill for the two years then the bill should be for the period 01.01.2011 to 01.01.2013.
7. The respondent in their statement have informed that the meter of the petitioner was changed in October 2005. At that time a wrong advice was sent by their office to M/s Sai Billing Agency, the contractor who generated the bills showing the MF as 20. The contractor then sent its input data report dated 12.12.2005 showing the MF as 20 instead of 40. On 24.01.2013 when an officer of the respondent checked the meter it was found that the CT installed on the petitioner's meter was 200/5. In the sealing certificate dated 24.01.2013 the AE (Meter) has written "Meter changed on the basis of IDF. CT installed is ratio of 200/5. But bill is showing MF 20. It should be 40. Assessment to be raised." The sealing certificate has been signed by the representative of the petitioner. The differential amount for the period 09/2006 to 01/2013 was charged applying the correct MF of 40 in the bill of January 2013. The respondent claims that this demand in no way contradicts section 56 (2) of the Act as the demand for the balance of units not charged due to wrong MF was made for the first time in the bill of January 2013. The respondent has also stated that the assessment has been

done from September 2006 as before that i.e. from the time of installation of the new meter (October 2005) to August 2006 the billing was being done correctly with MF 40 being applied.

8. There are contradictions in the statement of the respondent. On one hand it is claimed that in the advice to the billing agency at the time of installation of the new meter (October 2005), MF was recorded incorrectly as 20, on the other hand the Executive Engineer, Electricity Distribution Division (Rural) in his letter dated 07.02.2014 states that the correct MF of 40 was being applied till August 2006 and hence assessment has been done for wrong application of MF from September 2006 to January 2013. The respondent has however stated that M/s Sai Billing had sent the input data on 12.12.2005 showing the MF as 20. If the MF had already been input as 20 in the billing records, then how did the billing continue at MF 40 beyond December 2005 as averred by the respondent in the letter of 07.02.2014? It has also not been explained how the MF suddenly changed from 40 to 20 a year after the new meter had been installed (October 2005) in September 2006. The lack of explanation by the respondent as to how the MF changed to 20 leads to the conclusion that this may have been a matter of collusion between the two parties and would have continued if not for the inspection by the AE (Meter) in January 2013.

In fact if the statement of the respondent given vide his letter dated 07.02.2014 is correct, the petitioner was aware that MF was 40 and not 20 and was paying it without any objection for a year after the new meter was installed.

9. After hearing both sides and examining all the documents submitted, it is clear that the main question to be decided is the period for which arrears for application for wrong MF are due from the petitioner. The petitioner has nowhere objected to the MF being raised to 40 and has in fact stated that the respondent could only claim arrears, for wrong application of MF, for a period of two years preceding the date when the matter was raised for the first time.
10. In the statements/arguments, the petitioner has made reference to case law and the decision of the Hon'ble High Court of Bombay in the case of a sister concern of the petitioner in a similar matter wherein the Hon'ble High Court has held that, "if at all any recovery of arrears is made under section 56 (2) of the Electricity Act, 2003 then

the limitation of 2 years for recovery of such arrears is binding.” The matter is pending before the Hon’ble Supreme Court as the respondent has filed an SLP before the Court. The petitioner has also raised the issue that under section 56 (2) of the Electricity Act, 2003 and clause 3.3.1 (5) of Uttarakhand Electricity Regulatory Commission (The Supply Code) Regulations, 2007 the respondent could not raise charges for more than two years prior to the date the bill was sent.

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: ”

Clause 3.3.1 (5) of the Uttarakhand Electricity Regulatory Commission (The Supply Code) Regulations, 2007.

3.3 Billing

3.3.1 General

(5) The Licensee shall have no right to recover any charges beyond 2 years from the date such charges first became due unless such charges have been continuously shown as arrears.

11. From the wording of section 56 (2) and clause 3.3.1 (5) it is clear that these sections would not apply where the sum due has been shown continuously recoverable as arrears of charges for electricity supply. In this case the less billing was from September 2006 as per the statement of the respondent and continued till it was detected in the inspection on 24.01.2013. Hence, it was an amount ‘continuously

recoverable as arrears of charges for electricity supplied'. As such this is an arrear continuously recoverable due to application of wrong MF from September 2006. The petitioner has drawn attention to the comment of the Forum in the majority decision wherein they have stated that even if clause 56 (2) is attracted in these cases, the demand for uncharged amount raised in the bills as Misc. charges can be recovered by suit and alleged that the Forum in other words was stating that the respondent could first recover the amount for two years through the impugned bill and thereafter could file a suit for recovering the balance amount from the petitioner. This comment of the Forum was unfortunate and not required. It is not applicable in this case.

12. While the petitioner has quoted case law to back his claim that dues for arrears cannot be taken for a period of more than two years from the date they are raised, there is a lot of case law emphasizing the opposite. For instance in the case of HD Shourie vs Municipal Corporation of Delhi, 32 (1987) DLT 73, the single judge of the Hon'ble High Court of Delhi held that 'The electricity charges become due and limitation for recovery thereof commences only when the bill thereof has been raised.' Similarly 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 Haveli 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.' It was held that the revised bill amount would become due when the revised bill is raised and section 56 (2) of the Act would not come in the way of the recovery of the amount under the revised bill.
13. I have examined all the documents and heard the arguments from both sides. During perusal of the documents it was found that in fact the sealing certificate of 15.10.2005 when the new meter was installed clearly showed that meter no. UPCO 1772 installed on 15.10.2005 had a CT ratio $200/5 = MF 40$. Keeping this and other facts mentioned

above in view, I find that the assessment has been correctly raised against the petitioner. As explained above section 56 (2) of the Electricity Act, 2003 will not apply in this case. The majority order of the Forum was correct however their statement that the arrears for more than two years could be recovered by suit is not correct. The stay granted stands vacated. The petitioner should pay the arrears after adjustment of the amount already paid.

14. As already mentioned in a number of my judgments on such cases of wrong MF being applied, I reiterate that the department should examine such cases and initiate proceedings against the officials involved. In this case more so as there appears to be involvement of some officials in downgrading the MF in August/September 2006, a year after a new meter had been installed at the premises of the petitioner. In this reference para 8 of my judgment may be seen.

Dated: 04.04.2014

(Renuka Muttoo)
Ombudsman