

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Garrison Engineer,
Military Engineering Services,
Ranikhet, Distt. Almora,
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Nainital, Uttarakhand

Representation No. 03/2014

Order

The petitioner, Garrison Engineer, Military Engineering Services, Ranikhet approached the Ombudsman with a petition dated 19.02.2014 against the order dated 21.01.2014 of the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) in his complaint against the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent) demand notice for Rs. 15,22,430.00.

2. The petitioner has informed that he is a consumer of the respondent and has an electricity service connection no. CDI-NN 34/036243 and has been paying all his bills regularly. Initially an agreement was entered into on 14.12.1934 between Municipal Board of Nainital and the Secretary of State for India in Council for supply of electricity to the premises of the petitioner. As per the agreement the respondent was to 'supply continuously to the consumer by day and by night electric energy for lighting, heating, cooking or power required by the consumer for Military Buildings in the Nainital Cantonment'. Military building has been defined in the agreement as 'any building and/or premises owned, hired, leased, appropriated or used by the Government of India in the Army department'.
3. The petitioner states that as per the respondent's statement before the Forum an inspection was done by the Assistant Engineer Vigilance and SDO Nainital of the premises of the petitioner and they found unauthorized use of electricity at the

premises. Assessment of Rs. 19,04,340.00 was raised which was revised on 29.10.2013 to Rs. 15,22,430.00. The respondent did not give any details as to how the total connected load was arrived at, neither did they give a copy of inspection report nor explained how the use was unauthorized and on what basis the bifurcation was done. The petitioner states that the premises where the supply is made is a totally Army area used for habitation of the families of Army personnel and no commercial activity is taking place.

4. The petitioner then approached the Forum who dismissed the case vide their order dated 21.01.2014 on the ground that they do not have the jurisdiction to deal with this case. The petitioner maintains that the respondent did not reply to the queries even before the Forum but only contended that the Forum did not have jurisdiction to entertain the complaint. The petitioner has prayed that his appeal be admitted, order of the Forum be set aside, demand raised by the respondent be set aside and the respondent be restrained from taking any coercive action against the petitioner. The petitioner also gave an application for interim stay on the same date requesting that the respondent be restrained from realizing the demand raised against the petitioner and from taking any coercive action against the petitioner. Interim stay was granted on 24.02.2014.
5. In their statement the respondent have claimed that after 14.01.2000, the date of enforcement of UP Electricity Reforms Act, 1999 only the tariff framed by the Regulatory Commission became applicable, in which there was no mixed tariff. They have claimed that the question of doing any commercial activity is not relevant as the load was contracted for domestic use but was unauthorizedly being used for non domestic purposes. In this regard the respondent has stated that the use of electricity for office, canteen, guest house etc. are non domestic use and it is a commercial activity. In fact they have maintained that the MES itself is a commercial organization. The respondent has maintained that the Forum had no jurisdiction to entertain any complaint pertaining to assessment for unauthorized use of electricity under section 126 of the Electricity Act, 2003.
7. Further the respondent has stated that a checking was done of the premises of the petitioner on 17.07.2013, and the petitioner was found using electricity for domestic and non domestic purposes which have different tariff and for which there was no

agreement between the parties, hence it was unauthorized use as per section 126 of the Act. On 13.09.2013 a recheck of the petitioner's premises was done by SDO Nainital and a Vigilance officer in the presence of the petitioner's representative. During this checking it was found that the petitioner was using domestic/commercial load of 34.405 KW and domestic load of 31.4 KW total 65.805 KW. The percentage came to 52.28% for non domestic and 47.72% for domestic use. The petitioner's representative agreed with the contents of the rechecking report. The original assessment of Rs. 19,04,340.00 was revised at the request of the petitioner and a revised bill was sent of Rs. 15,97,544.00 + Rs. 30,000.00 security amount. On 17.10.2013 the petitioner requested for removal of electricity duty from the demand and on 29.10.2013 a revised assessment bill excluding the duty was sent to the petitioner for a total of Rs. 15,22,430.00. The same has not been paid so far. The respondent also stated that they are billing 15 other MES connections whose load is less than 75 KW on domestic tariff. As per tariff if electricity is used for any other activity then domestic, the entire billing of the connection is to be done under RTS 2 (5 B) and (6 B). Respondent has stated that as per tariff effective from 01.05.2013, RTS 8 (1) provides that the schedule applies to single bulk supply connection of more than 75 KW where the supply is used predominantly for domestic purposes with more than 60% load and also for other non domestic purposes. This schedule also applies to supply to MES but is only applicable to MES connections having more than 50 KW. There is no separate schedule for MES for mixed load use.

8. Lastly the respondent has stated that the Ombudsman does not have the jurisdiction to examine if the procedure for assessment is followed or not or whether the assessment is made under the correct tariff as the case falls within the jurisdiction of the Appellate Authority u/s 127 of the Electricity Act, 2003.
9. Let us deal first with the question of jurisdiction. This office is not adjudicating on the assessment but on the very principle of calling this unauthorized use.

As per the agreement, the respondent was to 'supply continuously to the consumer by day and by night electric energy for lighting, heating, cooking or power required by the consumer for Military Buildings in the Nainital Cantonment'. Military building has been defined in the agreement as 'any building and/or premises owned, hired, leased, appropriated or used by the Government of India in the Army department'.

Part II of the agreement – Terms and conditions mentions the various purposes for which the supply can be used which include energy for lights, heating and cooking, power for fractional Horse power motors , power for certain trade purpose including illumination of exhibition grounds and shop windows, process work as in photographic studios, flood lighting of buildings. From this it is clear that the supply was for a mixed load and not for domestic use. It is not clear as to how the respondent came to the conclusion that the load was for domestic use.

10. The respondent has claimed that the 1934 agreement became void after introduction of the UP Reforms Act, 1999 and enforcement of tariff framed by the Regulatory Commission. They claim that the existing tariff supersedes the agreement. This stand of the respondent is surprising as nowhere do the Tariff Orders mention that these orders supersede previous agreements, they only maintain that they supersede earlier Tariff Orders and tariff schedules annexed with the earlier agreements if any. The question here is not of the tariff applicable but whether the clauses of the agreement continue to be binding between the two parties.
11. In the absence of any fresh agreement I feel that the 1934 agreement is binding between the two parties. In view of that and the terms and conditions of the agreement, it is clear that the supply is for a mixed load and not for domestic use. There is no mention of the contracted load in the agreement. Moreover clause 9 of the Agreement states that “the supply made under this agreement shall be covered by the terms and the conditions for the supply of electricity sanctioned by the Government of United Provinces in their letter no. 162-EL/E/7EL/1929 u/s 21 (2) of the Indian Electricity Act, of 1910 or any amendment thereof sanctioned by the Government from time to time. This clearly provides that the petitioner could use the power supplied by the respondent for any activity in the cantonment area as defined in the agreement. If that is so how can the respondent call this a case of Unauthorized Use of Electricity.
12. The inspection carried out both on 17.07.2013 and 13.09.2013 were done by SDO level officials. The Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations, 2007 provides as under in section 5.2.1:

“5.2 Unauthorised Use of Electricity (UUE)

5.2.1 Procedure for booking a case for Unauthorised Use of Electricity

(1) The Licensee shall publish the list of Assessing Officers of various districts in accordance with Section 126 of the Act prominently in all the District Offices and the Photo ID Card issued to such officers shall indicate so.

(2) An Assessing Officer under Section 126 of the Act, suo moto or on receipt of reliable information regarding UUE shall promptly conduct inspection of such premises.

(4) The Assessing Officer shall prepare a report giving details such as connected load, condition of seals, working of meter and mention any irregularity noticed (such as, artificial means adopted for UUE) as per format given in Annex IX.

(6) The report shall be signed by the Assessing Officer and each member of the inspection team and the same must be handed over to the consumer or his/her representative at site immediately under proper receipt.”

13. The Assessing Officer is the Executive Engineer. While the SDO is competent to carry out the inspection, under these regulations it is necessary that the Executive Engineer should head the inspection team. In this case the Executive Engineer is nowhere in the picture. The inspection on both occasions has been done by SDO level officers. Thus the respondent himself has violated the provisions of section 126.

We may now take up what exactly is defined as ‘unauthorized use of electricity’ under the Indian Electricity Act, 2003. Section 126 (6), explanation states:

“126 Assessment.

6. ...Explanation.- For the purposes of this section,

unauthorised use of electricity means the usage of electricity

- i. by any artificial means; or*
- ii. by a means not authorised by the concerned person or authority or licensee; or*
- iii. through a tampered meter; or*
- iv. for the purpose other than for which the usage of electricity was authorised.*
- v. for the premises or areas other than those for which the supply of electricity was authorized.”*

14. The respondent appears to have assessed the usage as unauthorized on the basis of clause (iv) i.e. for purpose other than which the electricity was authorized. As has already been brought out above, the original agreement envisaged mixed use of

electricity in the cantonment area. As this is clear, the premise of the respondent that it is a case of unauthorized use of electricity is incorrect.

Hence it is clear that this is not a matter of unauthorized use of electricity and should not have been assessed under section 126 of the Act. As it is not a subject matter of section 126, the Ombudsman is fully authorized to hear the complaint and decide on the matter.

15. Let us now discuss the tariff applicable after the introduction of UP Electricity Reforms Act, 1999. The first tariff by the UP Regulatory Commission issued on 07.08.2000 effective from 09.08.2000 which was also adopted in the State of Uttarakhand provided different Rate Schedules for different usage. There was no specific reference to tariff for MES areas. In the absence of such a provision, the most appropriate Rate Schedule for MES was Rate Schedule LMV 1. This tariff remained in force in Uttarakhand up to 19.09.2003 where after Tariff Orders were issued by Uttarakhand Electricity Regulatory Commission (UERC) from time to time. In subsequent Tariff Orders issued by UERC there was no specific Rate Schedule for MES in the Tariff Orders applicable up to the year 2006-07. The subsequent Tariff Orders made a specific provision for MES. The provision for MES was included in RTS 8 in the Tariff Order 2007-08.

“RTS 8: Mixed Load

1. Applicability

This Schedule applies to single point bulk supply connection of more than 50 KW where the supply is used predominantly for domestic purposes (with more than 60% domestic load) and also for other non-domestic purposes. This schedule also applies to supply to MES, a deemed licensee.”

This provision has been carried in all subsequent Tariff Orders, however the words ‘a deemed licensee’ has been removed from the Tariff Order dated 06.05.2013.

16. The respondent is maintaining that the full para has to be applied even in the case of MES i.e. connection of more than 50 KW with more than 60% domestic load. I however would interpret this as two separate components while the first sentence

laying down certain conditions deals with connections other than MES. The second sentence with no conditions applies to MES.

17. In fact this particular division of the respondent appears to be one of the few who seems to hold this belief as examination of bills of other like consumers i.e. MES units in other parts of the State show that different divisions of the same respondent company are charging the MES units at RTS 8. The claim of the respondent that the load should be more than 75 KW for mixed load application is also proved to be wrong on examination of the bills of other MES units where loads of 20/25 KW are also being billed at RTS 8.
18. The main problem appears to be the tariff being applied for the petitioner. The respondent at some time has fixed the contracted load as 50 KW and tariff RTS 1 (domestic use) and continued with the same. They have not been able to show how or why this was done. From the above it is clear that the respondent himself made a mistake in the application of the tariff to the petitioner and then has tried to cover it up by showing Unauthorized Use of Electricity.
19. I find that there was an agreement between the two parties in 1934 for supply of electricity for mixed load usage. There was no reference to the contracted load. The respondent's claim that the agreement became void on introduction of tariff by the Commission was not found to be correct. Hence in the absence of a fresh agreement the 1934 agreement would continue to be valid. The assessment raised by the respondent for Unauthorized Use of Electricity is wrong. The mistake has been made by the respondent in applying the wrong tariff i.e. RTS 1 instead of RTS 8. The respondent should withdraw the assessment for Unauthorized Use of Electricity and examine the applicability of appropriate tariff schedule as per Tariff Orders issued from time to time and if necessary bills may be revised accordingly. The respondent may also consider entering into a fresh agreement with the petitioner. Order of the Forum is set aside.

Dated: 23.05.2014

(Renuka Muttoo)
Ombudsman