

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Satya Dev Gupta
B-16, Shivalik Nagar,
Haridwar, Uttarakhand

Vs

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

Representation No. 18/2014

Order

The petitioner, Shri Satya Dev Gupta approached the Ombudsman with a petition dated 15.10.2014 against the order of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 24.07.2014 in his complaint against the Uttarakhand Power Corporation Ltd (hereinafter referred to as respondent). As the Forum did not advise the petitioner that he could approach the Ombudsman against their order, the petitioner approached the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC) who advised him vide their letter dated 18.09.2014 to approach the Ombudsman. The delay was condoned. It may be mentioned that while the Kumaon Forum has started recording that the complainant can approach the Ombudsman if not satisfied with the order, as per orders issued by the UERC, the Garhwal Forum however does not record this leading to problems as in this case.

2. The petitioner claims that he had been sanctioned a domestic connection in 1984. In 1997 it came to his knowledge that he was being billed under commercial tariff instead of domestic tariff. He took up the matter with the respondent. On receiving no reply, he sent them a notice through an Advocate in 1998 followed by reminders thereafter. On 12.05.2003 on the advice of the respondent he filed another application that despite his requesting in 1998 for change in kind of tariff applied to his

connection, nothing had been done by the department. The petitioner requested that the tariff for bills from January 1998 till date may at least be changed from commercial to domestic tariff. He further informs that the respondent sent him an office order dated 11.11.2003 that the tariff had been changed from commercial to domestic in his case from September 2003. However, the petitioner states that the respondent did not change the tariff in the bills for the next 10 years, despite his repeated requests and he continued to be billed at commercial tariff. The petitioner requested that he may be allowed to pay the current bills till the settlement of his complaint, however, the respondent did not agree to the same nor did they inform him as to why he could not be given the corrected bill.

3. The petitioner has further alleged that his complaints relating to maintenance of the line/connection were not registered by the local office. The meter reader also stopped taking meter reading. The petitioner states that the Executive Engineer wrote a letter dated 05.03.2004 to the SDO, Jwalapur about the complaint of the petitioner. The petitioner also states that despite taking up the matter repeatedly, the respondent did not change his 30 year old mechanical meter.
4. The petitioner states that he kept on requesting repeatedly from 1997 to 2011 for corrected bills to be given to him, however no action was taken by the respondent. He even got 3 notices issued through an Advocate in 2011 but no action was taken. The petitioner then approached the District Consumer Protection Forum with his complaint, however the Forum dismissed his complaint. On 20.06.2014 he approached the Forum against the decision of the District Consumer Protection Forum. The Forum in their order dated 24.07.2014 ordered that the petitioner pay Rs. 90,410.00 which was pending due from him and did not give any relief regarding compensation demanded by the petitioner. Aggrieved by the order of the Forum the petitioner approached the Ombudsman. The petitioner has prayed that
 - a) The Government had announced a scheme for waiver of surcharge up to 14.08.2014. As he had paid his bill for Rs. 90,410.00 on 14.08.2014, surcharge included in the bill should be waived.
 - b) The hand written bill given by the respondent on 11.07.2014 for Rs. 1,67,981.00 is incorrect and differs from the computerized bill dated 08.07.2014. The

petitioner has already paid Rs. 90,410.00 and in fact surcharge paid in excess should be refunded to him.

- c) The petitioner has demanded that he should be paid compensation @ Rs. 50 per day from 1997 till date for the inaction of the respondent in not maintaining his connection properly/giving him bills without meter reader checking the same. He has also alleged that the meter installed at his premises is faulty and was not replaced despite his requesting for the same.
 - d) He has also demanded compensation for all the harassment caused to him and his family by the respondent.
 - e) Action should be taken against the concerned staff for not sorting out his problem despite his complaints over the last 15-16 years.
5. The Forum in their order dated 24.07.2014 have stated that the respondent informed them that the complainant had first approached the District Consumer Protection Forum who decided the case against him on 15.02.2014. Further the respondent informed the Forum vide their letter dated 11.07.2014 that the bills from May 1997 to July 2014 have been revised according to which after deduction of Rs. 26,209.00 already deposited by the petitioner the gross amount of the bill was Rs. 1,67,981.00 including Rs. 90,410 principal amount and Rs. 77,510.00 LPS. The Forum decided on the basis of the records shown by the respondent that Rs. 1,67,981.00 was due from the petitioner. The Forum however opined that it was not justified to charge surcharge from the petitioner due to the negligence of the respondent in not issuing the bills to the petitioner from time to time. The Forum therefore decided that only the principal amount Rs. 90,410.00 be charged from the petitioner and the 30 year old meter of the petitioner should be changed.
6. The respondent in their reply have not commented on the charges made against them but have stated that it is all a matter of record. They have stated that all bills from May 1997 to July 2013 have been corrected and a sum of Rs. 90,410.00 and surcharge of Rs. 77,571.00 in all Rs. 1,67,981.00 were found due. This was submitted before the Forum vide letter dated 11.07.2014 and the Forum had taken note of this in the judgment. After the order of the Forum, respondent have waived the surcharge under the surcharge waiver scheme up to 15.08.2014 on the petitioner voluntarily depositing the bill amount. Hence all the complaints of the petitioner stood redressed.

7. Further the respondent have maintained that the petitioner had filed a complaint in 2011 before the District Consumer Protection Forum which had dismissed the complaint. As the petitioner has chosen this remedy out of two available to him he could not now file a complaint with the Forum/Ombudsman. As the petitioner has not filed any appeal against the judgment, the respondent maintained that the judgment of the District Consumer Protection Forum had become final and operated as res-judicata between the parties and the present complaint was barred under law. The respondent maintained that surcharge of Rs. 77,571.00 has been waived and no relief can be granted by the Ombudsman. The petitioner has not claimed any compensation in his complaint before the Forum and hence cannot be granted any relief in excess of the complaint under law. Further respondent has drawn attention to Regulation 19 (v) of Regulations of 1984 and stated he has no right to complain against the bills.

8. Brief facts of the case are that the petitioner has a sanctioned domestic connection from 1984 of 2 KW. In 1997 i.e. after 13 years he came to know that instead of domestic he was being charged commercial tariff all these years. From 1997 he started approaching the respondent vide verbal and written requests including applications through advocates. The respondent took no cognizance of his complaints. In May 2003 the respondent advised him to file another application asking for review of the tariff applicable to him from January 1998. In his application dated 12.05.2003 the petitioner has drawn attention to his affidavit of 06.01.1998 wherein he had requested the respondent to change his tariff from commercial to domestic. In this letter he also informed that despite the tariff not being changed he has deposited Rs. 9700.00 in December 1997 and Rs. 4,406.00 in October 1998. He once again requested that the tariff may be changed to domestic. Subsequent to this the petitioner received an order dated 11.11.2003 stating that the tariff had been changed from commercial to domestic from September 2003. However the petitioner continued to get bills with commercial tariff. He then approached the Executive Engineer vide his letter dated 20.02.2004 wherein he complained that he continued to receive bills for a domestic connection on commercial tariff and requested that he may be billed vide the correct domestic tariff and amount already paid by him in the higher tariff be adjusted against future dues. The petitioner also complained that the meter reader had stopped

visiting his premises for over a year and the bills being received by him were not as per actual consumption.

9. The Executive Engineer wrote a letter dated 05.03.2004 to the concerned SDO drawing attention to the complaint of the petitioner and asked the SDO to examine the matter and resolve the problems of the petitioner. He also advised that explanation of the meter reader be taken.
10. Despite all the complaints of the petitioner no action was taken by the respondent. In 2011 the petitioner again sent 3 notices through an Advocate regarding his problems. When he received no relief he approached the District Consumer Protection Forum. This body instead of going into the merits of the case went by the statement of the respondent that they did not have records prior to 1997 and the consumer had failed to provide them with his old bills. Holding that this was a major lacunae on the part of the petitioner as he had not provided all the documents since 1984, this body dismissed the case vide its order dated 15.02.2014. They also recorded that the respondent had provided them papers showing that the petitioner owed Rs. 1,96,927.00.
11. Not receiving any relief from this body, the petitioner then approached the Forum with a complaint dated 20.06.2014 wherein he mentioned in detail all his applications sent to the respondent from 1997 onwards and also mentioned about the case before the District Consumer Protection Forum. The Forum took cognizance of his complaint but decided against him on the basis of the respondent's averment that they had revised his bill.
12. The respondent has raised 4 points.
 - i) The case is debarred as the petitioner had already selected one remedy by approaching the District Consumer Protection Forum and could not now approach another body seeking relief.

The respondent did not raise this point before the Forum even though it was specifically mentioned by the petitioner that he had approached the District

Consumer Protection Forum and full details of the case were disclosed by him in his complaint. The Forum has given orders in his complaint. In fact the Forum ordered that surcharge charged by the respondent was not justified and only the principal amount of Rs. 90,410.00 be charged from the petitioner. The respondent allowed the petitioner to take advantage of Surcharge Waiver Scheme on his depositing the sum of Rs. 90,410.00 before the end of that scheme on 14.08.2014. The respondent at no point raised the question of 'principles of estoppel' either during the hearing or after the Forum issued their order. Moreover the Forum have mentioned in their order that though the petitioner had approached the District Consumer Protection Forum, Haridwar in December 2011, he did not give any reply to the Court's query and hence the District Consumer Protection Forum decided the case on ex-parte basis.

Aggrieved by those orders the petitioner has approached the Ombudsman who is bound under the Uttaranchal Electricity Regulatory Commission (Appointment & Functioning of Ombudsman) Regulations, 2004 – section 5 (1) to hear any complainant aggrieved by the order of the Forum. On the basis of the Regulations the respondent's plea to debar the case is dismissed.

- ii) The respondent has drawn attention to section 19 (v) of the 1984 Regulations that if the bill was wrong, the petitioner should have paid the amount and requested for correction to be made. In the present case the respondent alleges that this was never done by the petitioner.

However the respondent seems to forget the fact that despite protesting the matter since 1997 the petitioner made payments of Rs. 26,209.00 between December 1997 and July 2014. This fact had been mentioned by the respondent himself in the calculation enclosed with the letter of the Executive Engineer dated 11.07.2014 submitted before the Forum. However, in the statement made before the Ombudsman the respondent has stated that this payment was made from 1984 to 2013 about 30 years.

I do not feel that this argument holds valid in a case where the entire structure of the bill is under question as the billing is being done under the wrong tariff.

The consumer has produced more than sufficient evidence to show that he had been making complaints since January 1998 requesting for the tariff to be set right. Hence this argument of the respondent is also set aside.

- iii) The respondent felt that the mistake was the petitioner's as he did not seek the proper remedy of going to the correct Forums against the problem being faced by him. For instance he should have gone to the District Consumer Protection Forum in 1986 if he felt there was a problem or to the Forum after it was set up in 2003.

What the respondent is forgetting is that the petitioner has stated that he only became aware of the problem in 1997 hence he could not have gone to the District Consumer Protection Forum in 1986. Moreover the respondent appears to feel that all petitioners have full legal knowledge of remedies available to them and should take the correct course from the beginning even though the respondent can continue to flout all rules. This is an impossible situation where all the pressure is on the shoulders of the petitioner and the respondent has no responsibility.

In the present case it is well established that the petitioner approached the respondent immediately on becoming aware of the problem of wrong tariff but the respondent did not react till 2003 nearly 6 years after the complaints were made and even then while issuing an order rectifying the problem continued to be negligent and sent bills in the old tariff. From the calculations attached with the letter dated 11.07.2014 submitted before the Forum it would appear that despite issuing the OM in 2003 to charge the petitioner domestic tariff from September 2003, he continued to be charged commercial tariff till 2014. The stand of the respondent before the District Consumer Protection Forum, that as the petitioner had not made available bills prior to 1997, they were not in a position to revise the bills from 1984 to 1997 on the basis of domestic tariff, is absolutely surprising where a Govt. department is claiming that they do not have to maintain records but the onus is on the consumer.

- iv) The respondent was of the view that as the standard of performance was only introduced by the 2007 Regulations it could not apply in this case.

While I do not agree with this stand of the respondent and feel that the SOP could be applied after it came into effect in 2007. In the present case it would not be possible to give any relief under this as it is a new issue introduced by the petitioner before the Ombudsman which being an appellate authority can only deal with an appeal against issues decided upon by the Forum.

13. From the above it is clear that neither the petitioner nor the respondent has any records of the usage/payment before 05/1997 except for an amount of Rs. 5,407.00 shown as arrears at the end of 04/1997 against 7151 units as per detailed calculation sheet attached with Executive Engineer's letter dated 11.07.2014. It is presumed that this arrear was calculated on charges made in commercial tariff. In the absence of any detailed accounts being available, it would be in the interest of justice that the charges for 7151 units be worked out on domestic tariff and excess be deleted or the entire amount of Rs. 5,407.00 be written off. As this amount forms a part of Rs. 90,410.00 paid by the petitioner, he should be given credit of this amount Rs. 5,407.00 in future bills. The order of the Forum is revised to this extent.
14. The petitioner is advised to allow the meter to be changed. It is also recommended that the department may examine as to why there was so much delay in sorting out the problem of a consumer who has had to run from pillar to post to try and get the matter rectified. The complaints started in 1997 the department issued an order in 2003 but complied with it only in 2014. It is necessary that an enquiry be carried out and action initiated against the staff responsible for such negligence.

Dated: 20.04.2015

(Renuka Muttoo)
Ombudsman