

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Doon Valley Distillers (Alcohol Division),
Harrawala, Dehradun, Uttarakhand.

Vs

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

Representation No. 04/2016

Order

The petitioner, M/s Doon Valley Distillers, Dehradun aggrieved that the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) did not intervene to quash the illegal demand of Rs. 5,75,646.00 made by the respondent vide bill dated 03.11.2015 under the garb of -Misc, Charges Ref. No. 1021/10-15 Asstt of 49.57% Slow Meterø have filed this appeal against order dated 14.03.2016 passed by Forum in complaint no 186/2015. The petitioner have claimed that the alleged assessment order under section 126 of the Electricity Act, 2003 was passed behind the back of the petitioner without even following basic requirements of section 126 (1), (2) and (3) of the Act. They have also alleged that the entire proceedings after the sealing and removal of the meter from the premises of the petitioner on 06.10.2012 were against the provisions of the Act, against the principle of natural justice and without any information to the petitioner, while petitioner were constantly in touch with the department. The petitioner was not informed nor was the sealed meter opened in their presence. The testing of the said meter was also not done in their presence. Petitioner have requested that the order of the Forum dated 14.03.2016 be set aside. The order by which Rs. 5,75,646.00 have been recovered by the respondents illegally and under duress, be quashed and the amount be refunded to the petitioner.

2. Forum in their order dated 14.03.2016 have explained that meter no. UPC 98381 installed at the premises of the petitioner, was replaced because less current was passing through R phase of the meter. Forum have quoted the report of the Test team

in the departmental lab situated at 18, EC Road, Dehradun. It has also been indicated that while the test were conducted at 12:21 on 08.10.2012 in the presence of consumer representative Shri I.P. Joshi and Shri Chaturvedi, and the same was covered in the videography done on site, but after the test was done, the two representatives left the lab and did not respond to telephone calls or SMS. Hence the meter was opened in their absence and it was found that there was no tampering in the meter. Forum have caused respondent to file comparative consumption chart for comparable period in 2011, 2012 and 2013. It is evident from the chart that the consumption in the period March to September 2012 is much lower than that in comparable period in 2011 and 2013. Similarly the demand pattern has also shown dip during the period of assessment in comparison to corresponding period prior to this and after this period. Forum have therefore concluded that based on the test report, the meter was recording 49.57% lower consumption and hence the demand raised by the respondent is justified in accordance with Supply Code Regulation, 2007 sub regulation 3.1.3 (5) and hence dismissed the complaint.

3. Respondent UPCL in their written statement before the Ombudsman have claimed that the petitioner had knowledge of less current in R phase on 06.10.2012 at the time of inspection, that assessment has not been done under section 126 of the Electricity Act, 2003, that it is wrong to allege that all proceedings after sealing and removal of the meter on 06.10.2012 were conducted behind closed door without informing petitioner and it has been established in the inspection on 06.10.2012 as well as in the test lab on 08.10.2012 that the R phase of the meter was recording less current than it was receiving. Respondent have also alleged that while the petitioner's representative was present at the time of the testing but they left before the meter was opened. The respondent have submitted that on checking on 06.10.2012 there was a variance in R phase current fed to the meter and that being displayed in the meter so the meter was removed and sealed and a new meter was installed in the presence of petitioner's representative with the intention that the meter shall be tested in respondent's test lab at 11 am on 08.10.2012 to find out the actual position regarding working of the meter. Accordingly, the meter was tested in the Lab on the pre decided date and time on 08.10.2012 when meter was found to be slow by 49.57%. However, no tampering in the meter was found. While petitioner's representative were present in the Lab at the time of testing of the meter but they left after the testing was over and hence were not

present when the meter was opened, but no tampering in the meter was found and the petitioner's representative did not return even after attempts of contact through SMS. Assessment from March 2012 to September 2012 on account of 49.57% less recording as per test report was raised for an amount of Rs. 5,75,686.00. The same was however raised through monthly bill dated 03.11.2015 by making an entry of misc charges. They have further submitted that the Ld. Forum having perused the test reports checking report of 08.10.2012, 06.10.2012, MRI and comparative statement of energy consumption and maximum demand for the corresponding period prior to the period the meter was held to be recording less and corresponding period for the year 2013, 2014 and 2015 held that the assessment has rightly been raised by the respondent in accordance with Supply Code Regulations, 2007 sub regulation 3.1.3. (5) (This subsection in fact is 3.1.3 (6)) and hence dismissed the complaint and directed that the assessment raised by the respondent is payable by the petitioner.

4. Arguments from both parties were heard and the record available on file has been perused. Further file of complaint no. 186/2015 of the Forum was also called from the Forum and examined. Information was also sought from the respondent on the following additional points:
 - i) Why a check meter was not installed at the premises of the petitioner when recording in the existing meter was not considered/found correct on checking on 06.10.2012 and why it was preferred to check the meter in your test lab instead of installing a check meter at site.
 - ii) The test lab report dated 08.10.2012 on the basis of which assessment for less recording @ 49.57% has been raised, is not clear, explanation to these test results may be submitted, with supporting documents.
 - iii) Why assessment was raised after more than 3 years of the checking carried out on 06.10.2012 and 08.10.2012, the assessment amount being included in the bill of 03.11.2015.
 - iv) Why the detailed calculation for working out the assessment as available in Forum's file of complaint no. 186/2015 against which the petitioner has filed this appeal was not sent to the petitioner, so that they could also know as to how the assessment has been done.
 - v) Videography, said to have been done on 08.10.2012 in the test lab has not been submitted, the same be submitted now.

5. The Executive Engineer in his reply of 28.06.2016 submitted replies to queries 2, 3, & 4 whereas replies to 1 & 5 were adduced at the time of arguments on 15.07.2016.

6. In terms of the arguments advanced by the petitioner the following points may be noted:

A it is evident that proceedings have not been drawn under section 126 (1), (2) and (3) of the Electricity Act, 2003 and hence contention that proceedings under these provisions of law are not maintainable is not relevant. The contention that recovery proceedings initiated in November 2015 for six month period prior to October 2012 are barred under Section 56 (2) of Electricity Act, 2003 is also not maintainable because tests have established that the meter was running slow and accordingly respondent have charged for energy consumed at the relevant time. No new levys are being imposed. Case law of Honøble High Court of Delhi in W.P. (C) 8647/2007 in Jingle Bell Amusement Park P. Ltd. vs North Delhi Power Ltd. in this regard is clear as will be evident from below:

“5. The question as to when the electricity charges become first due is no longer res integra. The Single Judge of this Court in H.D. Shourie Vs. Municipal Corporation of Delhi 32 (1987) DLT 73 held that the electricity charges become due and the limitation for recovery thereof commences only when the bill therefore has been raised. The Division Bench in appeal reported as MCD (DESU) Vs. H.D. Shourie 53 (1993) DLT 1 reiterated that liability to pay accrues when liability is quantified and bill is raised.”

B The petitioner has contended in his petition as well as in his rejoinder that the petitioner had no knowledge about alleged õless current in R phase on 06.10.2012ö Petitionerø signature on the inspection report of 06.10.2012 and presence of representatives of petitioner in the Test Lab on 08.10.2012 attested to by six members of the Test team indicate that petitioner was well aware of inspection and faults found in the meter.

C While it is true that no check meter was installed at the time of inspection on 06.10.2012 and the test party installed a new meter and took away the old one for testing in the lab, it has been explained however that this was done on account of a suspicion of theft in accordance with sub Regulation 5.1.1 (8) of

UERC (The Electricity Supply Code) Regulations, 2007 which reads as follows:

“(8) In case of suspected theft, the Authorised Officer shall restore the supply through a new meter of appropriate rating. In such cases, the Licensee shall check the connected load at the premises, affix a numbered distinctive seal on the tampered meter and shall also record the particulars of the same in the report. The Authorised Officer shall record reasons of suspect theft in the premises in his report. A copy of meter particular sheet of old and new meters shall be handed over to consumer or his representative.”

- D It was pointed out during arguments that while videography was done in the Test Lab, the same was not saved since no case of theft was made out as meter did not reflect any tampering.
- E While the test report in the lab dated 08.10.2012 showed meter was recording 49.57 % slow at 0.5 lagging power factor, the vector diagram attached with the test lab report indicates all vectors disturbed. The load survey report for the month of 09/2012 shows that demand recorded was much less than that being recorded prior to that period and after installation of the new meter. All these facts suggest that due to internal fault (as no tampering in the meter was found) the meter was recording less consumption as well as demand by 49.57 %.
- F The test results were available to the department on 06.10.2012 corroborated by the test lab report on 08.10.2012. The department took no action to recover charges on the basis of slow meter based on these inspection and test reports. This recovery of Rs. 5,75,686.00 was included in the bill raised on 03.11.2015 more than 3 years after the test, for the billing period October 2015. Even 3 years after, no letter of assessment was issued giving the calculation and the reason for levying these charges. The department merely raised the demand as Misc charges in their bill of 03.11.2015.
- G In terms of not issuing assessment report and merely raising miscellaneous charges recoverable through normal bills, respondent have maintained that the entire file regarding arrears to be recovered due to slow meter, was made

available to petitioner through letter dated 07.11.2015, while the demand had already been raised through bill dated 03.11.2015.

7. In view of aforesaid facts and documentary evidences of the case it is therefore concluded that:

- i) On 06.10.2012 when the meter was checked at site it was found that current in R phase in the meter was being displayed less (1.572 Amp) against current 2.86 Amp being fed to this phase, so the checking team initially took it as a case of suspected theft and removed the meter, sealed it for testing in the Lab on 08.10.2012, and installed a new meter. This was known to the petitioner as signature of his representative exists on the checking report. Action of the respondent was correct being in accordance with sub Regulation 5.1.1 (8) of Supply Code, Regulations, 2007.
- ii) On testing of the meter in the Lab on 08.10.2012 when petitioner's representative were present till testing of the meter but left thereafter, the meter was found recording less by 49.57% due to its internal fault. The vector diagram enclosed with the test report shows disturbed vectors. This report has been signed by six number officers of the respondent.
- iii) The MRI report, load survey report confirms the test result dated 08.10.2012.
- iv) The comparative statement of consumption and demand prior and after replacement of meter shows substantial fall in consumption and demand which corroborates the above.
- v) It is neither a case of theft nor a case of unauthorized use of electricity nor has the respondent raised any assessment under section 126 (1, 2 or 3). The respondent have only raised demand for the units left to be recorded by the meter due to slow running on account of internal fault and as such no assessment has been raised but only has raised demand to recover their legitimate dues for the period April 2012 to September 2012 in accordance with Regulation 3.1.3 (6) of Supply Code Regulation due to slow running of the meter due to its internal fault.
- vi) Clause 56 (2) of The Electricity Act, 2003 is not attracted in the case as explained above in this order.

8. In view of the aforesaid, the demand raised by the respondent is held to be correct. The Forum order is upheld. Petition is dismissed.
9. UPCL management may like to enquire how demand that became due in October 2012 was included in the bill of October 2015 vide bill issued on 03.11.2015. Responsibility for this delay in recovery of legitimate dues must be fixed to ensure that such delays do not recur in future.

Dated: 18.07.2016

(Vibha Puri Das)
Ombudsman