

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Gold Plus Glass Industry Ltd.  
Gold Plus House, G-192,  
Prashant Vihar, Delhi – 110085

Vs

The Executive Engineer,  
Electricity Distribution Division (Rural)  
Uttarakhand Power Corporation Ltd.  
Civil Lines, Roorkee,  
Distt. Haridwar, Uttarakhand

Representation No. 28/2015

### **Order**

The petitioner, M/s Gold Plus Glass Industry Pvt. Ltd. had first approached the Hon'ble High Court of Uttarakhand. From the order of the Hon'ble High Court dated 18.03.2015 available on file it is clear that the petition was withdrawn by the petitioner with the undertaking that he will approach the Electricity Consumer Redressal Forum for relief no. 3 and will place all other pleas before the Appellate Tribunal in the pending appeal. So the petitioner approached the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum). The petitioner, aggrieved by order dated 17.11.2015 of the Forum has preferred this appeal before the Ombudsman. The petitioner has requested that the order of the Forum be set aside and the complaint filed before the Forum allowed. The petitioner has made the following requests in the complaint:

- a. Quash the letters dated July 2010 & 04.11.2011 whereby the demand for penalty and continuous charges for the months of June 2009, July 2009, January 2010, February 2010 and March 2010 totaling an amount of Rs. 3,39,66,887.32 have been imposed and recovered.
- b. To direct the respondent to release/refund the above said total amount Rs. 3,39,66,887.32 in favour of petitioner along with 12% interest from the date of recovery till the date of realization.

- c. Any other relief, which this court may deem fit.
- d. Damages be awarded in favour of the petitioner against the respondent.

2. The case in brief is that the petitioner have contracted load of 8500 KVA from the year 2008. While the petitioner has alleged that his supply was given from the continuous supply line, no evidence regarding this has been adduced. The petitioner has been paying electricity bills without default on the due date. Bills for the month of June & July 2009 and January, February & March 2010 for the amounts mentioned in these bills were duly paid, as received. The petitioner received in July 2010 an abstract for penalty amount from the CGM (Commercial) of UPCL for the period June and July 2009 for Rs. 73,75,953.00 including penalty and continuous supply charges. Similarly, the petitioner also received an abstract of penalty amount on 04.11.2011 for the months of January, February and March 2010 amounting to Rs. 2,65,90,934.00 including penalty and continuous supply charges. Altogether a total penalty amount of Rs. 3,39,66,887.32 was imposed on the petitioner. Since no written or oral instruction was received by the petitioner requiring him not to use electricity during peak hours (restricted hours) and the respondent did not issue any notification for stopping consumption in peak hours (restricted hours), the petitioner has alleged that there was no information given regarding cut in electricity or rostering. The petitioner has further alleged that such a hefty penalty has been imposed without affording him an opportunity of being heard and he in turn has paid the entire amount under duress. The petitioner has further alleged that because monthly bills for the month of June and July 2009 and January February and March 2010 had been raised and petitioner has made requisite payment in time, respondent have waived their rights to impose penalty and continuous charge on the expiry of six month period and the right to impose penalty stands time barred.
3. The Forum in their order have held that the penalty was imposed as per provision of the Tariff in which no discretion is available to the respondent whether or not to charge penalty on violation of the restricted hours. Forum have also held that there is no requirement of sending any oral/written instruction to the petitioner or any other consumer regarding enforcement of peak hour restriction as it has been notified by publication in news papers. Since petitioner did not request for MRI and did not complain about non receipt of MRI, it is presumed that MRI was given to the petitioner. Violation of restricted hours is charged according to Tariff under RTS-7

(6) (iii). Forum has also held that there is no period prescribed for issuing penalty bill and the penalty amount is incorporated in regular bill. The Forum have therefore upheld the imposition of penalty as justified under the Tariff and have deemed adequate information to the consumer for power cuts.

4. Respondent have, in their written statement, refuted the claim of the petitioner that he had been given electricity from continuous power supply line since there is no such line. When petitioner made a request for continuous supply the same was granted by respondent vide O.M. dated 20.05.2010 w.e.f. 01.05.2010 valid till 31.03.2011. An agreement for continuous supply was executed between the petitioner and the respondent on 11.08.2010 in pursuance of the said O.M. implying therefore that the earlier connection sanctioned in 2008 was not for continuous power supply. Since the information regarding power cut and restrictions were published in news papers as required by the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC) no infirmity arises with reference to provisions of Tariff. Since the petitioner knew about the peak hours restrictions he paid heavy amounts of penalty and continuous charges bill without any demur and objection. As there is no requirement of issuing any gazette notification for peak hour restriction this was not done.
5. The documents filed on record have been perused. It is seen while petitioner has been claiming that electricity supply was given from the continuous supply line and provisions of rostering do not apply, also that imposition of penalty on peak hours (restricted hours) as well as 20% & 10% continuous charges is illegal, arbitrary and unjust, it has been established that the continuous supply was sanctioned vide OM dated 20.05.2010 w.e.f. 01.05.2010. The electricity bills of 01.01.2010 to 31.01.2010 also clearly indicate that the connection is for non continuous supply. Further, bill from 01.04.2010 to 30.04.2010 is also issued for non continuous category. Bills from 01.05.2010 and onwards were accordingly issued under continuous category. It is obvious, therefore, that prior to May 2010 the petitioner was not subscribed to continuous supply. The agreement for continuous category was however executed between the petitioner and the respondent on 11.08.2010. It shows that prior to 01.05.2010 the petitioner was under non continuous category and therefore his claim that restrictions were not applicable to him is not maintainable. The violation of restricted hours is duly recorded in MRI (Load Survey) in multiple time slots. The

petitioner has not challenged usage of power beyond 15% of his contracted load during the hours for which the penalty has been imposed but has only claimed that the restrictions are not applicable to him and therefore the imposition of penalty as per tariff and based on the actual consumption and demand recorded during restricted hours is wrong. His claim that restrictions are not applicable to him is not maintainable in view of the fact that during the period under reference he was being billed under the non continuous category of the industry as he was a non continuous consumer during that period.

6. The petitioner cannot claim ignorance of provisions of RTS 7 (6) of relevant tariffs applicable during the period of restrictions under reference and conditions recorded in the O.M. dated 07.03.2008 vide which load was sanctioned to him and which suggest that the petitioner was subscribed to non continuous category industry.
7. A perusal of records i.e. para 35 of respondent's reply dated 03.10.2015 to petitioner's replication before Forum mentions that "*in case there is no prescribed procedure why the petitioner has entered into continuous supply agreement dated 29.07.2011 for which the memorandum sanctioned was issued bearing no. 71 dated 07.01.2011, a true and correct copy of the said memorandum is enclosed herewith as Annexure-1 to this reply. It belies all the allegations of the petitioner.*" Based on the aforesaid averment of the respondent the Forum, in Para 5 of concluding part of their order, the Forum have stated that "*as per records the complainant executed the agreement for continuous supply of electricity on 29.06.2011 only and before that the complainant has non-continuous supply agreement. The complainant did not enter into agreement for continuous supply during the period of restrictions, so penalty for violation of restrictions was imposed under tariff RTS-7 6 (iii)*". An examination of the said para 35 shows that Annexure-1 (O.M. 71 dated 07.01.2011) is an order of the respondent for reduction of sanctioned load of 8500 KVA by 1500 KVA, after which the contracted load shall be 7000 KVA and not an order for grant of continuous supply. So respondent's averment becomes wrong and based on this averment the Forum's conclusion that "*As per records the complainant executed the agreement for continuous supply on 29.06.2011 only and before that the complainant had non-continuous supply agreement*" also becomes erroneous. This error in Forum order needs to be rectified in view of correct date of grant of continuous supply as explained under para 4 above.

It suggests that the agreement on 29.06.2011 or 29.07.2011 (agreement is not on file) was for reduced load of 7000 KVA and not for the continuous supply, as mentioned in aforesaid documents. Correct position has already been explained in para 4, 5, 6 above.

8. Arguments on behalf of the petitioner and respondent have been heard. Orders and citations were given by the petitioner and the respondent. The petitioner referred the case of M/s Pushkar Steels pertaining to power cuts in 2007 as per Tariff of 2007. It was averred by respondent that this case is still pending in the Hon'ble High Court and this ruling may not be taken as final. It is however seen on perusal of Ombudsman order dated 12.12.2012 in respect of Pushkar Steels (case no 14/2012) that the point at issue was non publication of UERC order dated 25.01.2007 for imposition of restricted hours. UPCL had levied penalty for violation of restricted hours while the public notifications dated 10.01.2007 and 14.01.2007 in news papers pertain to an earlier order of UERC dated 09.01.2007 regarding scheduled rostering. In the present case there is no allegation of non publication of UERC order. It is therefore considered that this ruling of the Hon'ble Ombudsman is not applicable to the present case. As regards petitioner's contention regarding delay in imposition of penalty it is found that no period is laid down in Tariff within which penalty has to be levied/recovered. Further, no financial loss has obtained to petitioner as a result of delay. Petitioner has also cited judgment dated 28.02.2014 of Hon'ble Supreme Court in Civil appeal no 2015-2917 of 2014. Appeal has been allowed by the SC in a matter where public authority has been held to have not given opportunity of being heard to the appellant. In the instant case, penalty and charges for continuous tariff have been levied as bill for relevant period and not as an assessment, as per provisions of tariff. In fact it is not an assessment but is a part of the bills for those months which became due, due to violation of the restrictions imposed on usage of power beyond 15% of the contracted load and availing the facility of continuous supply, which was charged at a later date. Respondent is not afforded any option to relax or waive any provision of tariff.
9. Respondents have cited two judgments, one by the Hon'ble Ombudsman in case no. 01/2013 dated 25.09.2013 and another ruling namely M/s Uttaranchal Ispat and others as of key relevance to the present case. Since the latter order by Hon'ble High Court upholds the same principle, that order is being discussed The UERC order regarding

restricted hours dated 18.01.2010 for imposition of restricted hours from 21.01.2010 to 31.03.2010 has been agitated in this matter. Hon'ble High Court in its judgment dated 17.03.2015 has ruled that:

*“It is not a case of the petitioners/industrial units/consumers that they did know the tariff fixed by the Electricity Regulatory Commission. Rather case of the petitioners is that they have paid the enhanced rate for using electricity beyond 15% of the contracted load as per the tariff fixed by the Electricity Regulatory Commission for the restricted hours. It is not disputed that none of the petitioner has ever opted for continuous supply of the electricity during the peak hours too on payment of enhanced charges. Therefore, all the petitioners fall within the definition of non continuous consumers. As per clause 11 (j) of the order dated 18<sup>th</sup> January, 2010, if non continuous consumer is using beyond 15% of the contracted load, he shall also pay penalty, over and above, the enhanced rates (tariff) for using the electricity beyond 15% of the contracted load during the restricted hours. Tariff and penalty for using electricity during restricted hours were already known to the petitioner, therefore, it was not required to be published. Only those terms and conditions are required to be published which were stipulated while permitting the restricted hours. Since, no new term and condition was stipulated while permitting the restricted hours, therefore, there was no need to publish already existing tariff fixed by the Commission. Therefore, imposition of penalty cannot be faulted with.*

*In the result writ petitions fail and are hereby dismissed.”*

10. The notification in respect of UERC order dated 18.01.2010 has been established by the above mentioned order of Hon'ble High Court, as validly communicated. Similar process has been followed for the earlier order dated 20.06.2009. From the above analysis and citation it is therefore established beyond doubt that
  - i) The petitioner was not a consumer of continuous category during the period under reference.
  - ii) The petitioner was aware of the conditions guiding usage as per clause 6 of Rate schedule RTS 7 of appropriate tariff orders of UERC.
  - iii) Information regarding restricted hours was adequately given through public notification read with the Tariff.

iv) Opportunity for hearing before imposition of penalty was not called for since this is provision of Tariff.

11. In the event, there is no justification for intervening with the order of the Forum, which is upheld with rectification advised in para 7 above. Petition is dismissed.

Dated: 13.05.2016

(Vibha Puri Das)  
Ombudsman