

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Smt Susham
W/o Late Captain Chaman Lal,
40/4, Ansari Marg
Dehradun, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (Central),
Uttarakhand Power Corporation Ltd.
18, EC Road, Dehradun, Uttarakhand.

Representation No. 22/2016

Order

The petitioner Smt. Susham W/o Late Capt. Chaman Lal has filed this appeal no. 22/2016 before the Ombudsman against the order dated 30.08.2016 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum).

2. The case in brief is that a complaint no. 40/2008 filed by the petitioner before the Forum was decided on 19.08.2008 in which the Forum while directing petitioner to make payment of the revised bill of Rs. 1,02,625.42 by 20.09.2008 without waiving surcharge, also directed payment of compensation of Rs. 10,000.00 to the petitioner by the UPCL. While the case regarding payment of revised bill was agitated by the petitioner before the Ombudsman and when no relief was afforded before the Hon'ble High Court, directions of the Hon'ble High Court to the petitioner to deposit Rs. 50,000.00 and to the respondent UPCL to restore her connection have been complied with the proviso that her connection had already been restored before the orders of the Hon'ble High Court. The case which was once dismissed ex parte because of absence of petitioner was later restored and is still pending. Petitioner has now sought implementation of 2008 order of the Forum for payment of compensation to her for which she had filed a request with the UPCL. On not receiving any reply, she requested information under the Right to Information and not receiving satisfactory information, has filed complaint before the Forum and not having received any relief

from the Forum has approached Ombudsman. It is therefore clear that while substantive issue pertaining to connection dues to be paid etc. is still open before the Hon'ble High Court, the only matter presently under discussion is payment of compensation of Rs. 10,000.00 ordered by the Forum in their order dated 19.08.2008.

3. Forum in their order dated 30.08.2016 have refused to intervene and have placed reliance on the fact that their order of 2008 awarding compensation of Rs. 10,000.00 to the petitioner is part of an order in which petitioner has also been directed to make payment of Rs. 1,02,625.00. Since the petitioner has not paid the said amount, she is not entitled to ask for compensation awarded to her. Forum therefore dismissed the case.
4. Respondent in their written statement have commented that the Forum have no jurisdiction to award any compensation to the petitioner and the same is a nullity and unenforceable in the eye of Law. Further, they have maintained that the case has to be considered as a whole and since the petitioner has not complied with the order of the Forum and deposited the dues payable by her, her claim for compensation is incorrect. Respondent have also explained that as Hon'ble High Court have nowhere mentioned the head of account i.e. whether energy charges or LPS, under which referred Rs. 50,000.00 payable by petitioner shall be adjusted. Hence the conclusion by the petitioner that respondent have not complied with the order of the Hon'ble High Court is incorrect.
5. In her rejoinder the petitioner has basically reiterated points referred in the original petition and has denied most of the points raised in the written statement. Petitioner has also maintained that she will be filing contempt of Court proceedings against respondent shortly.
6. Arguments of both parties have been heard and material available on record has been carefully examined. While the petitioner has again requested that the order of the Forum dated 30.08.2016 be set aside and order of the Forum dated 19.08.2008 be given effect to, on behalf of the respondent it has been argued that the instrumentality of the Ombudsman and the Forum are meant to address grievances of the consumer vis-à-vis Licensee, and provisions of section 42 (5) may not be used to seek compliance of orders of the Forum. They have further argued that in case this case is still considered admissible, the order of the Forum of 19.08.2008 awarding

compensation of Rs. 10,000.00 is without jurisdiction and hence non est. Further, respondent have also argued that in case the above two arguments are not accepted the judgment is an equitable judgment which places a responsibility on the consumer to pay her dues of Rs. 1,02,625.00 and receive compensation of Rs. 10,000.00 and since petitioner has not paid the said Rs. 1,02,625.00, she is not entitled to ask for compensation amount of Rs. 10,000.00. There is no provision for payment of interest on amounts payable by the UPCL and therefore the demand of the petitioner to pay interest of 12% on compensation of Rs. 10,000.00 is completely without basis. Having said all of the above respondent have also said that even if none of the above is accepted UPCL follows the practice of adjusting payable amounts against future dues and therefore UPCL is not liable to make any payments up front to the petitioner, even if the above arguments are not accepted.

7. While the respondent statement that section 42 (5) precludes the possibility of petitioner filing an appeal before the Ombudsman since the grievance of the petitioner lies not with UPCL but with non compliance of order dated 19.08.2008, is not acceptable since the order of the Forum arises because of grievance against UPCL and does not arise in a vacuum, as such the larger jurisdiction of the CGRF/Ombudsman is available for grievance redressal.
8. As far as the argument that Forum order is without jurisdiction and hence non est is concerned, order dated 19.08.2008 came up for review before the Ombudsman and was decided vide order dated 12.01.2009 in which the Ombudsman found no reason to interfere with the order of the Forum. While this office is bound by the earlier order of the Ombudsman, it is also observed that Sub regulation 3.3.4(5) of UERC (The Electricity Supply Code) Regulations, 2007 reads as follows:

“In case the arrears, as mentioned in sub-regulation (1) & (2) appear in a bill for the third time or thereafter, the consumer shall be entitled to make a petition to the Forum and the Forum shall decide the exemplary compensation to be paid to such consumer on a case-to-case basis.”
9. Further, respondents argument that the Forum judgment is an equitable judgment and even if Rs. 10,000.00 is deemed as payable as compensation, UPCL will adjust the amount against payment of Rs. 1,02,625.00 to be paid by the petitioner, is borne out by provisions of sub Regulation 3.3.4 (4) of UERC (The Electricity Supply Code)

Regulations, 2007 as well as sub regulation 4 (2) and 10 (3) of UERC (Standard of Performance) Regulations, 2007.

10. The order dated 30.08.2016 of the Forum whereby they have dismissed the other prayers of the petitioner namely payment of interest on overdue amount, consideration of contempt of court proceedings against respondent or any other relief, they have also observed that since the petitioner was expected to deposit Rs. 1,02,625.00 and compensation payable by respondent was a small portion of this namely, Rs. 10,000.00 and neither party has deposited the said amount as per the order of the Forum, Forum desires that their order be complied in full rather than partially. They have therefore come to the conclusion that petitioner is entitled to receive compensation of Rs. 10,000.00 as per the order of the Forum only if petitioner has also abided in full by the Forum order. In the event the Forum have not taken into account the order of the Hon'ble High Court dated 21.01.2009 whereby the petitioner was directed to pay Rs. 50,000.00 which amount has been deposited by the petitioner. Any further payment is subject to orders of the Hon'ble High Court. At the same time there is no bar/interference in the implementation of the orders of the Forum with respect to payment of compensation to the petitioner. It is therefore concluded that the Forum have erred in making payment of compensation contingent on payment by the petitioner of Rs. 1,02,625.00. Order of the Forum dated 19.08.2008 (reviewed by order dated January 2009 of the Ombudsman) has given a direction to the petitioner to deposit a sum of money and to the respondent to give a certain compensation. Petitioner has approached the Hon'ble High Court and abiding by the High Court order has deposited Rs. 50,000.00. It is therefore directed that Forum order dated 19.08.2008, except the portion already stayed by the Hon'ble High Court may be given effect to. Respondent UPCL shall be free to adjust compensation payable against current dues recoverable from the petitioner. Order dated 30.08.2016 of the Forum is set aside.

Dated: 14.12.2016

(Vibha Puri Das)
Ombudsman