

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Siddivinayak Pet. Mft. Co.
Plot 6 10C, Sec-9
SIDCUL, Rudrapur,
Distt. Udham Singh Nagar,
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division
Uttarakhand Power Corporation Ltd.
Rudrapur, Distt. Udham Singh Nagar
Uttarakhand.

Representation No. 02/2016

Order

The petitioner, M/s Siddivinayak Pet. Mft. Co. have filed this petition against the order dated 23.02.2016 of Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) in complaint no. 306/2015. The petitioner have prayed to set aside the order of the Forum in the above mentioned case and also quash the assessment of Rs. 47,30,563.00 which includes assessment for Rs. 29,87,799.00 in the present application and Rs. 17,42,764.00 already deposited in an earlier assessment. Secondly they have requested the amount paid already of Rs. 17,42,764.00 be refunded with interest or adjusted in future bills. Any other compensation and relief that is thought fit considering the harassment and inconvenience caused to the petitioner.

2. The petition in brief is that while the petitioner is a consumer of the UPCL through electricity service connection no. KNO5491 since 25.03.2010 with a contracted load of 270 KVA (it is seen from the record that the petitioner had a connection prior to 25.03.2010 and 25.03.2010 is the date when the sanctioned load was enhanced to 270 KVA and meter no. RN-11-(4)-490/09578127 was installed). In the sealing certificate issued on 25.03.2010 signed by JE (T) and AE (T) CT ratio for the line is given as 15/5A. Petitioner have also alleged that while the MRI of the petitioner's meter is done every month consumption reported has been paid regularly. In a testing of the consumer meter on 11.12.2014 a sealing certificate indicating CT ratio of 20/5A was

given which came to the notice of the petitioner during proceedings in the Forum. An employee of the company had signed the sealing certificate without understanding the importance of the statement nor the truth of the contents. An assessment of Rs. 17,42,764.00 was raised in the billing month July 2015 showing assessment for six months prior to 11.12.2014 and thereafter till June 2015 on the basis of wrong application of multiplication factor (MF). Under threat of disconnection the petitioner paid the assessed amount. But on 02.11.2015 another assessment for Rs. 29,87,799.00 was communicated, indicating that checking by YMPL and sealing certificate shows MF 4 and after investigation it has become known that MF 4 has continued from 25.03.2010. The petitioner is perplexed that while the sealing certificate of 25.03.2010 mentions categorically MF of 15/5 how is it possible to now say the MF was 20/5 on that date itself. When all protests by the petitioner failed to yield any response he was forced to file a complaint dated 26.11.2015 before the Forum. The Ld. Forum has committed an error of jurisdiction and law by not relying upon the admissions from the documents of the respondent that there was no wrong application of MF and also in believing without any evidence that the same was from 25.03.2010. Petitioner have alleged that arbitrary order passed by higher official are not binding on the petitioner and it cannot form the basis of raising any assessment on the petitioner. The petitioner have therefore requested that the assessment order be quashed, the earlier deposited amount refunded or adjusted in future bills.

3. The Forum in their order dated 23.02.2016, have concluded that since the CT/PT chamber was not opened between 25.03.2010 and 11.12.2014, the MF of 20/5 indicated in sealing certificate of 11.12.2014, since it is based on test, is more reliable. Forum have also relied on the respondent's statement that while the sealing certificate of 25.03.2010 showed MF of 3, the reading slips showed MF of 4, it is therefore proved that the MF was indeed 4. The Forum have therefore concluded that while respondent had been negligent in their modus operandi, and action to prevent recurrence of such confusion should be taken by the Licensee, they have, placing reliance on the provisions of the Supply Code as well as prior orders of the Ombudsman and Honorable High Court of Delhi, dismissed the complaint of the petitioner and upheld the assessment.
4. In their written statement the respondent have merely reiterated the action already taken by them and in their additional pleas have placed reliance on the reading slips

issued to the petitioner where MF of 4 has been clearly mentioned. They have claimed that even though they did not raise bills according to this MF, petitioner was well aware of his consumption pattern using this MF. Further, they have indicated that they were not clear as to from which date the MF was 4 and hence assessment for the month of June 2014 till June 15 was raised in the bill for the month of July 2015. The respondent have further claimed that they could know that the MF of 4 has continued from the date of change of meter i.e., 25.03.2010 only after the Executive Engineer (Test) informed them on 28.10.2015. Respondent have also stated that since no new evidence has been adduced after the orders of the Forum, there is no basis for interfering in the same and the Forum order, based as it is on earlier orders, of the Ombudsman must be allowed to prevail.

5. Arguments have been heard and record available on file has been perused. It is established that sealing certificate issued on 25.03.2010 after enhancement of load and replacement of meter indicates CT ratio 15/5 and MF 3. It is also established that reading slips issued immediately after installation of this meter and from 03.04.2010 onwards indicate CT ratio 20/5, MF of 4. While respondent have claimed that because reading slips contained this information about MF being 4, this fact was in the knowledge of petitioner and he cannot claim to have been informed 5 years later at the time of assessment, the respondent, it is seen however, remained ignorant of the MF being 4 as per reading slip, as is evident from the bills issued for the entire period, giving MF of 3. Since the department itself has chosen to place its reliance on some documents, namely sealing certificate of 25.03.2010, and not on certain other documents, namely reading slips, it is presumed that the respondent placed higher credibility on sealing certificate. Now this position is sought to be reversed when we are informed that sealing certificate of 25.03.2010 is faulty and the sealing certificate of 11.12.2014 giving MF of 4 is correct.
6. Since the distribution division while raising assessment in June 2015 was unaware as to the date from which assessment was to be raised they raised assessment for six months prior to the date of checking in terms of sub regulation 3.1.3 (6) of UERC (The Electricity Supply Code) Regulations, 2007 which is applicable in case of slow running of meter and for a further period of six months after the date of checking till June 2015 during which period they continued to issue bills at MF 3 and hence bill

amounting to Rs. 17,42,764.00 was issued in the month of July 2015 for the period June 2014 to June 2015.

7. In October 2015 the distribution division obtained clarification from the test division as follows:

i) The meter no. 09578127 was installed at the connection of the petitioner at the time of enhancement of load vide sealing certificate no. 216/09 dated 25.03.2010, which did carry a CT ratio of 15/5 and MF 3. Later on M/s YMPL who were entrusted the job of checking/testing of metering system of HT consumers in terms of agreement dated 09.01.2014, carried out checking of the meter of the petitioner on 11.12.2014 and submitted their report (protocol 331 and sealing certificate no. 16/420 dated 11.12.2014) in which they found ratio of CT installed on 25.03.2010, was in fact 20/5, so correct MF was 4. The EE (Test) clarified that since CT/PT chamber was never opened after 25.03.2010 till 11.12.2014, when it was opened for checking by M/s YMPL as aforesaid, correct MF was 4 w.e.f. 25.03.2010 and thus assessment must be raised w.e.f. 25.03.2010.

ii) Other discrepancies pointed out by the EE include the diary maintained by the concerned JE indicates the number of the lock i.e. FA32043. However no mention of this lock is found in the sealing certificate. Further the polycarbonate seals of the UOO series were installed at the time of sealing on 25.03.2010. There seems to be discrepancy in the number of these seals mentioned in sealing certificate of 2010 and that of 2014. This, the EE has said could be because of fading of the print and loss of impression due to age. The MRI report was again examined and from 25.03.2010 onwards the B phase of CT was found to be reversed which was corrected on 11.12.2014. The EE has therefore tried to explain that while no work was done by opening the CT/PT chamber in the period 25.03.2010 to 11.12.2014, the CT ratio was incorrectly reflected on 25.03.2010 and needs to be $20/5 = 4$

8. The billing division had to place reliance on information provided by Executive Engineer (Test) and the bills issued by the division for 6 months after the inspection i.e. till June 2015 continued to show MF 3 and energy charges continued to be levied accordingly. It is clear therefore, that the respondent UPCL have been in doubt about the MF applicable, about the rules governing recovery about information available

with the division and that with the test division, and for 5 years have remained ignorant about charges to be levied to an HT consumer. This shows a lackadaisical approach to work in the concerned officers and officials.

9. Notwithstanding the above, the following points are also established on the basis of record now available:

- i) Test report of M/s YMPL indicates that the MF was indeed $20/5=4$ and not 3. Assessment raised for the period June 2014 for six months in the period June 2014 to June 2015 on the same basis was paid by the petitioner. Even though confusions have been stated regarding the position of lock and polycarbonate seals, it is nobody's case that the meter was opened between 25.03.2010 and 11.12.2014. While number of some seals has been given as different, but some of the seals carry identical numbers. In case the CT/PT chamber had been opened all seals would necessarily have carried a different number. It is therefore logical to conclude that the meter and CT/PT chamber was not opened between 25.03.2010 and 11.12.2014 and hence the CT found on checking on 11.12.2014 with ratio 15/5 as written in the said sealing certificate were the same but correct ratio was 20/5 as recorded in sealing certificate dated 11.12.2014 and duly corroborated with test results given by M/s YMPL and hence it is established that the correct MF during the entire period was 4.
- ii) As regards the issue of reversal of polarity of B phase CT, the phasor diagrams confirms polarity reversal of B phase CT right from 25.03.2010 to 11.12.2014 before checking and after it was set right, the phase diagram shows correct polarity. However, as clarified by the respondent, on the basis of meter setting report, polarity reversal had not affected energy recording, being a 3 phase, 4 wire, unidirectional meter.
- iii) On the issue of levying charges for the second time first in July 2015 and second in November 2015 and recovering dues even 5 years after they became due, case law is well established as has also been quoted by the Ld. Forum in their above referred order. While the respondent have been negligent in correctly recording MF in the sealing certificate dated 25.03.2010, in basing bills on the sealing certificate rather than reading slips, in continuing to recover charges with MF 3 for 6 months after the 11.12.2014 test, on issuing assessment in July 2015 for only 6 months, it still does not take away from the

legitimacy of the dues being recovered in lieu of energy consumed and that even after 5 years the dues remained recoverable under appropriate Regulations as well as case law.

10. Since, on the basis of documentary evidence it is well established that the CT installed on 25.03.2010 was in fact of ratio 20/5 and correct MF was 4 from 25.03.2010 to 11.12.2014, so the respondent has rightly raised demand for the difference of the energy left to be billed due to application of wrong MF i.e. 3 and the petitioner is liable to pay the same. The points raised by the petitioner regarding applicability of section 56 (2) of Electricity Act, 2003, sub regulation 3.1.3 (1), 3.1.3 (6) and 3.3.1 (6) of UERC (The Electricity Supply Code) Regulations, 2007 have rightly been clarified by the Forum in their impugned order. As per case laws limitation under 56 (2) and limitation regarding duration of assessment not applicable in the instant case. Further it is clarified that the demand raised by the respondent on account of correction of MF, de-facto, is not an assessment, but a supplementary bill, raised to recover the cost of energy which the petitioner actually consumed, but could not be levied in the monthly bills issued over this period, due to application of wrong MF and as such no limitation of time and duration is applicable in the instant case.
11. In view of the aforesaid; Forum order need not be interfered with and is hereby upheld. The petitioner is liable to pay the assessment raised by the respondent after adjustment of the amount paid against the first assessment bill. In case the petitioner doesn't pay the amount due from him, the respondent is at liberty to recover their legitimate dues by adopting means available to them under the Regulations/statutory provisions. The petition is dismissed. Stay stands vacated.
12. As elaborated above the negligence on the part of concerned officers/officials of UPCL is responsible for causing loss in revenue to UPCL over the course of more than five years. Whereas energy charges on the basis of MF of 4 should have been levied regularly in monthly bills from 25.03.2010 onwards, they were first levied in the bill of July 2015 and subsequently in the bill dated 02.11.2015. In this case, while LPS is not chargeable to the consumer it is only appropriate that employees of UPCL responsible for causing such loss should be appropriately penalized both administratively and financially. Management of the respondent are advised to get the loss in revenue quantified through internal audit process, fix responsibility on concerned officers/officials and award exemplary punishment to officers/officials

deemed responsible for this loss and report action taken to this office within 3 months from the date of this order.

Dated: 29.07.2016

(Vibha Puri Das)
Ombudsman