

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Smt. Susham  
W/o Late Captain Chaman Lal  
60/4 Ansari Marg,  
Dehradun, Uttarakhand

Vs

1. Managing Director, UPCL, V.C.V. Bhawan, Kanwali Road, Dehradun.
2. Director Finance, UPCL, V.C.V. Bhawan, Kanwali Road, Dehradun.
3. The Executive Engineer, Electricity Distribution Division (Central), 18, EC Road, Dehradun.
4. S.D.O., UPCL, Bindal Sub Station, Chakrata Road, Dehradun.

Representation No. 17/2016

### **Order**

The petitioner, Smt. Susham has filed this appeal against the order dated 10.06.2016 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) in complaint no. 13/2016.

2. The petitioner has, in her petition, sought the relief of setting aside the order of the Forum, that the amount of Rs. 50,000.00 should be adjusted towards the energy cost and not towards the surcharge, that entire surcharge should be waived as per the scheme floated in the month of February 2016, that compliance of the Honøble High Court order dated 21.01.2009 should be ordered for restoration of the electricity connection and any other reliefs that the Ombudsman may think fit may also be granted.
3. The Forum in their order have stated that while petitioner is a consumer with connection no. CB 22114048617, the connection as claimed by the petitioner has been disconnected since 05.03.2010 (while the respondent have claimed on the basis of billing history that it was disconnected on 07.01.2014). The final reading as per record

of respondent is listed as 24029. While petitioner has given details of her approaching the Forum, Ombudsman and finally, the Honøble High Court, and the order of the Honøble High Court dated 21.01.2009 directed petitioner to pay Rs. 50,000.00 and respondent opposite party no. 3 and 4 to restore the electricity connection, Forum has stated that petitioner deposited Rs. 50,000.00 on 17.02.2009 in compliance of order of the Honøble High Court while the respondent again disconnected the connection on 05.03.2010. Having detailed out the averments of the petitioner as well as the opposite parties, the Forum concluded that since the case was still pending before the Honøble High Court and any order on the adjustment of Rs. 50,000.00 deposited in compliance of the Honøble High Court order can be passed only by the Honøble High Court, have therefore dismissed the complaint and stated that they are unable to provide any relief to the petitioner.

4. Respondent in their written statement have taken exception to the petitioner's claim that the Honøble High Court in Writ Petition no. 138 of 2009 have stayed the surcharge while petitioner has deposited Rs. 50,000.00 towards energy cost on 17.02.2009. Respondent have stated clearly that petitioner misrepresented the interim order of the Honøble High Court claiming that the surcharge was stayed while there was no order of adjusting Rs. 50,000.00 towards energy cost. Further they have also stated that in the receipt of payment of Rs. 50,000.00 dated 17.02.2009 given by the respondent to the petitioner the respondent has specifically mentioned that Rs. 50,000.00 is being received as part payment hence the allegations to the contrary are wrong and afterthought. Respondent have also denied para 11 of the representation as wrong. They have further mentioned that the petitioner had ever been consuming electricity evading payment of dues and surcharge is charged according to tariff, so there is no justification for claiming waiver of surcharge without depositing the bill. Respondent have further alleged that petitioner has nowhere specifically claimed that electricity was not restored after depositing the amount of Rs. 50,000.00 on 17.02.2009 in pursuance of the interim order passed by the Honøble High Court. Respondent have also stated that petitioner cannot file a complaint before the Forum for compliance of the directions of the Honøble High Court.
5. It is seen that in representation no. 14/2008, against which petitioner have approached the Honøble High Court, (and interim order for payment of Rs. 50,000.00 and restoration of the connection has been passed on 21.01.2009), the Ombudsman order

dated 12.01.2009 had specifically held “...However, grave as it is, UPCL’s failure in this area cannot become a licence for the petitioner to evade payment and continue to receive and consume power, year after year. Having done so for more than eight years, it is indeed audacious for the petitioner to now claim to be the victim and seek waiver of the surcharge imposed as per the applicable tariff. Such misplaced leniency or generosity would be contrary to the provisions and also the spirit of the Act, the regulations and the tariff orders passed by the Commission.”

6. There is no further evidence after the averments of the respondent in their written statement where they have twice stated “it is wrong to allege that the respondent failed to restore the electricity after deposit the said amount” and again “It is wrong to allege that the electricity was not restored after deposit of Rs. 50,000.00”. While petitioner has denied paragraph no. 14 of the written statement and has again stated that respondents failed to restore connection but at the same time have stated that the disconnection was done again on 05.03.2010. The petitioner’s this averment as well as consumer billing history suggests that the connection was either alive at the time of depositing Rs. 50,000.00 by the petitioner on 17.02.2009 or was restored after the said date.
7. With reference to the relief sought by the petitioner it is clear that the Forum have given their unequivocal finding that
  - i) In the matter for restoration of electricity connection upon deposition of Rs. 50,000.00 as ordered by the Honøble High Court, since the Writ Petition is pending before the Honøble High Court and an interim order has already been passed by them, any order by the Forum will be against the principles of law and justice.
  - ii) On the point of waiver of LPS, since the petitioner did not accept the LPS as per revised bill, they could not be given any benefit of the waiver scheme. Forum have concluded that in such circumstances specially when the entire matter has already been agitated before the Honøble High Court, there is no ground for any relief/compensation to be provided to the petitioner by the Forum.

Forum have therefore held that they are unable to give any relief to the petitioner and they have dismissed the complaint.

8. Petitioner has sought the following reliefs from the Ombudsman
- a) That the impugned order dated 10.06.2016 by the CGRF pertain to the complaint 13/2016 be set aside.
  - b) That the amount of Rs. 50,000.00 should be adjusted against the energy cost and not towards the surcharge.
  - c) That entire surcharge should be waived as per the scheme floated in the month of the February 2016 for appellant as being consumer of the UPCL.
  - d) That the compliance of the Honøble High Court order dated 21.01.2009 should be ordered for restoration of the electricity connection.
  - e) That in the lime light of the facts and circumstances any additional further order be passed as the Ombudsman deems fit.
9. Arguments of both parties have been heard and documents on file perused. It has been observed, before the Ombudsman, that while respondent initially claimed that the matter in the Honøble High Court had been decided and the case dismissed and order to that effect was also filed, it was later brought to the notice by the petitioner that case had been restored after hearing by the Honøble High Court and is still pending. Status of the case before the Honøble High Court is the same as it was at the time of passing orders by the Forum. As far as reliefs at point b) and c) are concerned, since the entire matter of total dues payable by petitioner including adjustment of ad-hoc payment of Rs. 50,000.00 is still under consideration of the Honøble High Court, it is not possible for Ombudsman to give any finding on these points. As far as relief sought under point d) regarding restoration of the electricity connection, the points brought out in para 6 above have explained the status. No other relief is made out. There is no justification to interfere with the order of the Forum and the same is upheld. Petition is dismissed.
10. Further a perusal of the consumer history from January 2009 to April 2014, submitted by the respondent shows ADF billing from July 2010 (at reading 24029) till December 2013 (at reading 24029) i.e. for a period of forty two months which is blatant violation of sub regulation 3.2. (1) of UERC (The Electricity Supply Code) Regulations, 2007 which reads as follows:

***“3.2 Billing during the period defective/stuck/stopped/burnt meter remained at site***

*(1) The consumer shall be billed on the basis of the average consumption of the past three billing cycles immediately preceding the date of the meter being found or being reported defective. These Charges shall be leviable for a maximum period of three months only during which time the licensee is expected to have replaced the defective meter.”*

The same provisions with regard to ADF billing have been incorporated in the appropriate tariff orders.

11. As the respondents have claimed to have disconnected the connection on 07.01.2014, it appears that the connection was alive throughout the period of ADF billing and bills for 02/2014 & 04/2014 show present status as UDC and NR (at reading 24029) respectively, for assessed 400 units/bill. This shows utter negligence on the part of UPCL towards correct billing and working of meter as per relevant regulations and tariff provisions. The UPCL management is directed to take necessary punitive action against the erring officers/officials.
12. Compliance of the orders for action against the erring officers/officials as desired under para 11 above as well as under para 5 of Ombudsman's order dated 12.01.2009 (referred in para 5 above) in appeal no. 14/2008 of the same petitioner, may be reported within 30 days of this order.

Dated: 07.10.2016

(Vibha Puri Das)  
Ombudsman