

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Ashok Kumar Gupta
MD, M/s Sheela Construction Ltd.
Khurpatal, Nainital Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Nainital, Uttarakhand

Representation No. 41/2013

Order

The petitioner, Shri Ashok Kumar Gupta, MD, M/s Sheela Construction, Khurpatal Nainital, had filed a representation against the order dated 24.09.2013 in complaint no. 11/2013 of Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum), on 06.11.2013. These proceedings were held in abeyance by the Ombudsman since respondent had approached Hon'ble High Court. The Hon'ble High Court vide order dated 09.11.2016 directed Ombudsman to proceed with the case.

2. A stay had been granted by Ombudsman on 15.11.2013 restraining the respondent from coercive action for realization of disputed dues till further orders while further proceedings also remained suspended till further orders of the Hon'ble High Court in the pending Writ Petition. Proceedings were resumed in compliance of Hon'ble High Court order dated 09.11.2016 which was submitted by the petitioner on 19.11.2016 and by the respondent on 23.11.2016.
3. Petitioner in his representation before Ombudsman has alleged that the Forum has erred in giving 06.07.2008 as the date on which the CT in his meter stood reversed and Forum have also drawn wrong conclusion from this even though the date of CT being reversed is indeterminate; Forum have drawn a wrong conclusion based on Supply Code Regulation 3.1.3; having recognized that a serious error of CT being reversed continued unchecked for 4 long years reveals a very shoddy work ethic but

despite this they have held the petitioner responsible for payment; this is entirely contrary to principle of natural justice; the purchase order of the concerned meter dated 03.10.2006 had specifically mentioned that in case of CT being reversed, there would be no impact on meter functioning and energy calculation; however Forum paid no attention to this provision, despite the respondent having accepted before the Forum that the MRI report was submitted on a monthly basis ever since the 75 KVA meter was installed in the petitioner's premises, it cannot be presumed that their mistake could not be checked for so long; and finally petitioner has argued that on the grounds of section 56 (2) of the Electricity Act, 2003 recovery of Rs. 19,19,905.00 is completely time barred. The finding of the Forum that it is time barred prior to 2 years is incorrect. On these grounds, petitioner has requested to allow the appeal and set aside the order of the Forum whereby they have directed respondent to issue a revised bill after deducting the amount that became payable more than 2 years ago.

4. The petitioner has further stated that he had requested for load enhancement from 35 KVA to 75 KVA. against his connection no. 3136 with meter no. 14570. The agreement for the enhanced load was executed on 25.03.2008 with Electricity Distribution Division, Nainital. The enhanced load was sanctioned on 26/27.05.2008 and a CT of 150/5 was installed instead of the old CT of 100/5. The petitioner has been regularly paying his bills and has not defaulted. Petitioner alleges that on 21.11.2012 respondent UPCL installed a check meter no. UPC00214 without testing and with a CT ratio of 200/5. The said check meter was finalized on 04.12.2012. The check meter was removed and the old meter was sent for testing in the Dehradun Laboratory. The test report of 28.12.2012 found the meter ok in all respects. On 01.01.2013 respondent no. 2 sent a letter no. 08 in which they said that from 06.07.2008 to 04.12.2012 his meter was found to have reversed CT and it was found running 58% slow on this account. Accordingly, bills issued to the petitioner were less by Rs. 19,19,905.00 and therefore the calculation was made available to the petitioner with the request to deposit the due amount by 28.01.2013.
5. The Forum in their judgment, have recorded the finding that while purchase order did mention that CT polarity reversal will not impact recording of energy by the meter but in view of the clarification given by the manufacturer the polarity reversal will not impact recording only if CT is installed in the neutral so the Forum have concluded that in the instant case the recording in the meter has been impacted. Forum have held

06.07.2008 as the date of CT reversal relying on the UPCL statement regarding fulfillment of three conditions for logging in of CT polarity reversal in the MRI. They have held the respondent liable for having disregarded intimation of CT reversal through MRI for 4½ long years from July 2008 to November 2012 have directed action against concerned officials. They have also in their majority judgment agreed with petitioner's request partially that the recovery is time barred under provisions of Section 56 (2) of the Electricity Act, 2003. They have held that dues of period more than 2 years old are time barred as per these provisions and have therefore directed respondent UPCL to issue revised bill. To this extent Forum have allowed the complaint. The dues from 2011 onwards have been confirmed by the Forum and no further relief has been granted to the petitioner. In the minority judgment, the Member Technical has distanced himself from the majority view and has given a separate order whereby he has made clear that all the elements of the metering system were working alright but due to human error and wrong connections consumption was not recorded correctly as per the actual consumption. Hence Member Technical has recommended dismissal of the complaint and reiteration of the bill to the consumer.

6. Respondent in their written statement have stated that while the electricity load of the consumer was enhanced from 35 to 75 KW on 27.05.2008, his electricity consumption dropped drastically after load enhancement. The MRI report indicated first CT reversal on 06.07.2008 and thereafter continuously. In the context of petitioner's allegation that as per the terms of purchase, the meter will show same consumption irrespective of whether the CT is reversed, the respondent have stated that this is applicable only when neutral CT and Star connection is made for metering. In absence of neutral CT and Star connections done at site, the meter will not detect events at source end and therefore recording will be affected. Respondent have also quoted letter dated 22.07.2013 from meter manufacturer Secure which is available on file and the same has been mentioned in the said letter of meter manufacturer M/s Secure Company.
7. Respondent have claimed in their written statement that the check meter was made the main meter, a point which is disputed by the petitioner and which has been argued at the argument stage. As proof of the recording being 58% less respondent have further given consumption data to show that after enhancement of load, petitioner's consumption has dipped from 10691 units per month to 6654 units per month. This

consumption has gone up to 19813 units after December 2012 when CT polarity was set right. The respondents on the basis of the energy recorded during the year 2011-12 and 2012-13 in the months of December, January and February, wherein after the CT polarity was set right the consumption had increased by 57%, 64% and 103% in the corresponding month in 2012-13 as compared to the consumption in the corresponding months in the previous year (2011-12) and thus have established that the less recording was due to wrong CT connections.

8. Respondent have further given citations of orders of the Hon'ble National Consumer's Dispute Redressal Commission where it has been held that "*raising of a bill for the electricity consumed, howsoever belated, could not be termed as a deficiency in service*" This judgment has been upheld by the Hon'ble Supreme Court in their order dated 24.01.1997 wherein they have also stated "*Moreover, there is no deficiency of service in making supplementary demand for escaped billing.*" Other citations including Jingle Bell Amusement Park P. Ltd. Vs North Delhi Power Ltd in Hon'ble High Court of Delhi and Rototex Polyester vs Administrator in Bombay High Court, Admn. Of Dadra and Nagar Haveli Electricity Dpt. MANU/MH/0760/2009 have also been given.
9. Arguments of both parties have been heard and record available on file has been carefully perused. The various pleas raised by the petitioner namely: that the date of reversal of CT is indeterminate, that check meter with a different CT ratio has been installed, that a third meter was installed as main meter on 04.12.2012 rather than check meter being left at site to work as main meter, that the interpretation of Regulation 3.1.3 of Supply Code Regulation by the Forum is wrong, have all been addressed at length by the Forum and the clarifications given are logical and as per provisions of the relevant Regulations and need no further explication except the point regarding the date of CT polarity reversal being 06.07.2008. It may be pointed out that the CTs were installed on 26/27.05.2008 and the chamber was never opened thereafter till 04.12.2012 so the physical situation of the CT cannot change itself during this period. The R phase CT reversal might have been logged in the MRI on 06.07.2008 as per respondent's report but it could not be the date of polarity reversal which continues to be the date of installation of the CTs on 26/27.05.2008. To this extent Forum's finding is incorrect.

10. It is seen that the grounds of appeal by the petitioner and his request for setting aside of the Forum order includes the complaint that only partial relief of 2 years had been allowed by the Forum while he claims that the assessment itself is wrong and unjustified as per meter specifications. He has also included a copy of the purchase order to buttress his claim. While it is true that the tender conditions had stipulated that irrespective of direction of CT the meter reading will not be impacted, respondent have given reference of a letter dated 22.07.2013 whereby meter manufacturer Secure have given certain clarifications regarding CT reversal and forward logic in the meter. This matter was examined by the Forum. It is instructive to see the findings of the Forum who have observed that based on the clarification by M/s Secure given to Executive Engineer, Test Division, the recording in the meter due to CT reversal will be affected if CT in the neutral is not installed. Even though the purchase order stipulated that recording in the meter will not be impacted due to CT polarity reversal, Forum have held that in the meter installed at the premises of the petitioner, recording was impacted.
11. Forum finding that recording in the meter due to R phase CT polarity reversal without installing a CT in the neutral and without making a star point has been impacted w.e.f. from the date of CT polarity reversal till setting right the connection is appropriate in view of Test Lab report dated 28.12.2012 declaring the old meter functioning correctly. It is established, therefore, that less recording by 58% as per check meter report during the period w.e.f. from date of installation of CT 26/27.05/2008 at the time of enhancement of load till 04.12.2012 when the meter was replaced, was only due to R phase CT polarity reversal. This is further corroborated by the figures of consumption given by the respondent for the period under dispute, wherein in spite of enhancement of load the consumption has gone down substantially and after setting right the connections of CT on 04.12.2012 the consumption has substantially increased.
12. The Forum's finding that the recording in the meter due to polarity reversal has been impacted due to non installation of CT in the neutral as clarified by the manufacturer is substantiated by a perusal of the purchase order filed by the petitioner vide their letter dated 15.11.2013. This purchase order includes a line diagram as part of the Guaranteed Technical Particulars duly approved by the purchaser. These clearly show installation of CT in the neutral and star connection. In view of this inclusion, and

corroborations listed above, the finding of the Forum regarding recording in the meter of the petitioner being impacted (due to CT polarity reversal without installing a CT in the neutral and star connection), is appropriate and is upheld.

13. Forum in their order have held that as per provisions of section 56 (2) of the Electricity Act, 2003, Licensee cannot recover dues after 2 years unless the same is shown as arrears continuously. Forum have therefore directed revision of bill by respondent UPCL by limiting the period of realization of dues to 2 years only, in accordance with section 56 (2) of the Act.

14. Case law cited by the respondent provides as under:

In the case of Rototex Polyester vs Administrator, Administration of Dadra and Nagar Haveli Electricity Department, MANU/MH/0760/2009 the Hon'ble High Court of Bombay in WP no. 7015 of 2008 held that *'In case the consumer is under billed on account of clerical mistake such as where the MF had changed, but due to oversight the department issued bills with 500 as MF instead of 1000, the bar of limitation cannot be raised by the consumer.'* It was held that the revised bill amount would become due when the revised bill is raised and section 56 (2) of the Act would not come in the way of the recovery of the amount under the revised bill.

In appeal no. 520/1995 of Maharashtra State Electricity Board vs Swastic Industries before Hon'ble National Consumer's Dispute Redressal Commission it has been held that *"raising of a bill for the electricity consumed, howsoever belated, could not be termed as a deficiency in service"* This judgment has been upheld by the Hon'ble Supreme Court in their order dated 24.01.1997 wherein they have also stated *"Moreover, there is no deficiency of service in making supplementary demand for escaped billing."*

15. Above case law establish that limitation under 56 (2) shall not apply in cases where the energy actually consumed was not recorded in the meter due to some human or clerical mistake and thus such energy escaped to be billed earlier and has been billed now through this bill served upon the petitioner, which is in fact a supplementary bill, to recover the cost of escaped energy.

16. In view of established case law, the direction of the Forum limiting the recovery to two years in accordance with provisions of section 56 (2) is not borne out and therefore this portion of the Forum order is set aside. Bill raised by the respondent is correct and is payable by the petitioner with this modification that the date of CT polarity reversal shall be 26/27.05.2008 instead of 06.07.2008 as elaborated above. Respondent are directed to modify the bill appropriately.
17. Stay on coercive action for recovery of dues granted by the Ombudsman on 15.11.2013 is vacated. Respondent are free to take necessary action as per law for recovery of their legitimate dues.
18. The respondent have committed before the Forum that necessary action against the erring officials is being taken but no documents/records to show the action taken by the respondents against erring officials has been placed on record. They are directed to submit the same within 30 days from the date of this order, to this office as well as to the Forum.

Dated: 07.07.2017

(Vibha Puri Das)
Ombudsman