

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

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

Vs

1. Executive Engineer, Electricity Distribution Division (Central),
18, EC Road, Dehradun.
2. S.D.O., UPCL, Bindal Sub Station, Chakrata Road, Dehradun.

Representation No. 02/2017

Order

The petitioner, Smt. Susham, aggrieved by the order dated 10.01.2017 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) in complaint no. 159/2016 has approached the Ombudsman. Petitioner had approached the Forum in compliance with the Hon'ble High Court directions in their order dated 16.12.2016 in Writ Petition no. 138 of 2008 vide which they had given one week time to the petitioner to represent before the Forum. The Forum in their order have referred to an earlier complaint no. 40/2008 of the petitioner decided by Forum on 19.08.2008 whereby they had held the petitioner liable for dues of Rs. 1,02,625.00. They had also directed that surcharge is leviable but a sum of Rs. 10,000.00 as compensation was awarded to the petitioner to compensate negligence of respondent. Forum have held that since this order of the Forum was confirmed vide the Ombudsman order dated 12.01.2009 in appeal no. 14/2008 hence the Forum is not entitled to hear any dispute for bills up to 20.09.2008 and this due amount of Rs. 102625.00 stands. Forum have also brought out that despite this finding, petitioner did not honor any bill for electricity consumed by her. The final reading of 10.03.2016 in the meter no. L-37829 is shown as 24029 whereas on 20.09.2008 the said reading was 17189. The only amount deposited by her is Rs. 50,000.00 in compliance with directions of the Hon'ble High Court on 17.02.2009. The Forum therefore held

petitioner not liable to receive any relief by waiver of surcharge, payment of compensation, or any other.

2. Petitioner has approached the Ombudsman vide petition no. 02/2017 on 23.01.2017. It may bear mention that earlier petitions of the petitioner had been preferred as per 14/2008, 17/2016 & 22/2016 which have been decided vide order dated 12.01.2009, 07.10.2016 and 14.12.2016.

3. While petitioner has sought the following reliefs namely

- i) Waiver of surcharge,
- ii) In accordance with calculation submitted, only energy cost be recovered, after adjusting amount of Rs. 50,000.00 deposited on 17.02.2009 towards energy cost only.
- iii) Wrong bill dated 10.03.2016 and amount shown on UPCL website of Rs. 1,40,847.00 as on 22.12.2016 be nullified
- iv) The same connection no. of electricity be restored.
- v) An amount of Rs. 2,00,000.00 be awarded as compensation for mental harassment and litigation charges, and any other relief deemed fit,

the direction of the Hon'ble High Court pertains to firstly Forum entertaining representation of petitioner to decide waiver of surcharge and secondly to not realize the bill dated 10.03.2016 till decision of the Forum.

Forum in accordance with the Hon'ble High Court directions have received the representation of the petitioner and in their order dated 10.01.2017 have stated:

“मंच द्वारा दिनांक 19.08.2008 को निर्णय पारित करते हुए दिनांक 20.09.2008 तक संशोधित बिल रू0 1,02,625.00 उपभोक्ता द्वारा विपक्षी को अदा करने का आदेश दिया गया तथा यह भी आदेश पारित किया गया कि सरचार्ज खत्म नहीं होगां ... ऐसी दशा में दिनांक 20.09.2008 तक परिवादी के विद्युत बिल के सम्बन्ध में विवाद को पुनः सुनने को कोई अधिकार इस मंच को नहीं है

मंच द्वारा परिवादी के दिनांक 20.09.2008 के पश्चात् से वर्तमान तक के बिलों का अवलोकन किया गया जिसमें अभिलेखों के अनुसार 20/09/2008 को मीटर संख्या L-37829

की अंतिम विद्युत खपत की रीडिंग 17189 थी तथा दिनांक 10/03/2016 को अंतिम रीडिंग इसी मीटर में 24029 पयी गयी, तदानुसार ही विपक्षी द्वारा परिवादी को बिल निर्गत किए जा रहें थें परिवादी द्वारा CGRF के दिनांक 20/09/2008 के निर्णय के पश्चात् भी नियमित रूप से कोई धनराशि निर्गत बिलों के विरुद्ध जमा नहीं की गयीं माननीय उच्च न्यायलय द्वारा रिट याचिका संख्या 138/2009 के अंतर्गत पारित अंतरिम आदेश दिनांक 21/01/2009 के अनुपालन में परिवादी द्वारा रू0 50,000/- की धनराशि दिनांक 17/02/2007 को विभाग को जमा की गयी है इसके अतिरिक्त विपक्षी द्वार समय-समय पर जारी बिलों की राशि का कोई भी भुगतान परिवादी द्वारा नहीं किया गया जबकि मा0 उच्च न्यायलय के उक्त आदेश के अंतर्गत आगामी बिलों के भुगतान पर कोई भी रोक नहीं लगाई गयी थीं इस प्रकार परिवादी द्वारा समय-समय पर विभाग द्वारा प्रेषित विद्युत बिलों के भुगतान में default किया गया है जिस कारण समय-समय पर विपक्षी पर लगाया गया विलम्ब अधिभार परिवादी द्वारा देय है जिसमें किसी प्रकार की कोई छूट प्रदान नहीं की जा सकतीं ”

4. Respondent UPCL in their written statement have stated clearly that the only controversy in the judgment dated 19.08.2008 and the order of the Ombudsman on 12.01.2009 was about surcharge in the corrected bill of Rs. 1,02,625.00 (the only issue agitated before Hon'ble High Court by the petitioner in January 2009 is the issue of surcharge in the order of the Forum upheld by the Ombudsman. No other issue was agitated at that time nor is it possible to do that now). It has been firmly denied that the amount of Rs. 50,000.00 was deposited by the petitioner only towards energy cost. The said amount was deposited towards total dues and not against energy cost alone. There was no direction of Hon'ble High court to deposit only the part of energy cost. Respondent have further maintained that Hon'ble High Court did not say the petitioner is not liable to pay further dues and the order dated 17.02.2009 (the interim order of the Hon'ble High Court is of 21.01.2009. 17.02.2009 is the date on which the petitioner deposited Rs. 50,000.00 as per direction of Hon'ble High Court) for restoration of supply was an interim order which merged with the final order disposing off the writ petition. No order for not disconnecting petitioner's supply for nonpayment in future had been passed by Hon'ble High Court. Respondent have also disputed the petitioner's allegation that his disconnected connection was not restored. As per respondent, after restoration of the connection subsequent to order of Hon'ble High Court of January 2009, the connection was again disconnected on 06.03.2010 and on 07.01.2014 and finally on 11.04.2016.

5. They have also alleged that while respondent restored the connection, petitioner made no payments against bills raised and she continued to consume energy without paying dues. Respondent have also maintained that the Hon'ble High Court did not set aside either the order of the Forum dated 19.08.2008 nor the order of the Hon'ble Ombudsman dated 12.01.2009 but merely remanded the case for fresh hearing by Forum. Respondent have therefore asserted that Ombudsman do not have the jurisdiction to entertain this petition.
6. While the issues raised in the case are dealt with in subsequent paragraphs, the respondent's objection that as the case was remanded by the Hon'ble High Court to Forum the appeal against Forum's order dated 10.01.2017 cannot be preferred before Ombudsman may be dealt with first. It is made clear that the objection is not sustainable firstly because the case was not remanded to Forum by the Hon'ble High Court but the Court directed the petitioner to file a complaint/representation before the Forum within a week from their order which shall be decided by the Forum within 2 weeks thereafter and secondly since the appeal has been preferred before Ombudsman by the petitioner, being aggrieved with the aforesaid order. It is well within the Ombudsman jurisdiction to admit and adjudicate any such appeal in terms of the relevant provisions of UERC (Appointment and Functioning of Ombudsman) Regulations, 2004.
7. The record available on file, including that pertaining to previous orders of the Forum, as well as the Ombudsman, have been perused carefully and arguments preferred by both parties have been heard. In terms of directions of Hon'ble High Court, a representation was filed by the petitioner before Forum and after carrying out proceedings the Forum have dismissed the representation. The issue of waiver of surcharge had been dealt with in the Forum in 2008 and before the Ombudsman in 2008-09. The decision on merits in both fora was against waiver of surcharge. In approaching the Hon'ble High Court the petitioner's case was for waiver of surcharge and quashing the order of the Ombudsman and Forum to the extent they relate to the condition that surcharge shall not be waived. The petitioner while putting forward her representation in compliance with Hon'ble High Court order, has not brought any fresh facts or evidence on record. She has only added the number of reliefs to those claimed before the Hon'ble High Court, as already mentioned in para 2 above. The petitioner has not made any payment except Rs. 50,000.00 paid on 17.02.2009 as per

interim orders of the Hon'ble High Court dated 21.01.2009 and despite there being no stay on payment of the balance amount of the revised bill of Rs. 1,02,625.00 and on payment of subsequent bills till Hon'ble High Court's order dated 16.12.2016 staying realization of the bill dated 10.03.2016 amounting to Rs. 1,38,638.00. The reasons for not allowing waiver of surcharge have been dwelt at length and in a succinct manner in the Ombudsman order dated 12.01.2009 which still remain valid. The petitioner is therefore liable to pay the Late Payment Surcharge as shown in the bill of Rs. 1,02,625.00 as also in the subsequent bills. The LPS is payable by the petitioner as per provisions of the relevant tariff.

8. As far as the relief regarding adjusting amount of Rs. 50,000.00 deposited on 17.02.2009 towards energy charges only is concerned, the same cannot be accepted as it had already been held in the earlier orders as well as in this order that surcharge cannot be waived off and therefore this amount of Rs. 50,000.00 is adjustable against the total dues of Rs. 1,02,625.00 which the respondents have adjusted as per their prevalent practice and have proceeded further to build up the subsequent bills accordingly. The second request of the petitioner is therefore turned down. As far as the prayer for cancellation of wrong bill dated 10.03.2016 of Rs. 1,38,638.00 is concerned this is a consolidated bill for the period 25.04.2014 to 10.03.2016 for metered reading up to 24029, hence petitioner's request for cancellation of this bill is not justified. Regarding his request to nullify the amount of Rs. 1,40,847.00 as reflected on respondent's website on 22.12.2016, from the records submitted by the respondent vide letter dated 19.04.2017, it is seen that after permanent disconnection on 11.04.2016 and finalization of PD vide OM dated 18.03.2017, this amount stands modified to Rs. 87,207.00.
9. The respondents after permanent disconnection of the petitioner's connection have finalized the PD vide their OM dated 18.03.2017 according to which after waiver of fictitious dues of Rs. 52,841.00 accrued after the date of temporary/permanent disconnection, and adjustment of security of Rs. 799.00 have worked out the net payable dues as Rs. 87,207.00 and have also issued notice under section 3 of relevant Act on 23.03.2017 which is in order. Restoration of the same connection no. of electricity is not possible since the connection has been permanently disconnected. It is therefore held that petitioner is not liable to receive any relief as demanded.

10. Forum statement in their order dated 10.01.2017 “ऐसी दशा में दिनांक 20-09-2008 तक परिवादी के विद्युत बिल के सम्बन्ध में विवाद को पुनः सुनने का कोई अधिकार इस मंच को नहीं है” is not in order in view of Hon’ble High Court directions dated 16.12.2016. To address this, the matter regarding waiver of surcharge as well as other reliefs has been examined and adjudicated at length above. Forum Order is upheld with above observation. Petition is dismissed. No order as to costs.
11. Orders of the Ombudsman contained in para 5 of order dated 12.01.2009 in representation no. 14/2008, pertaining to action against erring staff of respondent, are reiterated.

Dated: 22.06.2017

(Vibha Puri Das)
Ombudsman