

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s U.S.Metals Products
Plot 79-A, Sector 5,
SIDCUL, Haridwar,
Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division (Rural),
Uttarakhand Power Corporation Ltd.
SIDCUL, Haridwar, Uttarakhand

Representation No. 22/2017

Order

The petitioner, M/s US Metal Product aggrieved by the order dated 27.01.2017 of Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 108/2016, filed a representation dated 03.07.2017, before the Ombudsman. Since the representation had been filed 157 days after the order of the Forum , petitioner requested for condonation of delay which was allowed in the interest of justice after hearing both parties.

2. Petitioner's grievance arises from penalty to the tune of Rs. 2,12,023.00 imposed on him intimation of which he received with the bill dated 03.09.2016. Petitioner claims that he has been regularly paying his electricity bills, as received, and when he was served this additional penalty amount, he approached concerned office bearers of the respondent and protested such arbitrary additional penalty without any show cause notice or following principles of natural justice. However no one heeded his complaint and he then approached the Forum. Since the Forum dismissed the complaint, petitioner was forced to deposit the penalty amount immediately, after the aforesaid judgment, under protest. Petitioner has also repeatedly brought attention to the fact that no letter other than the letter of 20.08.2015 has been issued by the respondent (opposite party) pertaining to excess usage. Petitioner has alleged that Forum have failed to appreciate that petitioner has already had a penalty imposed on him in the regular course, on the alleged excess usage of electricity, over the

contracted load and the same had been paid by the petitioner. He has therefore requested that the file of the Forum be summoned, the judgment of the Forum dated 27.01.2017 be set aside and the respondent be directed to refund or adjust the amount of penalty deposited by the petitioner under protest to the respondent.

3. The Forum in their order have referred to the petitioner's complaint against electricity connection no. 25821. The petitioner received a bill for Rs. 3,01,243.00 which was unexpectedly higher than routine bill of Rs. 89,219.00. The reason for the difference of Rs. 2,12,023.00 could not be ascertained even after several discussions with representatives of the department. Hence he was constrained to approach the Forum. Forum called for the consumer billing history, MRI report and Load Survey Report, basis for assessment and complete details thereof and the category of complainant's connection as well as its present status. Opposite party filed relevant documents before the Forum, and also informed that consumer had been drawing demand in excess of his contracted load in each month for the period August 2014 to October 2015. Respondent issued notice for enhancement of load within 15 days or to face disconnection vide their letter dated 31.12.2014. Since the complainant took no action and continued to exceed contracted load from January 2015 to October 2015, another notice was served to him on 31.12.2015. As directed by Forum, calculation of assessment of Rs. 1,45,545.00 (difference between recorded demand chargeable as per HT tariff and LT tariff) was put up before the Forum. Since the consumer had drawn power (demand) to the tune of 136.5, 124.5, 116.7 and 119 KVA for the months August, September, October and November 2014 as against contracted load of 75 KW, Forum came to the conclusion that petitioner having taken cognizance of repeated notices issued and having effectively reduced his demand after October 2015, there is no need to convert the connection from LT industry to HT industry. But since he has knowingly disregarded the notice of 31.12.2014, Forum directed that petitioner be charged as per RTS 7, HT industry tariff schedule for the period January 2015 to October 2015 after adjusting amount already paid by the petitioner and without LPS.
4. The respondent in their written statement read with clarifications given by them vide letter dated 06.09.2017, have admitted that the petitioner has been billed as per RTS – 7 (HT) for the period January 2015 to October 2015, in compliance to Forum order dated 27.01.2017 and in supersession of the bills already issued for the period

08/2014 to 02/2016 (and calculation for Rs. 1,45,541.00 for the period from 08/2014 to 10/2015, as per verbal directions of the Forum and put up to them vide respondent's letter no. 88 dated 06.01.2017), since the petitioner had been using load far in excess of the sanctioned load in the period August 2014 to October 2016 (August 2014 to October 2015 is the correct period during which excess demand has been drawn as per billing history). Respondent have further said that since petitioner has been using load in excess of sanctioned load, respondent is suffering loss of revenue. There is also loss of revenue on account of MCG. Petitioner is therefore liable to be charged for demand charges under HT tariff instead of LT tariff. In response to petitioner's claim that penalty had already been imposed upon him which had been paid to the respondent in the regular course of business and therefore any further order imposing dual penalty is barred by law, respondent have claimed that while penalty for use of excess demand was charged in the bills but the same has been cancelled (deleted) and the petitioner has been charged as per HT tariff. Respondent have further argued that since the petitioner had not reduced his demand despite notice and despite regular contact with the department, respondent is justified to charge petitioner as per applicable tariff which is RTS 7 (HT). Respondent has also denied that they have charged the petitioner under different tariff arbitrarily. When the demand consumption exceeded the contracted demand, the petitioner is liable to pay under appropriate tariff. The Ld. Forum order has considered these circumstances and it is wrong to allege that they have failed to appreciate that petitioner stopped using excess demand from October 2015 since the same is mentioned in para 2 of the judgment. Respondent have therefore reiterated that the HT tariff is justified and petitioner is not entitled to any relief from Ombudsman.

5. Arguments have been heard and record available on case file as well as on Forum's file, which was called, has been perused. Forum in their order of 27.01.2017 have recognized that petitioner having taken cognizance of repeated notices issued by respondent has stopped using excess load beyond October 2015. As such presently, there is no requirement for changing the petitioner's industrial connection from LT to HT. However, Forum have also taken note of the fact that after the first notice was issued petitioner continued to use excess load and therefore Forum have disregarded petitioner's claim that since he was paying a penalty for additional usage he should not be billed as per HT industry tariff. Forum have dwelt on the fact that petitioner

was well aware of Tariff Schedule issued by UERC and to save himself from excess expenditure he had deliberately avoided increasing his contracted load. The conclusion drawn by the Forum that petitioner deliberately avoided enhancing his contracted load despite being well aware of the provisions of Regulations and the tariff, may well be correct. However, the remedy for such deliberate inaction motivated to deny legitimate revenue to Licensee, has to be consistent with provisions of tariff and Regulations. The provision of tariff order 2014-15 provides as under:

“In case of consumers where electronic meters with MDI have been installed, if the maximum demand recorded in any month exceeds the contracted load/demand, charges for such excess load/demand shall be levied equal to twice the normal rate of fixed/demand charge as applicable. Such excess load penalty shall be levied only for the month in which maximum demand exceeds contracted load.”

Identical provision exists in the tariff order 2015-16.

6. Following facts of the case are to be borne in mind.
 - i. The petitioner is a consumer under LT industrial category having a contracted load of 75 KW w.e.f. the date of connection 07.02.2014 with an electronic meter as per tariff.
 - ii. The billing history shows that the petitioner has drawn demand more than his contracted load of 75 KW from August 2014 to October 2015. The actual demand recorded during these months has been between 90.90 KVA and 136.5 KVA except for the month of September 2015 when it is 75.60 KVA and in the month of December 2014 when it is zero KVA.
 - iii. The respondents have charged in the regular monthly bills, penalty for excess demand drawn in different months at the penal rates of fixed charges as prescribed under RTS 7 (LT category).
 - iv. As per audit observations and directions the demand charges for the period 08/2014 to 02/2016 were revised at the rates of demand charges under RTS 7 (HT category) treating the contracted load as 137 KVA and accordingly a sum of Rs. 2,12,023.00, on account of difference of demand charges as suggested by audit and the demand charges already charged under RTS 7 (LT) was added in the bill of 08/2016. This created a grievance to the petitioner for the redressal of

which he approached the Forum where it was registered as complaint no. 108/2016.

- v. The Forum observed that while the petitioner was drawing excess demand from the month of August 2014 till the month of October 2015 and in all months, in this period except December 2014 and September 2015, the demand had gone beyond his contracted load of 75 KW which is the upper limit of LT category (and the demand drawn in all these months had been more than 75 KW), thus the Forum concluded that the billing for all these months should be revised on RTS 7 HT tariff. However, the Forum concluded that since the notice to the consumer was issued in the month of December 2014, bills from the month of January 2015 to October 2015 can be revised and they accordingly ordered that the bills from January 2015 to October 2015 be revised on RTS 7 (HT) under appropriate tariff orders.
 - vi. The respondents accordingly revised the bill from January 2015 to October 2015 wherein the difference of HT billing and LT billing from January 2015 to October 2015 has been worked out as Rs. 2,54,907.00 and after deducting Rs. 2,12,023.00 which has already been billed as aforesaid, a differential amount of Rs. 42,884.00 (Rs. 2,54,907 – Rs. 2,12,023) was further raised to the consumer in the bill for the month of March 2017 which has duly been paid by the petitioner.
7. There are two aspects to the Forum order first of applicability of HT tariff for the period of excess drawal i.e. August 2014 to October 2015; the second part pertains to the date from which HT tariff will take effect whether after the service of the notice or without such a notice.
8. In view of aforesaid discussion, it appears logical as also in keeping with provisions of tariff that excess demand drawn by the petitioner from the month of August 2014 to October 2015 be charged at the penal rates provided for in the appropriate tariffs applicable to the category to which the consumer belongs as per his contracted load. Both parties agree that penal demand charges, as per provisions of RTS (LT) tariff have already been charged in the regular monthly bills and the same have duly been paid by the petitioner. Since, penal charges or excess demand drawn by the petitioner during the period August 2014 to October 2015 have already been billed and paid as

per provisions of the relevant tariff, nothing more can be billed and charged for drawal of excess demand.

9. The Forum order directing billing under RTS 7 (HT tariff) thus seems to lack authorisation under relevant tariff provisions. Forum order for billing for the period subsequent to issue of notice have also not been found to be consistent with any Regulations/tariff provisions.
10. Respondents are directed to refund Rs. 2,54,907.00 deposited by the petitioner against the bill raised on RTS 7 (HT tariff), by way of adjustment in the next bill(s). Forum order being inconsistent with tariff provisions, is set aside. Petition is allowed.

Dated: 17.10.2017

(Vibha Puri Das)
Ombudsman