

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Windlass Healthcare Private Limited,  
Plot no. 183 and 192,  
Mohabewala Industrial Area,  
Dehradun, Uttarakhand

Vs

1. The Managing Director,  
Uttarakhand Power Corporation Ltd.  
VCV Gabar Singh Bhawan, Kanwali Road,  
Dehradun, Uttarakhand.
2. The Executive Engineer,  
Electricity Distribution Division (South),  
Uttarakhand Power Corporation Ltd.,  
18, EC Road, Dehradun, Uttarakhand

Representation No. 23/2017

### **Order**

The petitioner, M/s Windlass Healthcare Pvt. Ltd., aggrieved by the order dated 13.06.2017 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) in complaint no. 195/2016, has filed this petition no. 23/2017 with the request to set aside the said order, since it has been passed erroneously and without consideration of objections and documents by the petitioner. The petitioner requested for stay of the execution proceedings against order dated 13.06.2017. After hearing both parties and requiring petitioner to deposit an additional Rs. 2.5 lakhs (which they deposited on 21.07.2017), stay was granted as requested in application dated 10.07.2017.

2. The case in brief is that petitioner is a pharmaceutical company engaged in manufacture of medicines and has a connection no. 6639 with a sanctioned load of 1000 KVA. The petitioner had been regularly paying his bills when suddenly the department made an arbitrary demand in violation of the Rules and Regulations. Due to the reason (less consumption) the department has assessed the consumption w.e.f. 01.06.2016 to 09.01.2017 and requiring the petitioner to pay a sum of Rs. 37,17,277.00 vide letter dated 06.03.2017. Petitioner maintains that while consumption

fluctuates based on production and in case of fluctuation in power supply the backup with generator sets for uninterrupted power supply is used, his request to the Forum resulted in the order of the Forum dated 13.06.2017. Forum have failed to grant relief while accepting without justification slow running of meter by 32.3% while evidence of 34.47% less production during the said period had been filed. Petitioner has also alleged that the Forum has failed to consider the UERC Regulations 2007 and have erred in passing the order. Petitioner has also quoted provisions of regulations 3.1.1 (4) 3.1.3 (1), (6), (7) and (8). 3.1.4 (3) and (4), 3.2 (1), 3.3.1 (1) and (2) and referred to other provisions of Electricity Act and Rules. Petitioner has also taken exception to the old meter having been removed and in the possession of respondent no. 2 and not produced in spite of their request. He has also alleged that the authenticity of the new meter has not been checked and petitioner therefore feels that he should not be made to suffer for the fault of the department.

3. Forum in their order dated 13.06.2017 have recorded that as per sealing certificate of check meter installed by the department on 01.12.2016 and sealing certificate of the check meter finalized on 09.01.2016 (correct date being 09.01.2017) the old meter is found 32.3% slow. Executive Engineer Distribution Division, Dehradun has been quoted as saying that the meter was recording 32.3% slow and therefore an assessment for 230 days i.e. 25.05.2016 to 09.01.2017 was made. Petitioner had protested against this assessment on the basis of his consumption being lower as compared to earlier period. Forum have recorded that while they repeatedly directed respondent UPCL to give firm documentary evidence in support of assessment of 230 days, the same was not presented and therefore Forum have concluded that respondent do not have any firm documentary evidence to support assessment for 230 days. (However, a perusal of records on Forum's case file, shows that documentary evidences such as tamper report, load survey report and MRI along with Test Division letter no. 304 dated 19.04.2017, were duly submitted to Forum by the respondent vide their letter no. 227 dated 24.04.2017). They have therefore held that as per Regulation 3.1.3 (6), it will be appropriate to restrict the assessment @ 32.3% slow, for a period of 6 months prior to 09.01.2017. No LPS will be chargeable on this amount and the amount will be calculated after making adjustment of payments made so far.
4. Respondent UPCL in their written statement before the Ombudsman have disputed the petitioner's allegation that the check meter was installed on 01.12.2016 and

finalized on 09.01.2017 without his knowledge. Respondent had through the test division letter no. 217 dated 26.11.2016 duly informed the petitioner that check meter will be installed on 01.12.2016. The sealing certificate of 01.12.2016 is duly signed by Shri Sachin an Electricity Executive of the petitioner. Further, the sealing certificate of 09.01.2017 has been duly signed by Shri Sudam Pradhan, who is known to be the Head of the Department in the petitioner's unit. Respondent have quoted at length the process of installing check meter and the presence of the several employees of the petitioner and the fact that the supply to the petitioner's unit was stopped and load shifted to the generator and therefore the petitioner cannot claim lack of knowledge of removal of old meter. Respondent have also disputed his pleading ignorance of installation of check meter on the above grounds. Respondent have clearly stated that in their letter dated 06.03.2017 along with which a bill was enclosed, it was explained at length that after the finalization of check meter the old meter was found slow and therefore the assessment is neither arbitrary nor without prior intimation. Respondent have also disputed the petitioner's claim that he had asked respondent to withdraw demand and after the respondent's letter dated 06.03.2017 the petitioner only approached the Forum. Respondent have further clarified that the petitioner may be consuming electricity as per his requirement but they have only mentioned that the meter was recording less consumption. The generator set of the petitioner cannot be used for any fluctuation or to stand in if one phase of power is missing in the meter. The motors installed in the unit of the petitioner are 3 phase and they run on 3 phase supply only. The question of installation of generator set is wholly irrelevant in this case. Respondent have challenged the petitioner's claim that there is no justification for claiming arrears w.e.f. 01.06.2016 and in this connection, they have also disputed the Forum finding on page 7 of their order because the respondent had given the exact date of the tamper in the summary report and the Forum have erred in holding that respondent were repeatedly directed and could not produce evidence with regard to date of commencement of tamper. Consequently, respondent have argued that it is wrong to restrict the assessment to 180 days as decided by the Forum as there is full evidence for justifying assessment for 230 days. The respondent have therefore argued that petitioner is not entitled to reliefs requested and the order of the Forum confining the assessment to 6 months as per para 3.1.3 (6) is liable to be quashed.

5. Arguments on behalf of both parties have been heard. File of the Forum has been called for and the record filed before the Ombudsman as well as the record before the Forum has been carefully perused. A few broad points need to be stated. From the record, it is evident that petitioner was not ignorant of the installation of the check meter or of its findings as explained by the respondent in their written statement as well as in the sealing certificates. Since the sealing certificates were not fully legible, sealing book was called for which gives clearly the date of sealing certificate as being 09.01.2017 and not 09.01.2016 as mistakenly mentioned at some points including in the Forum order. The representatives of the petitioner who have signed the sealing certificate have been claimed to be electricity executive and head of department respectively, a statement which had not been controverted by the petitioner. The basis on which the petitioner has requested for setting aside of the Forum order is his consumption record. His argument about his production being less can be no justification for non assessment as done by the respondent. The respondent argument that petitioner's consumption is to be measured by the meter and not through his production data is correct. The check meter has clearly established that the meter installed at the petitioner's premises was recording 32.3% less. The cumulative tamper data has revealed B phase voltage missing for 230 days starting on 24.05.2016 and ending on 09.01.2017 with the removal of the old meter. Further record available clearly establishes that the meter is recording less and the reason for less recording has also been revealed through the documents namely cumulative tamper data filed by the respondent. These pieces of evidence have not been controverted.
6. The petitioner has drawn attention to provisions of UERC (The Electricity Supply Code) Regulations, 2007 which he claims have been violated in putting forward this assessment of Rs. 37.17 lakhs. The specific provisions quoted in the petition are addressed as follows:
- a) Sub regulation 3.1.3 (6) of supply code.
- In the instant case the meter has been recording less by 32.3% as per check meter report and the reason for this less recording is established to be the B phase voltage missing to the meter continuously for 230 days as per tamper report. It is not a case of meter running slow but recording less due to less input in B phase. This sub regulation restricting the period of recovery of dues for unbilled units to a maximum period of 180 days is applicable where the meter

is found running slow beyond permissible limit as specified in Rule 57 (1) of Indian Electricity Rules 1956, whereas in the instant case the meter was recording less due to lesser input in its B phase, because of voltage missing (failure) in this phase of the meter and since this period is definite, being 230 days as per Tamper report, so this sub regulation is not applicable in the instant case.

- b) Sub regulation 3.1.3 (7) of supply code.

The representatives of the petitioner have duly signed the sealing certificates dated 01.12.2016 and 09.01.2017 and he has not disputed the test report. This sub regulation is not applicable in the instant case.

- c) Sub regulation 3.1.3 (8) of Supply Code.

This sub regulation is also not applicable as the records such as sealing certificates, MRI report and Tamper reports are duly maintained by the respondent as the same have been submitted in the Forum as well as before the Ombudsman. The respondents have duly complied with the provisions of this sub regulation.

- d) Sub regulation 3.1.4 (3) & (4) of Supply Code.

These sub regulations are applicable in case of ADF/RDF/IDF metering and since in the instant case the meter running although recording less due to the reason explained above is not a case of ADF/RDF/IDF and therefore these regulations are not applicable in the instant case.

- e) Sub regulation 3.2 (1) of Supply Code.

This regulation applies for billing in the case of defective/stuck/stopped/ burnt meters and since none of the conditions was found in the instant case with regard to the meter so this regulation is also not applicable.

- f) Sub regulation 3.3.1 (1) & (2) of Supply Code.

This provides for billing schedule in general so has nothing to do in the instant case.

- g) Sub Regulations 3.1.1 (4) & 3.1.3. (1) of Supply Code.

While sub regulation 3.1.1. (4) provides for the responsibility of the Licensee to maintain the meter and keep it in working order at all times 3.1.3 (1) provides for periodical checking of the metering equipments and this periodicity in case of bulk supply meter (HT) to which category the petitioner belongs provides for checking of the metering equipment once in a year. In the instant case the

less recording of meter has been established for 230 days due to B phase voltage missing to the meter. It is not certain whether the periodical checking in the case of the petitioner had become due or not during this period as no such evidence is available on file. As regards responsibility of the Licensee to maintain the meter in working order it is true that it is the responsibility of the Licensee and since in this case the meter has been recording less continuously for 230 days it appears that the Licensee's concerned officers/staff have been negligent in discharging their duty. But since as established through documentary evidence, referred to above, the meter has recorded less during the period under reference than what petitioner has actually consumed, he is liable to pay for the energy which he had consumed but could not be billed during this period of 230 days, despite respondent's negligence and not detecting this abnormality promptly.

7. In view of above clarifications as well as the documentary evidence i.e. sealing certificates dated 01.12.2016 and 09.01.2017 for installation and finalization of check meter respectively and the tamper reports, the demand of Rs. 37.17 lakhs raised by the respondents vide their letter dated 06.03.2017 to recover the cost of energy escaped to be billed in regular monthly bills due to less recording by the meter by 32.3% for a period of 230 days due to B Phase potential missing continuously, is the genuine demand and they are entitled to recover the same. The Forum conclusion for restricting the demand only for 180 days in terms of sub regulation 3.1.3 (6) is not correct as this sub regulation is not applicable in this case as clarified in para 6. a) above. The Forum order is therefore set aside. The petition is dismissed. Stay granted on 17.07.2017 stands vacated.

Dated: 07.09.2017

(Vibha Puri Das)  
Ombudsman