

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Aagya Biotech Pvt. Ltd.,
1.5 KM Manglore Saharanpur Road,
Manglore, Roorkee, Distt. Haridwar
Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division (Rural),
Uttarakhand Power Corporation Ltd.
Civil Lines Roorkee, Distt. Haridwar, Uttarakhand

Representation No. 03/2018

Order

Date: - 30.05.2018

The petitioner, M/s Aagya Biotech Pvt. Ltd. has filed this representation against the order dated 26.12.2017 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 85/2017.

2. Petitioner company is the successor company to M/s GS Pharmaceuticals Pvt. Ltd. whose industrial power connection of 450 KVA KNO 415 has been mutated in favour of petitioner (M/s Aagya Biotech Pvt. Ltd.) vide respondent's O.M. no. 6223 dated 22.02.2017. The grievance of the petitioner company is that Forum have disregarded the scientific finding of M/s YMPL and have relied on the Audit report for their order and assessment of Rs. 13,98,315.00. The case in brief is, that, in the month of July 2014 a bill of additional amount of Rs. 26,072.30 (correct figure as per bill is Rs. 2,60,762.30) as adjustment of bill in respect of B phase missing for the period 05.05.2014 to 16.06.2014 was served on petitioner M/s GS Pharmaceuticals. Petitioner deposited the said amount with the respondent on 16.08.2014. However, on 03.10.2016 a penalty of Rs. 13,98,315.00 was imposed on them on the basis of B phase missing for the period 12/2013 to 15.06.2014. Respondent did not heed oral complaints made before them and M/s GS pharmaceuticals were constrained to make a written representation on 20.03.2017 but received no help in the matter. The petitioner, therefore, filed a complaint before the Forum. Forum, according to the

petitioner, failed to consider that this demand was baseless and M/s YMPL report, being a technical report from an independent body could not be rebutted without any scientific evidence. The judgment of 26.12.2017 therefore passed by the Forum, is against facts and based on surmises and conjectures and needs to be set aside.

3. Forum, in their order dated 26.12.2017, have recorded that they heard the case over 6 hearings and called for additional documents as well. After hearing the case, Forum concluded that the calculation of B phase missing in the joint inspection report of M/s YMPL and the department is incorrect and the calculation and assessment given by the internal audit is correct as per rules. The audit report has detailed that the meter has been found to be slow from November 2013 for which the evidence cited is the table drawn up in the audit report from May 2013 to July 2014. Forum therefore upheld the assessment of Rs. 13,98,315.00 in addition to the Rs. 2,60,762.30 recovered earlier.
4. Respondent, in their written statement dated 12.02.2018, have accepted the averments made by the petitioner regarding bill of Rs. 2,60,762.30 served on the petitioner for the period 05.05.2014 to 16.06.2016 (possibly meaning 16.06.2014) due to B phase missing. They have also admitted that the petitioner has deposited the said amount and the fact that M/s YMPL wrongly mentioned the period of B phase missing as only 05.05.2014 onwards whereas audit report pointed out the date when less recording commenced i.e December 2013 and it is based on this reading by the audit that the revised assessment for Rs. 13,98,315.00 was sent on 03.10.2016 for the period December 2013 to 16.06.2014. However, respondent have disputed the allegation that the Forum did not consider the evidence and arguments of the petitioner while dismissing the complaint. Further, in reply to the grounds of appeal they have contested that the order of the Forum is against law, facts and merits of the case, and have reiterated that it is wrong to allege that the CGRF did not consider the fact that in the M/s YMPL report the period of B-phase missing is December 2013 to 15.06.2014. The learned CGRF has considered this fact in detail. And the facts stated in the respondent's letter no. 3385 dated 09.11.2017. The learned Forum has considered the fact that the department has erred in computing the period of the B-phase missing in the assessment made at the time. The YMPL tested the petitioner's meter on 16.06.2014 and found that B-phase was missing. However, respondent

submitted that the period of B-phase missing was wrongly mentioned in the said report. According to them, the audit pointed out that the meter was not recording correct consumption since 11/2013. So the assessment earlier made was revised for complete period during which the meter was found recording less consumption i.e. from 12/2013 to 15.06.2014 as detailed out in the audit report. It has also been admitted that the respondent sent the revised assessment vide bill dated 03.10.2016 for Rs. 13,98,315.00, for the period December 2013 to 15.06.2014.

5. Since the Forum had observed clearly that the calculation of period when B phase is missing has been incorrectly done by M/s YMPL and the departmental joint inspection and the process has been correctly observed in the internal audit, and the case had been heard over 6 hearings it was considered that the basis for coming to such a conclusion would be available in the Forum record. The Forum file was therefore called for and perused.
6. It is clear that an assessment of Rs. 2,60,762.30 has already been done for the period 05.05.2014 to 16.06.2014 for B-Phase current missing during the said period as per joint inspection report of M/s YMPL and departmental officers dated 16.06.2014. The same has been paid by the petitioner without any protest. The moot point raised by the petitioner and of concern before the Ombudsman is the additional assessment of Rs. 13,98,315.00 which has been levied on the basis of observations of the internal audit team. The audit team have observed that the meter no. 11136108 was replaced by a new meter no 1328677 vide sealing certificate no. 35/16 dated 16.06.2014 and the division had assessed Rs. 2,60,762.30 in the bill of 07/2014 due to B phase missing. The audit have further drawn a table of the monthly consumption from 05/2013 to 06/2014 recorded by the old meter (replaced on 16.06.2014) and have observed that it was not showing the correct consumption from 11/2013. Hence, they have directed that based on the average consumption of 3 months from 08/2013 to 10/2013 recorded by the old meter assessment for minimum 6 months from 12/2013 to 16.06.2014 be raised. The respondent, based on average consumption from 08/2013 to 10/2013, worked out additional assessment, including demand charges, at a total of Rs. 13,98,315. Audit has required that this assessment be carried out after verification of the records.

7. Since Forum have only observed that the joint inspection of M/s YMPL and department have miscalculated the period of B-phase missing, it is imperative to know the grounds on which this miscalculation has been established and such assessment for a period of 6 months been levied.
8. Since no indication of tamper was available in the report of M/s YMPL or on file, it was expected that such details would be available in the file of the Forum. However the tamper report was not available in the file of the Forum and therefore was called for from the respondent. Report received on 04.04.2018 from the respondent vide letter dated 31.03.2018 gives the status of tamper up to 31.05.2014. This reveals that B phase current was missing from 05.05.2014 to 31.05.2014. B phase current was found missing on 16.06.2014 at the time of checking by M/s YMPL and presumably B phase current was missing continuously from 05.05.2014 till 16.06.2014. Since no technical ground was available on record for mounting the assessment for the period December 2013 to 05.05.2014, respondent were again asked in the hearing on 16.04.2018 to indicate the technical grounds on which the assessment as calculated in the audit report was made and assessment for Rs. 16.24 lakhs was issued from 12/2013 to 16.06.2014. In reply respondent submitted report and clarification of 07.05.2018. While no technical grounds for making the assessment for the period December 2013 to 15.06.2014 have been given, the 2 points highlighted in the report are (i) In their discussion with the meter manufacturer L&T they have been informed that the tamper is recorded only when a tamper event after occurrence had restored itself. In the absence of such restoration, such event is not registered as tamper as per the manufacturer. (ii) The month wise variation in consumption across various months which necessitated this additional assessment. This report does not reveal B phase current as missing continuously in the period December 2013 to May 2014. The report also does not give any ground other than reduced consumption for the assessment for the period December 2013 to 16.06.2014, on the basis of past 3 months average consumption.
9. Despite repeated questioning respondent have been unable to give any technical grounds for revised assessment of Rs. 16.24 lakhs. This revised assessment seems to draw from the observations of the internal audit and comparison of consumption pattern in the period 11/2013 to 06/2014. Since this period has shown a decline in

consumption average consumption of previous 3 months i.e. August 2013 to October 2013 has been used to justify assessment of Rs. 16.24 lakhs for the 6 month period from December 2013 to 16.06.2014. The only technical report available on record is the joint inspection report of M/s YMPL and the department dated 16.06.2014, in which they found B phase current missing from 05.05.2014 to 16.06.2014 and decided to replace the meter. In the order of the Forum and in the reply of the respondent, different statements have been made regarding meter being slow, meter being defective, and B phase current missing from December 2013 to 16.06.2014. As mentioned above no technical justification for any of these averments has been given despite repeated opportunities. If the meter was slow as mentioned in the order of the Forum, the correct course should have been to install a check meter to ascertain the extent of slow running of meter (Sub regulation 3.1.3 (6) of UERC (The Electricity Supply Code) Regulations, 2007). A defective meter is defined in sub regulation 3.1.4 (1) of UERC (The Electricity Supply Code) Regulations, 2007 as when the meter is stuck or not recording. But in the instant case, the meter has been recording consumption during the period for which revised assessment on the basis of average of past 3 months consumption, as applicable in case of defective meter under sub regulation 3.2 (1), has been made. Provisions of sub regulation 3.2. (1) are not fulfilled in the instant case. Finally, the report dated 07.05.2018 of the respondent which has detailed instances of tamper still does not indicate that B phase current was missing continuously from December 2013 to 15.06.2014 for which period revised assessment has been made. But the respondent's report dated 31.03.2018 mentions that B phase current was continuously missing from 05.05.2014 till 31.05.2014 and further up to 16.06.2014 as found at the time of M/s YMPL checking.

10. It is therefore clear that the initial assessment based on the joint inspection report and determined by the tamper report for the period 05.05.2014 to 16.06.2014 for Rs. 2.60 lakhs was correct and justified as per record. The subsequent assessment of Rs. 16.24 lakhs is based only on the audit report finding of consumption lower than before but without any documentary evidence or technical report to substantiate the claim for such recovery. As mentioned above, assessment based on average of previous 3 billing cycles is consistent with regulation only when meter is declared defective, which is not the case of the respondent. Forum in their order, have also placed

reliance on reduced consumption pattern to justify additional assessment. They have failed to appreciate that consumption can at best be a substantiating condition for assessment which must be established through documentary and technical proof which is absent in the present case. If indeed consumption is lower while petitioner's sanctioned load has been enhanced, it was incumbent on the respondent to assess the reason as to why such reduction in consumption came about. Without such corroboration, assessment of Rs. 16.24 lakhs is not justified. In this matter ruling of Hon'ble High Court of Uttarakhand in WP no. 197 of 2016 dated 12.12.2017 in the case of M/s Sheel Chand Agro Oil Pvt. Ltd. is pertinent.

"...that a pattern of consumption since being on the lower side, they have drawn a presumption that the meter was not operating properly, although, it is no once (one's) case that the meter in the premise of the petitioner was either tampered or seal was broken. Hence, it was only the consumption pattern only which has been taken to be as the basis for imposing the liability... Here, since the entire action is based upon on the audit report, hence the same cannot be sustained... Thus, the writ petition is allowed."

No assessment can be sustained on the basis of consumption pattern unless such trend in consumption is corroborated by a technical study.

11. Respondent case for justifying assessment of Rs. 16.24 Lakhs is not made out as they have been unable to show documentary evidence in support of the same nor has such evidence been adduced before the Forum. This assessment is therefore disallowed. However demand charges of Rs. 34,823.00 as worked out by audit for enhanced load may be recovered after verification through record available with the respondent. Assessment of Rs. 2.6 lakhs for the period 05.05.2014 to 16.06.2014 based on the joint inspection report and substantiated by the tamper following B phase current missing, is upheld. The net assessed amount of Rs. 13.63 lakhs, deposited by the petitioner, may be adjusted in subsequent bill(s). Petition is allowed. Forum order is set aside.

Dated: 30.05.2018

(Vibha Puri Das)
Ombudsman