

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Rukmini Iron Pvt. Ltd.
C-6 & 7, Industrial Area, Bhadrabad,
Haridwar, Uttarakhand.

Vs

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

Representation No. 37/2019

Order

Dated: 30.09.2019

Being aggrieved by the order dated 15.06.2019 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in their complaint no 63/2019 before the said Forum against UPCL through Executive Engineer EDD Jawalapur (hereinafter refer to as respondent), M/s Rukmini Iron Pvt. Ltd. C-6 &7, industrial area Bahadrabad (hereinafter refer to as petitioner), have filed this petition (Representation) dated 11.07.2019 with the request that M/s UPCL be directed to waive the LPS charges along with other charges imposed on them as according to their submission they are not as per regulations and rules.

2 The petitioner's submissions are as follows:-.

That their unit has an electricity connection no 1431 from UPCL. Since the date of connection they have been paying all electricity bills regularly and have never defaulted. In the month of October 2018 they deposited a cheque no 641148 of Indian Overseas Bank amounting to Rs. 86,44,742.00 but the cheque was not cleared due to connectivity issues in the banking system and therefore was returned by Bank (Punjab National Bank) to UPCL. On this the Executive Engineer has levied many charges including late payment surcharge which is not as per rules and regulations and non professional gesture from UPCL.

3. The petitioner not being satisfied with Forum's Order the present appeal is being preferred to Ombudsman on the following grounds:-

- a) The bill raised by UPCL was a provisional one. Nowhere in the regulation and rules there is provision of such provisional bill.
- b) Referring to sub Clause 3.3.1. (2) of sub regulation 3.3 – billing of Supply Code Regulation 2007 which states “*the Licensee shall raise the bill for every billing cycle based on actual meter readings*”, the petitioner have stated that the bill in question was a provisional bill, the cheque vide which payment of this bill was made was bounced due to connectivity issues. They have further stated that there is no UERC Regulation whereby UPCL has been authorized to raise a bill provisionally (except some few exceptions which are not applicable in the instant case), as such the provisional bill is not bound by the liability of LPS so long other provisions of corresponding UERC's Regulations are not violated.
- c) The regular bills as per billing cycle was issued on 02.10.2018 and 03.11.2018 having payment due dates 16.10.2018 & 19.10.2018 (a perusal of bill dated 03.11.2018 shows that correct date is 19.11.2018) respectively. Both the above bills were paid within due dates. A billing cycle as per UERC guidelines is one month. LPS can be charged only if there was delay of more than 15 days in payment beyond due date.
- d) Grace period of 5 days in provisional bill issued by UPCL is arbitrary and with no legal backing of regulation.
- e) On receiving back the cheque no 641148 of Rs. 86,44,742.00 deposited on 15.10.2018 the payment was made on 25.10.2018 via RTGS.
- f) Forum did not take into consideration the fact that the bill on which LPS was allowed was a provisional one.
- g) UPCL have made inadvertent delay in realization of cheque hence another cheque would have been issued in time.
- h) Being a responsible consumer paying all bills in advance since beginning, the petitioner have claimed himself not responsible for bouncing of cheque due to connectivity issues and therefore he should not be penalized by way of charging LPS.

- i) The respondent's have also charged Rs 800.00 as RC/DC charges while connection was not disconnected also no ceiling certificate had been issued by the respondent which is mandatory.

In view of above submission he has requested that the LPS imposed by UPCL be ordered to be waived off.

4. The Forum after perusal of the records and hearing arguments from both parties have observed that the cheque was timely deposited by the department but the same was bounced and returned by the bank where after the LPS was imposed due to nonpayment of the bill and have thus concluded that the petitioner is liable to pay the amount of LPS and have accordingly dismissed the complaint.
5. The respondent Executive Engineer has submitted his written statement vide his letter dated 07.08.2019 followed by a revised WS vide his letter dated 26.08.2019. He has submitted that payment amounting to Rs 86,44,742.00 was made by the petitioner vide cheque no 641148 dated 15.10.2018 of Indian Overseas Bank which was presented before the PNB on the same day. The Indian Overseas Bank (IOB) dishonored the cheque vide letter dated 26.10.2019 for the reason that it could not be cleared due to connectivity issues and returned the same to respondent's office on 31.10.2018 as such amount of the bill along with surcharge was added in petitioner's bill vide letter no 5254 dated 31.10.2019 (a perusal of aforesaid letter shows that correct date is 31.10.2018)
6. In his revised written statement dated 26.08.2019 the respondent has submitted point wise reply to the Petition. Wherein against point no 1, 3, 5 he has shown his acceptance to these points of petition. Against point no 6 and 8 he has given no comments. In reply to point no. 4 and 9 of the Petition he has mentioned "*due to cheque bouncing*". In reply to Petition's point no 2 he has submitted enclosure 1 in 5 pages. A perusal of this enclosure No 1 shows that this is a copy of CMD UPCL's OM no 952 dated 27.04.2005 vide which the CMD has issued instructions regarding implementation of UERC Tariff Order dated 25.04.2005 to be effective from 01.04.2005 and another letter no 953 dated 27.04.2005 issued by Chief General Manager (Commercial) wherein giving reference of CMD's OM no 952 dated 27.04.2005, the CGM (Commercial) has issued rate schedule wise guidelines for

implementation of UERC's Tariff Order dated 25.04.2005. Point No 5 of guidelines for implementation of RTS 7 Rate Schedule are relevant in the instant case and the same is therefore reproduced below:-

“Now the billing cycle in case of PIU consumers shall be fifteen days and accordingly security deposit from such consumer shall be taken 50% of the rates of security deposits applicable on such consumers. The excess of security deposits calculated as above shall be adjusted in the ensuing bill(s), of the consumers. The bill for the first half of the month shall be issued on provisional basis that will be 50% of the bill of the previous month and in case of new connection, the same will be calculated on the basis of minimum charges. For the next half of the month, a firm bill shall be issued in the consumer after taking monthly reading including maximum demand for the whole month and the provisional bill for the first half shall be reduced from this firm bill. In case of non-payment of provisional bill, late payment surcharge shall be applicable on the amount of provisional bill. Reading of such consumers shall be taken once in a month as per previous practice.” Reply to para 7 of the petition is the same as submitted by him vide his written statement dated 07.08.2019

7. As regards rejoinder by the petitioner they have informed vide letter dated 29.08.2019 that as the respondent has agreed on most of the points of the appeal hence they were not submitting any rejoinder and have requested that the appeal be further processed accordingly.
8. The petitioner have however submitted a written argument dated 15.09.2019 during the course of hearing held on 16.09.2019.
9. With reference to Annexure 1 of respondent's written statement regarding billing cycle of 15 days and procedure for raising the provisional bill. The petitioner have stated in their written arguments dated 15.09.2019, that 15 days billing cycle was mentioned for P.I.U. (Power Intensive Industrial Unit) in the UERC Tariff Order dated 25.04.2005 but nowhere the procedure for provisional billing has been laid out as submitted by the respondent, Executive Engineer. Further in the same Tariff Order regarding LPS it was written that *“if the bill is not paid by the due date specified therein, a LPS shall be levied @ 1.25% per month proportionately for the number of days for which the payment is delayed beyond the due date specified in the bill and*

levied on the unpaid amount of the bill” but in instant case the LPS though arbitrary, has been levied as per UPCL, whims and fancies. It is further stated by the petitioner that provisional bill charged by UPCL can be taken as advance payment and accrued interest on it shall also be adjusted in the final bill as per billing cycle. The petitioner further stated that in the Tariff Order of 25.04.2005 the HT Industries have been broken up into:

- a) Power Intensive Industries (Load above 100 BHP and supplied at HT)
- b) General HT Industry (HT Industry other than PIU's)

10. The following further points have also been submitted in the written arguments:

- i. The petitioner have stated the background and the factors considered by the Commission under which first Tariff Order dated 08.09.2003 was issued.
- ii. In consideration to UPCL's petition dated 31.05.2004 seeking amendments in Tariff order dated 08.09.2003, the Commission passed an order dated 24.08.2004 in which order all steel units whether induction/arc/premises or rolling mills, re-rolling mills, mini steel plants etc. were designated as PIU. Such PIU's were separated from other consumers of UPCL and their Tariff were determined on marginal cost basis.
- iii. Commission's above orders were challenged before Appellate Tribunal Of Electricity (APTEL). The APTEL vide their order dated 02.06.2006 directed that Tariff for Steel Units (PIUs) should be determined not on the basis of marginal power purchase for supply to them, as has been done by the Commission, but after pooling the entire power purchase cost and working out the average cost of power purchase.
- iv. In view of disputes regarding the PIU category, the UERC under Clause 8.4.3 of Tariff Order for the Year 2007-08, and 2008-09 mentioned *“The Commission in its Tariff Order for 2006-07 specified separate tariff for General HT industry and Steel Units. Hon'ble Appellate Tribunal of Electricity in its Order in Appeal No 214 of 2006 opined that same tariff could be made applicable for all HT industries and Power Intensive Unites (PIUs) including Steel Units. The Hon'ble Appellate Tribunal of Electricity further mentioned that all units with load factor above 50% or below 33% should pay a*

comparatively low tariff. Some respondents have also emphatically demanded such merger and load factor based tariff. Considering the above observations of Hon'ble Appellate Tribunal of Electricity and respondents submissions, The Commission has re-categorized the HT industry category and has specified uniform load factor based Energy Charge for all the consumers under HT industry category. The Commission has specified the energy charges linked to load factor as follows: a) Up to 33% load factor b) Above 33% load factor and up to 50% load factor c) Above 50% load factor. As regards to demand charges, the Commission has specified lower demand charges for industries having contract load up to 1000 kVA than for industries having contract load above 1000 kVA”.

Accordingly in view of above, petitioner have submitted that concept of PIU and general HT Industry is not existing anymore and hence concept of billing cycle of 15 days as per Tariff Order 2005 ceases to exist. Further they have quoted section 64 (6) of the Electricity Act 2003 as “(6) a Tariff Order shall unless, amended or revoked, continue to be in force for such period as may be specified in the Tariff Order”.

- v. The petitioner have referred the following sub regulations of Supply Code 2007. (A) *The meter shall be read once in every billing cycle* (sub clause 3.1.2(1)) (B) *The Licensee shall raise the bill for every billing cycle based on actual meter reading* (sub regulation 3.3.1(2)) so if the UPCL is following billing cycle of 15 days then the aforesaid sub regulations have to be complied with.
- vi. Petitioner has demanded the refund of excess amount deposited by them with applicable bank interest in according with section 62 (6) of the Electricity Act 2003 which reads as “*if any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.*

11. In view of their above submissions they have requested the Ombudsman to direct the UPCL to return the LPS amount charged arbitrarily, disconnection and connection charges and other charges along with applicable interest in line with section 62 of the Electricity Act 2003.
12. The hearing was fixed for 23.09.2019, both parties appeared and argued their case. The arguments were concluded and 30.09.2019 was fixed for order in the case.
13. Records on file submitted by both parties as also the relevant provisions under Tariff, Supply Code Regulation and the Electricity Act 2003 have been perused carefully. Arguments from both parties have been heard. It is borne out that grievance of the petitioner is on levy of Late Payment Surcharge and other charges as per respondent's letter no 5254 dated 31.10.2018 on account of delay in payment of the provisional bill amounting to Rs. 86,44,742.00 issued on 10.10.2018 having due date 16.10.2018.
14. Before any final conclusion in the case is drawn it would be appropriate to examine whether the respondent UPCL are entitled to issue such a provisional bill and whether the due date for payment given in such a bill is in accordance with relevant Tariff and Supply Code Regulation 2007 issued by UERC. It is therefore necessary to find out as to where from the concept of issuing such a provisional bill has been drawn. The respondent, Executive Engineer under point no 2 of his revised written statement dated 26.08.2019 has submitted a copy of CMD UPCL OM no 952 dated 27.04.2005 wherein the CMD has issued order in conformity of UERC Tariff Order dated 25.04.2005 and a copy of Chief General Manager (Commercial) UPCL Circular no 953 dated 27.04.2005 wherein giving reference of CMD's aforesaid OM dated 27.04.2005, he has issued rate schedule wise guidelines for implementation of UERC Tariff Order dated 25.04.2005. Point no 5 under the heading RTS-7 Industry is relevant in the case which has been reproduced above in para 7 of this order. The CGM has mention that the billing cycle in case of PIU consumers shall be 15 days but directed the field units to issue provisional bills without any meter readings and also levy of LPS in the event of delay in payment of such a provisional bill and further has also directed that reading of meter of such consumers shall be taken once in a month as per provision in practice.

15. As such it is clear that such provisional bill has been issued under above instructions. In order to see whether the above instructions issued by CGM UPCL are consistent with UERC's directions contained in Tariff Order dated 25.04.2005. The UERC's above Tariff Order has been referred and it is observed that article 7.4.7.1 of the said tariff order is relevant and is reproduced below:

“Power Intensive Industrial Units (Load above 100 BHP and supplied at HT)

The consumer in PIU category, because of their high billed amount are required to deposit large amount by way of security resulting in liquidity problems. To remedy this it has been suggested that either pre paid meters be installed for such consumers or their billing cycle be reduced to 15 days or facility of furnishing bank guarantee in lieu of Security Deposit be allowed. The Commission, after consulting the Licensee, allows a billing cycle of 15 days for such consumers with corresponding adjustment in Security Deposits of these consumers.”

16. It is therefore clear that the UERC in their Tariff Order dated 25.04.2005 directed to reduce the billing cycle of PIU to 15 days and categorization of HT industrial consumers under rate schedule RTS 7 was accordingly done as general HT industry other than PIUs and PIUs. Instead of changing the billing cycle to 15 days for PIUs, the UPCL instructed their field units to issue provisional bills for PIUs every month followed by a firm monthly bill based on meter readings. As such the provisional bills issued by UPCL to PIUs from the Tariff of 2005-06 are arbitrary, without any authority being inconsistent with UERC's aforesaid directions. Moreover UERC's directions were applicable only for the Tariff of 2005-06 as no such provision did exist in any of the subsequent tariff order as required under section 64(6) of Electricity Act 2003 and was also quoted by the petitioner in their written argument. Further categorization of HT industries in the Tariff Order dated 12.07.2006 applicable for the year 2006-07 has been changed to General HT Industry other than Steel Units and Steel Units that is arc/induction furnaces, rolling / re rolling mills, mini steel plants and further in the Tariff Order dated 18.03.2008 applicable for the year 2007-08 and 2008-09 HT industries have been re categorized as contracted load up to 1000 kVA and contracted load more than 1000 kVA and the same categorization has still continued in all the subsequent Tariff Orders till UERC order

dated 27.02.2019 applicable for the Year 2019-20. Further UERC Supply Code Regulation 2007 under Sub Regulation 3.3.1(2) provides that *“The Licensee shall raise the bill for every billing cycle based on actual meter readings”* The provisional bill issued by UPCL is also in consistent with this sub regulation too.

17. It is therefore clarified that UPCL is not entitled to issue such a provisional bill, as under reference in this petition, as such bills are inconsistent with regulatory provisions. In fact such bills are UPCL’s unauthorized demand for advance payment from the consumers and as such no LPS on such unauthorized demand is leviable. Secondly even if, for a while only for the sake of argument, although it is not such a case here, it is considered as a provisional bill the LPS has wrongly been imposed because due date of payment and grace period has not been given as required under the following provisions of supply code regulation and tariff which are reproduced below

Provisions of UERC (The Electricity Supply Code) Regulations, 2007 lay down as below:-

“3.3.1(3) Delivery of each bill to the consumer shall be effected at least 15 days before the due date for payment of the bill.”

The bill as per regulation 3.3.2 shall include amongst other particulars also

25) Due Date including last date before which the bill has to be paid.

Provisions of Tariff 2018-19(applicable in the instant case) lay down the grace period admissible before levy of Late Payment Surcharge:

Annexure 1: Rate Schedule effective from 01.04.2018 A. General Conditions of Supply

*“7. Delayed Payment Surcharge (DPS) for all categories except PTW)
(also called as LPS)*

In the event of electricity bill rendered by licensee, not being paid in full within 15 days’ grace period after due date, a surcharge of 1.25% on the principal amount of the bill which has not been paid, shall be levied from the original due date for each

successive month or part thereof until the payment is made in full without prejudice to the right of the licensee to disconnect the supply in accordance with Section 56 of the Electricity Act 2003. The Licensee shall clearly indicate in the bill itself the total amount, including DPS, payable for different dates after the due date, after allowing for the grace period of 15 days, taking month as the unit...”

18. A perusal of the disputed bill shows bill dated 10.10.2018 and due date 16.10.2018 while as per above regulatory provisions a bill issued on 10.10.2018 should have due date as 25.10.2018 and after allowing further 15 days, the grace period shall be up to 09.11.2018 and as such if payment of disputed bill was made up to 09.11.2018 no LPS can be charged. In the instant case after the cheque was bounced, the payment was made by the petitioner via RTGS on 25.10.2018, which although admitted by the respondent's as on 27.10.2018 as such the payment was well within the grace period in terms of above regulations and therefore from this point of view also LPS in the instant case is not leviable.
19. In view of above deliberations, regulations and the Electricity Act 2003 provisions, the LPS and other charges on account of RC/DC, bank charges, noting charges claimed by the respondent vide their letter 5254 dated 31.10.2018 are not justified, apart from the so called provision bill for Rs. 86,44,742.00 being arbitrary and an illegal demand. The respondents executive engineer is hereby directed to withdraw all the aforesaid demands, other than bill amount of Rs. 86,44,742.00, made vide his aforesaid letter dated 31.10.2018. Forum's Order is set aside, appeal is allowed with no cost.

Dated: 30.09.2019

(Subhash Kumar)
Ombudsman