

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Harish Chand Pant  
S/o Shri B. D. Pant  
Prop. M/s Nainital Plastic Ltd.  
Peepalsana, Ramnagar,  
Hempur, Distt. Nainital, Uttarakhand

Vs

Executive Engineer,  
Electricity Distribution Division,  
Uttarakhand Power Corporation Ltd.  
Ramnagar, Distt. Nainital, Uttarakhand

Representation No. 03/2019

### **Order**

Date: - 12.04.2019

The petitioner, Shri Harish Chand Pant aggrieved by the order dated 12.12.2018 of the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) in complaint no. 84/2018 has filed this petition against the recovery of Rs. 5,87,694.00 for which respondent UPCL have issued an RC and in the documentation of which contradictory statements have been made regarding bill of Rs. 3,54,560.00 dated 27.08.2011 and on the other hand a bill of Rs. 46,634.00 against which petitioner deposited current demand. He has also stated that after the temporary disconnection of his connection on 02.12.2014, respondent demanded a sum of Rs. 6,20,500.00 while petitioner maintains that he had no amount due against him. While giving a background of the entire case, petitioner has also stated that while he had taken an electricity connection in 2004 he was getting bills on the basis of NR for the months May-June 2005, November-December 2005, February-March 2006 and February-March 2007. Petitioner kept making partial payment but opposite party did not correct his bills because of which he approached the Consumers Disputes Redressal District Forum, Nainital (hereinafter referred to as District Forum) in complaint no. 80/2007 in which the District Forum gave the decision on 30.06.2011 that petitioner be required to pay the amount of dues without surcharge. Respondent issued an OM dated 27.08.2011 and according to calculation given therein petitioner

deposited Rs. 55,784.00 with the District Forum for payment to OP (opposite party). Subsequently, petitioner requested respondent to waive Rs. 1,16,200.00 surcharge that they levied on the outstanding of Rs. 2,38,360.00 since this was completely illegal. While petitioner filed a case for execution of decree before the District Forum, (registered as execution no. 30/2011) and District Forum stayed the recovery of Rs. 3,54,560.00 but subsequently on 09.07.2014 ordered that proceedings for execution of decree are beyond its jurisdiction and therefore disallowed the execution application. Thereafter, since the Hon'ble High Court of Uttarakhand imposed ban on manufacture of plastic products, petitioner's factory was closed and respondent temporarily disconnected his connection on 02.12.2014. Respondent then issued RC for Rs. 5,87,694.00 against which petitioner was compelled to approach the Hon'ble High Court in writ petition no. 865 of 2016 whereupon Hon'ble High Court after getting a sum of Rs. 2,00,000.00 deposited by the petitioner, stayed the recovery. While dismissing the writ, Hon'ble High Court directed him to approach the Forum. It is in the context of the Hon'ble High Court direction that he approached the Forum and upon receiving no relief from the Forum has now approached Ombudsman. Petitioner has also stated that while GOs were issued in the year 2010-11 and 2011-12 for waiver of LPS and deposit of overdue amount, but respondent did not give petitioner benefit of these GOs and because his LPS was not waived, his bill could not be deposited.

2. Forum, in their order dated 12.12.2018, have observed that petitioner has sought relief of setting aside the process of recovery through RC since against an outstanding of Rs. 2,38,360.00 decided by the District Consumer Forum, petitioner deposited Rs. 2,00,000.00 in compliance with the order of the Hon'ble High Court. A sum of Rs. 38,000.00 was lying with respondent as security and therefore petitioner was not required to pay any further amount to respondent UPCL. Forum observed that the District Forum order of 30.06.2011 and 09.07.2014 have become final and Forum have neither any authority to interfere with those orders nor with the process of recovery through the Collector. Accordingly Forum held that petitioner's complaint does not come under the definition of complaint and therefore rejected the complaint as not maintainable.

3. Respondent in their written statement, have, while admitting the statements of the petitioner regarding order of the District Forum dated 30.06.2011 and the OM dated 27.08.2011 issued in compliance of the said order as well as the orders regarding deposit of Rs. 55,784.00 for the bills of the period (28.03.2008 to 28.06.2011) to be paid in 3 installments, but have disputed that District Forum gave any relief from LPS for the amount of Rs. 2,38,360.00. Respondent have denied categorically petitioner claim that the surcharge of Rs. 1,16,000.00 could not be levied. Respondent have also stated that in case petitioner was aggrieved with the order of the Forum in the execution case no. 30/2011 which had been dismissed as not maintainable, he could have filed appeal before the State Consumer Dispute Redressal Commission. Since he did not, that order of the Hon'ble District Forum has become final. In reply to the grounds of representation, respondent have categorically denied petitioner's allegation that they did not correct the bill after the petitioner deposited Rs. 2,00,000.00 in compliance with the order of the Hon'ble High Court. In their written statement before the CGRF (para 12, reply to para 19) respondent have stated that Rs. 2,00,000.00 has been accounted for and has been reduced from the total outstanding. (this claim is incorrect since adjustment of Rs. 2,00,000.00 has been provided only subsequently after the matter was raised during arguments before the Ombudsman.) Respondent have stated that security amount could not have been adjusted before disconnection was finalized. They have further stated before the Forum that against a total due amount of Rs. 6,20,500.00, after adjusting security, Rs. 5,87,694.00 became recoverable at the time of issue of RC dated 04.03.2016. Since the petitioner deposited Rs. 2,00,000.00 on 07.04.2016 the balance amount stands reduced to Rs. 3,87,694.00. Respondent have also denied the discrepancies alleged in the billing by the petitioner and have maintained that since the petitioner did not deposit the total amount due, surcharge continued to accrue. They have also denied petitioner's allegation that GOs were issued in 2010-11 and 2011-12 waiving surcharge. The said orders, respondent have maintained, were not for industrial connection but for domestic connection. All other averments of the petitioner have been denied.
4. In his rejoinder dated 06.02.2019 petitioner has dismissed all averments made in the written statement as wrong, baseless and unacceptable and reiterated points made in his own petition particularly he has reemphasized that imposition of LPS is entirely

illegal and wrong. Petitioner has further drawn attention to para 12 of the written statement and stated that this is wrong because adjustment of Rs. 2,00,000.00 paid by him has still not been done, as claimed. In the series of wrong and illegal bills given by respondent UPCL, petitioner has drawn attention to the fact that while his connection was temporarily disconnected on 02.12.2014, through their notice dated 28.09.2015 respondent demanded Rs. 6,25,500.00 while no moneys are due from the petitioner. Petitioner has also drawn attention to the fact that on 27.08.2011 on the one hand bill of Rs. 2,38,360.00 along with the surcharge of Rs. 1,16,200.00 i.e. Rs. 3,54,560.00 was sent through an OM, while in the month of August a bill of Rs. 4,66,034.00 was sent. Petitioner avers that the reason for these duplicate bills is that respondent want to exploit the petitioner and while no dues are payable by him, bills are being issued without reference to earlier bills.

5. Both parties have been heard and record has been carefully studied. Petitioner's request for stay of recovery of Rs. 5,87,694.00 against RC, was disallowed since Ombudsman is not empowered to interfere with recovery proceedings as per RC. Petitioner has requested for quashing the illegal demand of Rs. 5,87,694.00 and setting aside the order of the Forum and for direction to respondent no. 2 UPCL to correct its account statements in accordance with the order dated 30.06.2012 passed by the District Forum, Nainital (the said order is dated 30.06.2011). From the record available on file it is clear that the bill of Rs. 2,38,360.00 for the period 16.10.2004 to 28.03.2008 was to be recovered as per Rules as ordered by the District Forum, Nainital in their order dated 30.06.2011. The benefits of no LPS was allowed by the Forum for the period 28.03.2008 to 28.06.2011 when Licensee was faulted for not having given current bills to the petitioner and therefore Forum had directed no LPS was payable if petitioner pays the entire amount in three equal installments by the 10<sup>th</sup> of the month succeeding. It is clear from a perusal of OM dated 27.08.2011 that this part of the order of the District Forum stands complied. Further the OM also mentions that the bill for the period 16.10.2004 to 28.03.2008 of Rs. 2,38,360.00 is payable with LPS of Rs. 1,16,200.00 for 39 months (28.03.2008 to 28.06.2011) totaling Rs. 3,54,560.00 which petitioner was required to pay within 15 days. This fact has been recognized by the District Forum when the petitioner approached them for an execution decree where it has been reiterated by the said Forum that the sum of Rs.

2,38,360.00 for the period 16.10.2004 to 28.03.2008 is recoverable as per Rules from the petitioner. They have rightly refrained from interfering with these proceedings. As per Rules unpaid amount will attract LPS and accordingly at the time of temporary disconnection on 02.12.2014 for nonpayment, a sum of Rs. 5,35,740.00 was shown as due till December 2014. At the time of permanent disconnection this amount had risen to Rs. 6,20,500.00. After adjustment of security, the net payable amount was Rs. 5,87,694.00 for which RC was issued by the respondent on 04.03.2016.

6. The petitioner thereafter approached Hon'ble High Court of Uttarakhand, Nainital for quashing the recovery citation dated 04.03.2016 and requesting for issue of direction to respondent to correct its account statements in accordance with order dated 30.06.2011 passed by the Consumer Forum, Nainital. While the Hon'ble High Court of Uttarakhand had already prohibited coercive proceedings for recovery if the petitioner deposited Rs. 2,00,000.00 on or before 08.04.2016, in their final order dated 07.05.2018, Hon'ble High Court of Uttarakhand dismissed the writ without prejudice to the petitioner's right to approach the Consumer Forum. Petitioner approached the Forum who, as explained above, have dismissed the complaint vide their order dated 12.12.2018.
7. Since petitioner has maintained that the respondent UPCL had been giving him multiple bills with different due amounts, he was convinced that the bills were faulty and UPCL cannot be allowed to charge the same. Respondent UPCL were therefore asked to submit a detailed statement of bills issued and LPS levied and amount paid against the same. This statement has been received vide letter no. 1201 dated 29.03.2019 wherein the net payable amount is shown as Rs. 3,42,822.88. Petitioner while responding to this calculation termed the bill and the LPS arrears as baseless and wrong. Where upon the Executive Engineer in his letter no. 1329 dated 09.04.2019 has reiterated that starting with the arrears of Rs. 3,54,560.00 as of 30.06.2011 (arrears Rs. 2,38,360.00 + LPS Rs. 1,16,200.00). The billing statement as of 29.03.2019 was revised and an adjustment of Rs. 44,871.00 allowed in the same. Accordingly, now there can be no justification for comparing amounts shown in this calculation with the bills given earlier. From the averments of the petitioner it appears that he is under the impression that District Forum in their order dated 30.06.2011 imposed an embargo on LPS to be charged for the bills pertaining to the period

16.10.2004 to 28.03.2008 where Rs. 2,38,360.00 had been shown as outstanding. However order of the District Forum is clear that this amount is to be recovered as per Rules and since LPS is payable as per Regulations, petitioner's request was neither allowed by the District Forum in their order dated 30.06.2011, nor any relief granted in the order dated 09.07.2014 on the execution application nor by the Hon'ble High Court in their order dated 07.05.2018 of the disposal of the writ petition. It is also not allowable at present, since the amount due for the period 16.10.2004 to 28.03.2008 is recoverable as per Rules.

8. With the above analysis and information it is therefore clear that amounts paid by petitioner and security amount have been adjusted in the statement given on 29.03.2019 and after accounting for payments made, net amount of Rs. 3,42,822.88 is payable by the petitioner as on 29.03.2019. Respondent had earlier vide their letter dated 01.02.2019 confirmed that Rs. 2,00,000.00 deposited by the petitioner in compliance with the order of Hon'ble High Court, has been accounted for, the recoverable amount has been shown as Rs. 3,87,360.00. Now with the above mentioned letter this amount stands further reduced to Rs. 3,42,822.88.
9. Forum in their order dated 12.12.2018 have held that complaint does not qualify as a complaint under the relevant clauses of the UERC Regulations, 2007 under clause 2 (d) (iv) and therefore rejected the complaint. A perusal of the definition of complaint in the UERC (Guidelines for Appointment of Members and Procedure for CGRF) Regulations, 2007 indicates that matters related to billing are intrinsic to the definition of complaint and the exception clause pertains to recovery of arrears where electricity bill is not disputed. In the matter under consideration the bill issued is indeed under dispute since the petitioner is under the impression that LPS (which is an intrinsic part of the bill) is not payable by him as per the orders of the District Forum dated 30.06.2011. As has been concluded above this impression is wrong. In the specific circumstances of the case it cannot be averred that the bill is not disputed while the arrears are pending. The Forum have therefore erred in concluding that the complaint is not admissible before them.
10. Petitioner's case that LPS is not payable by him that he is not responsible for paying any amount to the respondent neither as electricity dues nor as surcharge and that his

petition is worthy of being accepted especially since he is a senior citizen and has suffered a brain stroke, are all extraneous. The admissibility of LPS had been upheld in the order dated 30.06.2011 of the District Forum against which petitioner has not approached the State Consumer Protection Commission and that order of District Forum is final. No evidence has been adduced to show why LPS is not admissible on bills for the period 16.10.2004 to 28.03.2008 which have remained unpaid. Modifications in the arrears payable after accounting for all the payments made and the security deposit of the petitioner have been incorporated in the statement submitted vide letter dated 29.03.2019. Apart from merely stating that LPS is not payable by him and the bills are wrong petitioner has given no evidence or justification why this may not be recovered from him. As such petition is dismissed. Forum, while dismissing the complaint, maintained that complaint is beyond jurisdiction, therefore their order is set aside. Respondent are free to recover their arrears as per law.

Dated: 12.04.2019

(Vibha Puri Das)  
Ombudsman