

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Sitaram
S/o Shri Kanha Singh,
Chudiyala, Bhagwanpur,
Tehsil Roorkee, Distt. Haridwar, Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Bhagwanpur, Distt. Haridwar, Uttarakhand

Representation No. 06/2019

Order

Date: - 12.04.2019

The petitioner, Shri Sitaram S/o Late Kanha Singh aggrieved with the order dated 26.12.2018 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 169/2018, has filed this representation through his son Shri Arvind Kumar for which he has given authorization under oath. He has also given an authorization for presentation of arguments on his behalf by one Shri Diwas Joshi. His requests to the Forum include to restrict the IDF billing on his connection to a maximum of 3 months as per clause 3.2 of UERC Supply Code waiving the entire bill thereafter till the new meter was installed, provide compensation @ Rs. 50.00 per day for 1508 days from 01.02.2010 till 20.03.2014, which comes to Rs. 75,400.00 and also to confirm whether the SOP reports submitted to the UERC, were as per actual. While the Forum rejected his complaint, he has maintained that Forum order is heavily biased in favour of respondent UPCL. Petitioner also asserts that clause 3.1.4 of UERC Supply Code, Regulations, 2007 is self explanatory and presumes that information regarding defective meter will be provided by the consumer. It is therefore understood that the IDF status reflected in the meter could not have been reflected of its own and information thereof would have been provided by the petitioner. Further, he has also alleged that respondent UPCL have attempted to shift the responsibility of changing IDF meter to the contractor. Petitioner's claim is that since no sealing certificate has been supplied, it is

wrong to allege that the contractor tried to establish contact with consumer and was unable to replace the meter because consumer/petitioner was not available. The responsibility for changing/ installation of meter rests with UPCL and contractor personnel cannot be held to be the signatories. Petitioner is also aggrieved that even without any of the mitigating circumstances mentioned in the UERC (Standard of Performance) Regulations, 2007 regarding payment of compensation, Forum decided against giving such compensation to the petitioner. In conclusion, petitioner has again reiterated his 3 fold request for restricting billing to 3 months as per UERC Regulations, directing UPCL to pay compensation as per SOP Regulations @ Rs. 50.00 per day for 1508 days which comes to Rs. 75,400.00 and also confirm whether the SOP reports submitted to UERC for their perusal were as per actuals.

2. Forum, in their order dated 26.12.2018, have concluded that petitioner did not inform the Licensee about his defective meter or request change of the meter. He also continued to use electricity throughout the period that the meter remained IDF, did not pay bills forwarded by the respondent, and did not cooperate with the department in the process of replacing the meter. Accordingly, Forum did not find any merit in the complaint and dismissed the same.
3. Respondent in their written statement have denied all allegations of the petitioner regarding bias of the Forum, regarding responsibility of the UPCL for taking action against contractor for not replacing the meter, that there is no provision in the Regulations to compare consumption after changing the defective meter with previous consumption and also wrong for the Forum to have asked UPCL details of monthly quarterly and annual SOP reports and finally it is wrong to allege that UPCL should have given compensation themselves and is bound to replace IDF meter in one month. They have also claimed that this complaint is not legally maintainable since petitioner had already filed a complaint dated 27.09.2018 which was decided by the Forum in their order dated 30.10.2018 and by Ombudsman in representation no. 37 of 2018 vide order dated 30.01.2019 in which reliefs have been given. No provision exists for second or successive complaint under law, even it is for compensation or to restrict billing for maximum of 3 months. Respondent have further alleged that petitioner has been consuming much more electricity than the IDF billing of 200 units for 2 months and that is why he was unwilling to get his defective meter replaced. In this

connection they have also alleged that in a checking on 28.11.2018, team have found that the petitioner was using much more load than sanctioned. Further, that after disconnection, petitioner has taken 4 connections in the same premises which shows that the requirement and consumption of the petitioner is much more and therefore it will be unfair to deny the respondent payment of energy which has been consumed by the petitioner. They have also quoted a dictum from the Hon'ble Supreme Court (later on prompting by the Ombudsman corrected vide his letter dated 27.03.2019 to indicate judgment of the National Commission) reported in III (1996) CPL 71(NC) wherein it has been observed that "*However inefficiency of the functionaries of the appellants (Licensee) could not and should not be made a ground to cause a loss to a public utility concerned*". The amount claimed from the petitioner, respondent have argued, is not by way of penalty but actual price of the energy supplied. The respondent have submitted a case law Writ Petition no. 13590 of 2016 of Hon'ble High Court of Allahabad and have claimed that in view of this case law the petitioner demand is time barred and therefore cannot be allowed by Ombudsman. Accordingly, respondent have claimed that the petitioner is not entitled for any relief and the representation and the order of Ld. CGRF is liable to be quashed.

4. Petitioner in his detailed rejoinder dated 04.03.2019 has countered the specific points raised in the written statement. The dictum of the Supreme Court (National Commission) has been used as substantiation of the petitioner's allegation of utter inefficiency of the functionaries and petitioner has claimed that this is no bar to the Ombudsman recovering the loss of the public utility from erring officials. Further, petitioner has given detailed calculation to establish that because of the tariff providing for minimum consumption guarantee and reduced financial collections in the perspective presented by the UPCL no loss actually obtains to the utility. With respect to the checking report of 28.11.2018 highlighted in the written statement, petitioner has given a detailed explanation regarding subsequent case made out by the respondent under section 135 of the Electricity Act, 2003. Petitioner has also detailed out the reason and rationale of increased consumption claimed by the respondent and has claimed that while his consumption has grown over the years, the monthly assessed units as per the checking certificate dated 28.11.2018 still come to only 116.52 units while he was charged 100 units monthly in the IDF bills. Petitioner has

also pointed to the letter of AE (Meter) dated 10.12.2018 written in response to EE letter dated 30.11.2018, claiming that petitioner did not cooperate with contractor's staff who approached him repeatedly for changing his IDF meter, being an afterthought, to oppose his plea for compensation since no earlier record of attempts prior to 2014, to install a meter have been detailed out.

5. Both parties have been heard and the record has been carefully perused. Respondent have objected that the representation is not maintainable as petitioner had already filed a complaint dated 27.09.2018 which was decided by Forum vide order dated 30.10.2018 and by Ombudsman in petition no. 37/2018/ vide order dated 30.01.2019 and no provision exists for second or successive complaint under law, even if it is for compensation or to restrict for maximum 3 months. Their objection is not maintainable, in view of UERC (Appointment and Functioning of Ombudsman) Regulations, 2004 sub regulation 2 (1) (o) and 5 (1). As such the representation is maintainable. The petitioner has preferred this representation for three reliefs, as mentioned in his representation, which he had sought for in Forum, and were not granted in Forum's impugned order dated 26.12.2018. Forum, in their order have been clear that since the petitioner has used energy he cannot be entitled to benefit from the provision of IDF billing being restricted to 3 months and no bill being raised till a new meter has been installed. It is clear that petitioner has been using energy and is therefore responsible for paying for the same. Despite the provisions of the Regulations and despite the clear negligence on the part of the Licensee in not replacing the meter in a timely manner, there can be no quarrel with the recovery of energy dues actually consumed by the petitioner over the entire period. I agree with the conclusion of Forum that the petitioner is liable to pay for the bills issued by the respondent on IDF basis as he has consumed electricity during this period despite delay in replacement of defective meter by the respondent within the time limit fixed in the relevant Regulations. This principle has been upheld in the order of National Commission in case no. III (1996) CPL 71 (NC) filed by the respondent. These bills include LPS, since bills from January 2010 to March 2014 remained unpaid. It is however clear that as per Regulation Licensee was not empowered to issue bills beyond three months and therefore the delay in payment cannot be attributed to consumer. The loss to Licensee in terms of delayed payment should be made good not

by consumer but the erring staff because of whom the meter remained defective beyond the period for which IDF bills were permitted. The Licensee cannot be put to loss on account of non recovery of LPS amount as the energy payment has been delayed. It is only appropriate that the LPS amount be recovered from the erring staff.

6. As regards the petitioner's demand for compensation on account of delay in replacement of defective meter beyond prescribed period, although the Forum has not made any specific note on this issue, they have dismissed the complaint, implying that the compensation has not been allowed. It is felt that since there has been inordinate delay in replacement of meter by the respondent in gross violation of SOP Regulations, and respondent have not substantiated their allegation that petitioner himself was responsible for delaying replacement of meter, consumer/petitioner is entitled for compensation. Again, as this inordinate delay in replacement of meter has occurred due to inefficiency and inaction by the concerned officials/officers of the Licensee, while the compensation has to be allowed to the petitioner but amount of such compensation has to be recovered from erring staff.
7. In view of above discussions it is ordered that:
 - i) The petitioner is liable to pay the amount of IDF bills issued from January 2010 to March 2014, excluding LPS imposed on such bills.
 - ii) The amount of LPS accrued on IDF bills is payable to Licensee but not recoverable from consumer, this amount be recovered from the officers/officials whose duty it was to replace meter in compliance with UERC Regulations and who defaulted in their duty.
 - iii) The amount of compensation for delay in replacement of defective meter beyond prescribed period, is admissible to him under relevant SOP Regulations, 2007 and as such be given to him by way of adjustment in the recoverable dues from him and such amount be recovered from the concerned erring officials/officers.
8. Petitioner's request for making available SOP report which might have been submitted to UERC by UPCL, it is clarified is not within the jurisdiction of CGRF and/or Ombudsman and cannot be allowed.
9. Forum order is set aside and petition is partly allowed.

10. The respondent have submitted that demand of the petitioner being time barred in terms of Limitation Act, 1963 should not be considered and be dismissed. They have also filed case law (Hon'ble High Court of Allahabad order dated 06.04.2016 in WC 13590 of 2016) in support of their submission. The said judgment is distinguishable on facts, and does not apply to the present case, since the petitioner has not asked for refund of any money, but has requested for withdrawal of IDF bills issued beyond 3 months of the meter being defective, as such bills are inconsistent with the provisions of relevant Supply Code Regulations, 2007. The case law is therefore not considered applicable in the instant case.
11. Further both parties have made mention of checking dated 28.11.2018 at the petitioner's premises by the respondent and framing case under section 135 of Electricity Act, 2003, it is clarified that matters relating to the said section are beyond jurisdiction of CGRF/Ombudsman mechanism, and Ombudsman can make no comment on this.

Dated: 12.04.2019

(Vibha Puri Das)
Ombudsman