

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Corbett Nature Reserve
Village Savalde West
P.O. Semalkhaliya, Ramnagar,
Distt. Nainital, Uttarakhand.

Vs

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

Representation No. 40/2018

Order

Date: - 27.02.2019

The petitioner, M/s Corbett Nature Reserve represented by Shri Anuj Sachdeva, aggrieved with the order dated 11.12.2018 of the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) in their complaint no. 92/2018 have approached the Ombudsman for setting aside the order of the Forum and quashing the recovery of Rs. 32,80,188.00. Petitioner also requested for a stay on the recovery of total assessment amount of Rs. 32,80,188.00. After hearing both parties and directing petitioner to deposit Rs. 10,00,000.00 in addition to the Rs. 5,00,000.00 deposited at the instance of the Forum, respondent were restrained from coercive action for recovery of disputed amount till the disposal of the case.

2. The case in brief is that the petitioner is a hotel and resort company which runs an eco-friendly resort by the name Aahna The Corbett Wilderness which is registered with the District Magistrate, Nainital under the Sarai Act. Petitioner, who has an electricity connection no. KNO 10354 commercial RTS 2 tariff, has been paying all dues before prescribed date and claims to be a company following responsible tourism. They feel aggrieved that on 31.07.2018 they received a letter alleging that the applicant's meter cubicle was checked on 20.02.2015, 2 CTs of ratio 20/5 were found damaged and were replaced by another CT of ratio 30/5 due to which the MF was changed from 4 to 6 but due to mistake on the part of UPCL the bills from the date of change of the 2 CTs i.e. 20.02.2015 to 30.06.2018 were still being issued on the lower

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multiplication factor i.e. MF 4 instead of MF 6. Petitioner has complained that Forum did not pay attention to the fact that as per Supply Code Regulations periodic inspection of the meter have to be conducted and the interval of testing for bulk supply meters and LT meters is 1 year and 5 years respectively. Petitioner has also claimed that Forum have not interpreted harmoniously a reading of sub section 1 and 2 of section 56 of the Electricity Act, 2003. Petitioner has been at pains to establish that neglects to pay any charge for electricity or any sum mentioned in sub section 1 would imply thoughtlessness and carelessness on the part of the consumer whereas in this case it is the liability of the distribution company and therefore the money cannot be recovered from them, the consumer. In this connection, petitioner has also quoted sub clause 5 of 3.3 of the UERC (The Electricity Supply Code) Regulations, 2007 (which is actually 3.3.1 sub clause (5)) which provides for Licensee having no right to recover any charges beyond 2 years from the date such charges first became due unless such charges have been continuously shown as arrears. Petitioner has also quoted from judicial pronouncements of Hon'ble High Court at Bombay in the matter of Rototax Polyester vs Administrator and the view taken by the Hon'ble High Court of Delhi in WP (c) 344/2007 between Yogesh Jain and BSES Yamuna Power Ltd. with reference to applicability of Section 56 (2) and being responsibility of the Forum as a judicial/quasi judicial authority to take note of all statutory provisions and judicial decisions in performing its functions and in making and pronouncing its decisions. Petitioner has also claimed that the amount in question has been illegally added in the running bills of the petitioner. Petitioner has also quoted at length views upheld by the Hon'ble High Court of Bombay in the case of Awdhesh S Pandey vs Tata Power Company Ltd. and otrs AIR 2007 Bombay 52 wherein it has been held that it at all any recovery of arrears is made under section 56 (2) of the Electricity Act, 2003 then the limitation of 2 years for recovery of such arrears is binding. The Hon'ble High Court of Bombay reiterated its order in the case of review petition filed by the electricity company. Thereafter the electricity company has filed an SLP in the Hon'ble Supreme Court wherein the APEX Court in its order dated 19.02.2014 has directed the Hon'ble High Court of Bombay that the matter to be referred to a larger bench. Petitioner has further stated that the larger bench of the Hon'ble High Court of Bombay has concluded hearing in the matter on 31.10.2018 and reserved it for judgment which is still awaited. Petitioner has also quoted from the order of Rajasthan State Appellate Tribunal for electricity in their order dated 14.11.2006 which has been

upheld by the Hon'ble Supreme Court in Civil Appeal no B 13164 of 2007. The Tribunal in their order quoted by the petitioner

"Thus in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded on the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment, is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in section- 56 (2) of the Electricity Act, 2003 shall start running".

Petitioner has also taken exception to the Forum not having applied the facts of the cases decided by the Ombudsman and have quoted from an order in representation no. 27/2013 in order dated 04.04.2014 wherein directions have been issued to the department to examine such cases of wrong MF being applied and initiate proceedings against the officials involved. Petitioner has said that the department has done nothing and the Forum have also overlooked this fact and because of this failure of the respondent, petitioner has been subjected to harassment and great hardship due to lack of due diligence on the part of respondent. Petitioner has therefore requested that the Forum order be set aside and the assessment be quashed.

3. Forum, in their order have quoted at length from the case law cited by petitioner before the Forum as also in the petition before the Ombudsman and observed that while the larger bench of the Hon'ble High Court of Bombay has also reserved their judgment after having concluded arguments and similarly a dispute about applicability of section 56 (2) is also pending before the Hon'ble Nainital High Court, Forum have quoted from 2 orders of the Ombudsman wherein it has been held (as per clear case law cited) that provisions of section 56 (2) shall not apply on account of wrong MF, and another case where section 56 (2) shall not apply in cases where energy actually consumed was not recorded due to some human/clerical mistake. Accordingly Forum dismissed the complaint.
4. Respondent UPCL in their written statement dated 21.01.2019 have admitted that due to application of wrong MF a bill for Rs. 32,80,188.00 escaped to be charged from the petitioner. Calculation sheet was also enclosed with the sealing certificate dated 12.07.2018. (The calculation sheet has actually been enclosed with respondent's letter



no. 2938 dated 31.07.2018, addressed to the petitioner and not with sealing certificate dated 12.07.2018.) Respondent have therefore stated that the petitioner consumed electricity for which payment was not made. They have disputed the allegation that Forum have not appreciated regulation 3.1.3 (1) which provides for testing of meters and have also disputed the application of limitation under section 56 (2) and also disputed that the Forum did not consider this provision of the Act. In fact respondent have asserted that Forum considered the point of limitation and concluded that the proviso "the charges first became due" is the critical provision since respondent were unaware of the wrong application of MF till it was discovered in 2018, whereafter the impugned bill was issued. They have also disputed that Forum have not considered Electricity Supply Code Regulations, 2007. Respondent have also disputed the allegation that the Ld. Forum overlooked sub clause 5 of Regulation 3.3 of UERC (The Electricity Supply Code) Regulations, 2007 which provides for billing. While this clause provides for limitation of 2 years the phrase "date when such sum first became due" is also mentioned. The respondent have further clarified that "In the present case the sum first became due when it was discovered by the inspecting party on 12.07.2018 about correct MF which was not applied in the bills. The YMPL inspected the premises on 12.07.2018 and found on testing the MF 6 instead of 4. Thereafter the bill applying correct MF was issued. Now the amount of Rs. 32,80,188.00 became due. Relevant law was also submitted before Ld. Forum." Respondent have submitted copy of letter no. 3423 dated 14.08.2018 filed before Forum. Respondent have also asserted that Forum have considered the case of Rototax Polyester vs Administrator and also considered other cases in their judgment at pages 5 and 6. However, since the above case stand referred to a larger bench and the judgment of larger bench of Hon'ble High Court of Bombay has not been finalized the interim order of Hon'ble High Court is to no avail. In brief, respondent have concurred with findings of the Forum and asserted that no case law quoted by the petitioner has been finally adjudicated and therefore is not relevant in assisting petitioner in his objective of claiming relief under section 56 (2). Respondent have further asserted that careful reading of the order dated 14.11.2006 of the Hon'ble Rajasthan Appellate Tribunal (Rajasthan High Court) (quotation from the order has been reproduced in petitioner's statement paraphrased above) reveals that it supports the contention of the respondent rather than the petitioner.

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5. In the rejoinder petitioner has reiterated the statements and allegations made in their original complaint. Petitioner has asserted that since the case does not fall in the category of regular billing the limitation of 2 years is being wrongly calculated from the date of discovery. Instead it can only be from the actual date of the date of becoming first due.
6. Both parties have been heard and the record and evidence available on file including the case law cited have been carefully perused. The fact that wrong MF having been used in the monthly bills from 20.02.2015 to 30.06.2018 and being corrected through this disputed supplementary bill, is not disputed by the petitioner. The sealing certificate dated 20.02.2015 reveals that 2 existing CTs of ratio 20/5 were found damaged and all the three existing CTs were replaced by CTs of ratio 30/5, as CTs of 20/5 ratio were not available in the lab. so that the CT installed is of ratio 30/5 with MF of 6. However, that CTs installed on 20.02.2015 were of MF 6, is undisputed. This is further corroborated by sealing certificate dated 12.07.2018 that CTs of ratio 30/5 were found installed thus confirming MF as 6. The fact that billing right up to 30.06.2018 was with an MF of 4 whereas the CT installed on 20.02.2015 had an MF of 6 is also undisputed. Therefore the fact of dues to the tune of Rs. 32,80,188.00 is not disputed. The only point at issue is the applicability or otherwise of limitation on the recovery of these dues.
7. Petitioner in his representation has referred to the Judicial dictum rendered by Hon'ble High Court of Judicature at Bombay in Rototax polyster vs Administrator 2010 (4) BCR page 456. This judgment was also referred before the Forum which petitioner alleges has been ignored by them and petitioner has quoted from the observations of Hon'ble High Court of Delhi in Writ Petition (c) 344/2007 between Yogesh Jain and BSES Yamuna Power Ltd. to emphasise that the Forum is bound to deal with submissions placed before it while performing its functions and in making and pronouncing decisions. Further, petitioner has referred to another case before the Hon'ble High Court of Bombay in which it has been observed that "similar issue was dealt by the Division Bench of this Hon'ble Court in Awadhesh S Pandey vs Tata Power Company Ltd. and others AIR 2007 Bombay 52. It has been held that limitation of 2 years for recovery of such arrears is binding. This order was reiterated by the Hon'ble High Court in the case of review petition filed by the electricity company. While this matter was agitated before the Hon'ble Supreme Court via an

SLP in the case Maharashtra State Electricity Distribution Company vs Venco Breeding Farm Pvt. Ltd. which is again a case of incorrect application of MF, the Hon'ble Apex Court, observing that conflicting judgments have been given by coordinate benches of the Hon'ble High Court of Bombay in Awadhesh S. Pandey vs Tata Power and M/s Rototax Polyester vs Administrator, have directed the matter to be referred to a larger bench. Arguments before the larger bench in Hon'ble High Court of Bombay have been concluded on 31.10.2018 and judgment is reserved but the petitioner is aggrieved that the Forum have not considered this case law while applying orders of the Ombudsman in representation no. 37/2013. Finally petitioner has also referred the orders by the Rajasthan State Appellate Tribunal for Electricity in order dated 14.11.2006 in the case of Ajmer Vidyut Vitran Nigam Ltd. vs M/s Sisodia Marble and Granites Pvt. Ltd. and others. This decision of the Appellate Tribunal has been upheld by the Hon'ble Supreme Court in Civil Appeal no. D 13164 of 2007. (The order referred by petitioner as that of Rajasthan State Appellate Tribunal for Electricity is actually by the Hon'ble Appellate Tribunal of Electricity.) The order dated 17.05.2007 of the Hon'ble Apex Court in the Civil Appeal No. D13164 of 2007 have upheld the order of the Hon'ble Appellate Tribunal for Electricity.

8. Respondent have, in their written statement, asserted that the Forum in fact considered all arguments before giving their judgment including the case law cited by the petitioner as regards citations of cases decided by Hon'ble Bombay High Court respondent have asserted that since in the Civil Appeal no. 2484-2485 Maharashtra State Distribution Company vs Venco Breeding Farm Pvt. Ltd. regarding wrong application of MF, directions of the Hon'ble Apex Court that Hon'ble High Court of Bombay constitute a larger bench to resolve conflicting judgments by coordinate benches of the Hon'ble High Court and the judgment by the larger bench is still awaited, earlier judgments of Hon'ble High Court of Bombay cannot be considered as valid case law.
9. From the above citations, and discussion related to them, it is therefore clear that Hon'ble Appellate Tribunal for Electricity have upheld the validity of assessment without application of limitation from the date it is first recorded in the bill. The ratio of judgment of the Hon'ble Appellate Tribunal of Electricity upheld by Hon'ble Supreme Court is: -

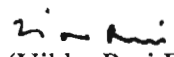
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“Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount became payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired.”

In the instant case the error of wrong application of MF was first noticed on 12.07.2018 in inspection by YMPL. Bills were accordingly modified by Licensee for the period 20.02.2015 to 30.06.2018 and an assessment of Rs. 32,80,188.00 was communicated vide letter dated 31.07.2018. In accordance with orders of Hon'ble Appellate Tribunal for Electricity, in the instant case, amount of assessment of Rs. 32,80,188.00 became first due on 31.07.2018 and limitation will apply w.e.f. this date.

10. Orders of the Hon'ble High Court of Bombay as per directions of Hon'ble Apex Court are still awaited. Therefore, as per references cited by both parties, the citation of Hon'ble Appellate Tribunal order dated 14.11.2006 in appeal no. 206 and 203 of 2006 and upheld by Hon'ble Apex Court supports the contention of the respondent that benefit of limitation under section 56 (2) is not available to petitioner in the instant case.
11. As mentioned already in para 6 above the only issue to be decided in the instant case is applicability or otherwise of limitation under section 56 (2) of the Electricity Act, 2003. No such limitation is constraining the right of the Licensee to recover dues escaped to be billed earlier due to application of wrong MF and have now been claimed through bill dated 31.07.2018 as a supplementary bill amounting to Rs. 32,80,188.00. Respondent are therefore justified in making such an assessment which is not time bound. Petition is therefore dismissed. Forum order is upheld. Stay granted on 21.01.2019 against coercive action for recovery stands vacated. Respondent are at liberty to recover their legitimate dues as per law.

Dated: 27.02.2019


(Vibha Puri Das)
Ombudsman