

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Mohit Ahuja
Prop. M/s Sai Industries,
268 A, Sisona Road, Raipur
Bhagwanpur, Roorkee,
Distt. Haridwar, Uttarakhand

Vs

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

Representation No. 21/2020

Order

Dated: 15.12.2020

Shri Mohit Ahuja, Prop. M/s Sai Industries 268, Sisona Road, Raipur, Bhagwanpur, Roorkee Distt. Haridwar a consumer of Uttarakhand Power Corporation Ltd. for 75 KW LT industrial connection no. 161, has preferred this appeal against UPCL through Executive Engineer, Electricity Distribution Division, Bhagwanpur on being aggrieved with Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) order dated 14.09.2020 in their complaint no. 52/2020 before the said Forum.

2. The petitioner in his appeal dated 23.09.2020 has submitted that a complaint was made by him before the Forum on 17.07.2020 to redress his grievance arose due to addition of a sum of Rs. 3,92,848.00 in the bill for the period 30.04.2020 to 31.05.2020 on account of slow running of meter for a period of 18 months. The petitioner has submitted that they are not satisfied with Forum's order in their complaint no. 52/2020 on account of the following reasons:

- i) As submitted by the respondent before the Forum that the outside agency M/s Mobineers Infosystems Pvt. Ltd. have reported abnormality in MRI report of the connection of the petitioner and the check meter was installed on the recommendation of the said agency. The petitioner has stated that this

submission of the respondent is wrong. They have further stated that on noting excess load of 180 KVA in the month of November 2019 and 240 KVA in December 2019 the fact was intimated to the department both times in writing. On finding their complaint correct the department deleted the excess load charges from the bill but they had also requested the department vide their letter dated 15.01.2020 to get the meter set right as it was not recording correctly where after a check meter was installed by the department on 18.01.2020.

- ii) While they appeared before the Forum on the scheduled dates for hearing fixed by the Forum, no representative from the department did appear which suggests that they were sure that the judgment shall be in their favour whether they appear or not for arguments and it happened so. Although the department have agreed that they are not at fault and it is a mistake on petitioner's part. During hearing when they appeared and nobody came from the department for hearing the Forum heard them and were of the opinion that they were right but still they passed order against them.
- iii) The department submitted MRI as evidence and argued that the meter was running slow for which the disputed bill has been raised. The petitioner has submitted that all monthly bills have been issued as per MRI which have duly been paid by them. Now the department have issued the disputed bill for Rs. 3,92,848.00 accepting their earlier bills as wrong. Earlier also in the month of March 2017, the department had realized a sum of Rs. 1,08,265.00 on account of slow running of meter and now they again charging a sum of Rs. 3,92,848.00 for a period of 18 months from July 2018 to January 2020, which is wrong and there is no justification for it.

3. The petitioner in view of above assertions and facts of the case has requested that the demand of alleged amount be set aside in the interest of justice.

4. The forum after hearing both parties and perusal of the records have observed that the existing meter at the premises of the complainant was running slow as per check meter report. It is established from MRI report that voltage on Y phase was abnormal from 21.07.2018 and onwards continuously which clearly establishes that the existing meter of the petitioner had been recording lesser energy and a bill of Rs. 3,92,848.00

has been issued as additional bill to recover the cost of such energy. The Forum was of the view that due to technical deficiency in the metering system attributable to less recording of energy demand of Rs. 3,92,148.00 raised by the opposite party is payable by the complainant and hence they concluded that the complaint is not liable to be allowed and having concluded as such they have dismissed the complaint.

5. The respondent, Executive Engineer has submitted a written statement dated 21.10.2020 wherein he has submitted as follows:

- i) On reporting abnormality in the MRI of the connection of the petitioner by outside agency M/s Mobineers Infosystems Private Ltd. as also on the request of the petitioner in order to testing the veracity of the main meter (secure-X0059572) a check meter (L&T-19628138) was installed by the Test lab in the presence of the consumer vide sealing certificate no. 28/42 dated 18.01.2020 and the same was finalized in the presence of the consumer vide sealing certificate no. 01/01 dated 30.01.2020. As per report of the check meter the existing meter recording less @ 19.69% in KWh and 20.30% in KVAH with respect to the check meter. It is wrong to say that the main meter was running slow but due to carbonization on the Y phase of the PT, low voltage was being exhibited on Y phase due to which the consumption was not being correctly measured and therefore check meter was installed to find out the extent of lesser energy being recorded in the meter. The matter relating to excess load charges referred in the petition is not logical, the petitioner have themselves submitted that such excess load charges had duly been deleted.
- ii) The Forum themselves have granted exemption from personal appearance vide their letter no. 100/17.07.2020 and have allowed for submission of the facts of the case and objections via email or by post. So all facts of the case and objections were submitted to the Forum by post and via email so submissions made by the petitioner that the respondent were already sure that the judgment shall be passed in their favour, is totally false. The energy was not being correctly recorded in the meter due to low voltage on Y phase due to carbon deposition which is attributable to technical reasons and not due to some personal interference by any person. The demand amounting to Rs. 3,92,848.00 has been raised strictly on the basis of check meter report, meter

MRI and tamper report which has duly been upheld by the Forum vide their order dated 14.09.2020 in petitioner's complaint no. 52/2020. It is wrong submission by the petitioner that the department have asserted before the Forum that the meter was running slow but on the basis of MRI report submitted before the Forum, the department have established that the main meter installed at the premises of the consumer was not recording energy correctly.

- iii) The respondent have substantiated their case by referring to the following orders passed by the Hon'ble Ombudsman in the past.
- a. M/s US Metals Product SIDCUL, Haridwar vs Executive Engineer, EDD, Rural Haridwar appeal no. 07/2013 order dated 31.01.2014.
 - b. Shri Gopal Kumar Khaitan vs UPCL in appeal no. 26/2019 order dated 31.07.2019.
 - c. Appeal of M/s ONGC vs UPCL no. 09/2014 order dated 14.11.2014.
 - d. The respondent has also mentioned case law "AIR 2011 Punjab and Haryana of Shri Satish Kapoor vs Punjab Electricity Board and others.
- iv) In all these above cases Hon'ble Ombudsman as well as the Hon'ble Punjab and Haryana High Court have held that being a case of less recording of energy by the existing meter due to low voltage availability for a period as determined by the MRI tamper reports during which the phenomenon of low voltage availability persisted throughout the period although in different magnitudes which is attributable to less recording energy by the meter and the extent of such less recording is determined by the check meter report and hence they have held that the demand raised by the respondent's in all such cases is neither an assessment nor a penalty but it is a supplementary bill to realize the cost of the energy that could not be recorded in the meter throughout the period and hence could not be billed in the regular monthly bills and hence such demand is to recover the legitimate revenue and is payable by the concerned consumer/petitioner. Although as mentioned by the Hon'ble High Court of Punjab and Haryana that *"if the electricity has been consumed by the appellant, he is bound to pay the same. It is true that there is no fault on the part of the appellant but the appellant has proceeded on a wrong belief that he is being penalized for the same, as a matter of fact he has*

been asked to pay for the electricity which has been consumed but could not be recorded by the meter because of wrong phase association of the meter”

6. The respondent have submitted that in view of the above submissions sub regulation 3.1.3 (6) of Electricity Supply Code, 2007 is not applicable in the instant case. In view of his above submissions having the force of case law and Ombudsman’s past orders referred to above he has requested that the petitioner be directed to pay the amount of the disputed bill. He has submitted copies of the documentary evidences referred in his written statement.
7. The petitioner has submitted a rejoinder dated 21.11.2020 wherein all the submissions are merely repetition or reiteration of what they have stated in their petition except the following points:
 - i) The main meter was installed in 2017 and testing as required under testing of meter rule 57 and electricity rules under UERC notification dated 17.04.2017 each year has not been done by the respondents (**it is clarified that as per UERC relevant regulations testing of consumers having contracted load up to 75 KW is required to be done once in 5 years and not yearly as stated by the petitioner yearly testing is to be done of the meters of HT consumers**)
 - ii) The petitioner has stated that the cases referred under para 3 of the written statement are not applicable in their case.
 - iii) The MRI report from 27.07.2018 to 30.01.2020 on the basis of which disputed bill has been raised is wrong. Bill for a period of 6 months prior to 18.01.2020 can be raised, so a bill for only 6 months is acceptable and disputed bill raised for 18 months is not acceptable as such it is requested that the slow meter assessment bill amounting to Rs. 3,92,898.00 be set aside and a revised bill for 6 month be issued in the interest of justice.
8. At the time of hearing the petitioner has submitted Hon’ble Ombudsman’s order dated 17.01.2017 in appeal no. 20/2016 of M/s Pharmaceuticals Pvt. Ltd. Bhagwanpur vs Executive Engineer, EDD (Rural) Roorkee to substantiate his case that assessment for slow running of meter should be made only for a period of maximum 6 months in

accordance with sub regulation 3.1.3 (6) of UERC Supply Code Regulations, 2007 as their case is similar to the above referred case.

9. Arguments from both parties were heard on 08.12.2020, both parties appeared and argued their respective cases. The petitioner argued that the check meter results are not challenged but assessment should be made only for a period of 6 months in accordance with sub regulation 3.1.3 (6) of Supply Code Regulations, 2007 which shall be in line with Ombudsman's order dated 17.01.2017 in petition no. 20/2016 referred above. The respondents argued that it is not a case of slow running of meter where sub regulation 3.1.3, (6) of supply code is applicable but as explained by them in their written statement and duly supported by Ombudsman's orders quoted in the written statement it is a case of less recording of energy by the meter due to the phenomenon of low voltage at Y phase right from 27.07.2018 to 30.01.2020 as confirmed by MRI tamper report and the percentage of less recording is determined by check meter study and therefore the bill amounting to Rs. 3,92,848.00 raised through an entry (Slow meter assessment) in the bill for the period 3004.2020 to 31.05.2020 is nothing but a supplementary bill to recover the cost of energy escaped billing through regular monthly bills during the period under reference and hence these are the legitimate dues which the respondent are entitled to realize and have requested that the petition be dismissed and the petitioner be directed to deposit the amount of the disputed bill.
10. After hearing arguments from both parties and careful perusal of the documents available on file it is established to be a case of less recording of energy by the installed meter due to low voltage availability on Y phase of the meter during the period 27.07.2018 to 30.01.2020 as confirmed from MRI tamper report submitted by the respondent. The check meter installed on 18.01.2020 and finalized on 30.01.2020 reveals that the meter recorded less energy @ 19.69% in KWH and 20.30% in KVAH due to low voltage availability on Y phase which happened due to carbonization on the PT link feeding voltage to the meter as such it is not a case of slow running of the meter due to its own defect but a case of less recording of energy due to external interference i.e. carbonization leading into low voltage availability to the meter during the period referred to above.

11. Such being the case sub regulation 3.1.3 (6) of Supply Code Regulations, 23007 is not applicable in the instant case but since it is established from the documentary evidences that meter recorded less energy during the aforesaid period due to availability of low voltage on Y phase and while meter CT/PT were not defective so the less recording of energy in the meter was only attributable to low voltage on Y phase, So it is definitely a case of less recording of energy by the meter due to the phenomenon of low voltage on Y phase.
12. The extent of which is determined by check meter study as 19.69% in KWH and 20.30% in KVAH. Since the petitioner had paid for the lesser energy than what they have actually consumed through monthly bills during the period 27.07.2018 to 30.01.2020. The demand of Rs. 3,92,848.00 raised by the respondent is neither a penalty not assessment but simply a supplementary demand to charge the cost of energy that could not be recorded in the meter and therefore could not be billed through regular monthly bills during the aforesaid period. As mentioned by the Hon'ble Punjab and Haryana High Court in the case law referred above although there is no fault of the petitioner but since he has consumed the energy, he is liable to pay for that and therefore the demand raised by the respondent amounting to Rs. 3,92,848.00 is justified as respondent's legitimate dues and the petitioner is liable to pay the same. The petitioner has nowhere challenged the check meter results but have simply submitted that assessment for slow running of meter should be made only for a period of 6 months in accordance with sub regulation 3.1.3 (6) of Supply Code, Regulations, 2007 since they have not challenged the check meter results the same have therefore become final and further their request for charging only for 6 months in accordance with aforesaid regulation, which in fact is not applicable in the instant case as explained above, is without the force of any regulation and is therefore tenuous and cannot be acceded to in view of the facts of the case being otherwise as explained above. It would be appropriate to mention there that supply Code Regulations 2007 has since been repealed by UERC (Electricity Supply Code, Release of New Connection and related matters) Regulations, 2020 dated October 29, 2020 which have already come into force w.e.f. 28.11.2020, the date of publication of the said regulation in the gazette notification, wherein sub regulation 5.1.2 (10) (v) provides for charging the difference for a maximum period for not more than 12 months. This sub regulation replaces sub regulation 3.1.3 (6) of the erstwhile supply

code regulations, 2007, although this is not applicable in the instant case as already explained above but it is mentioned here only for reference.

13. The case law and Ombudsman's orders passed earlier as submitted by the respondent are rightly applicable in the instant case. While Ombudsman's order dated 17.01.2017 in appeal no. 20/2016 of M/s Yaka Pharmaceuticals is not applicable in the instant case being *pari materia* (not comparable) with the instant case.
14. Further it would be appropriate to mention here that in past appeals in a number of similar cases have come before the Ombudsman in which orders on the same ratio *decidendi* have been passed and directions issued for recovery of cost of energy that escaped recording due to non availability of full voltage to the meter on 1 or 2 phases during the period as ascertained by the MRI tamper reports and extent of less recording determined by check meter study. Further the principle of estoppel and *res-judicata pro-veritate habeture* have also to be followed in all such similar cases as also maintaining consistency in all orders passed by the Ombudsman in similar cases in the past and therefore applying the same principle in the instant case and as also in view of the facts of the case the bill amounting to Rs. 3,92,848.00 raised by the respondent to recover the cost of energy that escaped billing earlier for the period 27.07.2018 to 30.01.2020 is upheld. The petitioner is directed to pay the same to the respondent. The Forum order is upheld. The petition is dismissed.

Dated: 15.12.2020

(Subhash Kumar)
Ombudsman