

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri. Kundan Singh
S/o Shri Param Singh,
05, Vyomprasth, GMS Road, , Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (South),
Uttarakhand Power Corporation Ltd.,
18, EC Road, Dehradun, Uttarakhand

Representation No. 13/2020

Order

Dated: 30.07.2020

Shri Kundan Singh S/o Shri Param Singh, 05, Vyomprasth, GMS Road, Kanwali Road, Dehradun a consumer of Uttarakhand Power Corporation Ltd. (UPCL) for connection no. SD25332100012 has preferred this appeal being aggrieved with Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) order dated 05.09.2019 in complaint no. 26/2019 of Smt. Kamla Devi Manral 457, Priyadarshni Enclave, Kanwali Road, Dehradun a consumer of UPCL for connection no. SD25332045567 against UPCL through its Executive Engineer, Electricity Distribution Division (South), Dehradun (respondent).

2. Although the petitioner, Shri Kundan Singh was neither a complainant in the aforesaid complaint nor he was made a party before the Forum either by the complainant Smt. Kamla Devi Manral nor by the Forum themselves but as he is the effected party with the order of the Forum so he felt aggrieved and thus preferred this appeal before Ombudsman, which was a proper appeal in terms of UERC (Appointment and Functioning of Ombudsman) Regulations, 2004 sub regulation 4 (1) (a) and was thus accepted by the Ombudsman in terms of sub regulation 5 (5) of the said UERC Regulations.
3. The petitioner referring to Ombudsman's order dated 18.07.2017 in his earlier appeal no. 11/2017 before Ombudsman and Forum's order dated 05.09.2019 in Smt Kamla Devi Manral's complaint 26/2019 has asserted that a sum of Rs. 9,904.00 has again

been added in his bill for the month of January 2020 by way of wrong application of Forum's order dated 05.09.2019 which is in contravention to Ombudsman's order dated 18.07.2017 and thus have committed contempt/non compliance of Ombudsman's earlier order dated 18.07.2017. He has submitted that in Forum order dated 05.09.2019 it has nowhere been ordered that Rs. 9,904.00 be added in his bill in spite of Ombudsman's order dated 18.07.2017. While the aforesaid sum had already been deleted from his bills by the respondent Executive Engineer in compliance to Ombudsman's aforesaid orders and no sum had been shown as arrears in his bills till November 2019. All bills were being paid regularly.

4. On contacting the division on receipt of bill of January 2020 it has come to the notice that the disputed amount Rs. 9,904.00 has been added in his bill on 28.12.2019 in compliance of Forum order dated 05.09.2019 but he was never apprised by the department about the complaint before Forum and their order and has yet not been given any information about this. The department had also refused to accept the payment of bills excluding the disputed amount till the bill of May 2020. It has come to his notice from other sources that this disputed amount was deleted from his bills in compliance to Ombudsman's order of 2017 and the same was added in the bills of Smt. Kamla Devi W/o Late Shri Kundan Singh, while the Hon'ble Ombudsman did not issue any such order for adding the disputed amount in the bill of Smt. Kamla Devi. Smt. Kamla Devi had filed a complaint before the Forum in the matter in spite of Ombudsman order. The Forum has heard this complaint against the established judicial procedure. The Forum in their order dated 05.09.2019 had directed only to delete the disputed amount of Rs. 9,904.00 from the accounts of Smt. Kamla Devi and have no where ordered to add this disputed amount in his bills. This suggests that the respondent's office is working on their whims. Having said as above the petitioner has requested as follows:

- i) Action against the officers and officials responsible for contempt of Ombudsman order and thereby adding the disputed amount in his bills be taken as per law.
- ii) The disputed amount wrongly added in his bills be ordered to be deleted.

- iii) Order for payment of the other bills excluding the disputed amount be issued to him so that he doesn't have to pay LPS.
 - iv) Compensation of Rs. 30,000.00 be granted.
5. The Forum in their order dated 05.09.2019 in complaint no. 26/2019 of Smt. Kamla Devi Manral after perusal of records and hearing both parties have observed that the Hon'ble Ombudsman in his order dated 18.07.2017 in appeal no. 11/2017 of Shri Kundan Singh S/o Shri Param Singh (connection no. SD25332100012) vide para 7 had ordered that disputed amount Rs. 9,904.00 added in the bill of the above connection be deleted because the disputed amount has to be accounted for in the ledger account of the connection no. mentioned on the receipts but in para 8 of his aforesaid order the Hon'ble Ombudsman had not directed to add this disputed amount in the bills of connection of Smt. Kamla Devi Manral (connection no. SD25332045567). They have further observed that the opposite party Smt. Kamla Devi Manral W/o Shri Kundan Singh had deposited a sum of Rs. 9,904.00 in the account of connection no. SD25332100012 in the period from 05/2004 to 03/2007. It is further mentioned that the then Executive Engineer had verified the above deposits from the original receipts and hereafter the sum was deleted from the account of connection no. SD25332100012 and added in the account of connection no. SD25332045567 of Smt. Kamla Devi Manral. In view of above the Forum was of the view that the amount RS. 9,904.00, which had already been deposited by Smt. Kamla Devi Manral, its recovery from her is not logical and not justified. Having observed as such the Forum ordered that the disputed amount Rs. 9,904.00 added in the account of the complainant be deleted from her ledger account.
6. The respondent Executive Engineer has submitted his written statement vide his letter no. 4553 dated 15.07.2020 wherein no reply to the petition has been submitted but he has simply submitted that in compliance to Forum order dated 05.09.2019 in complaint no. 26/2019 the disputed amount Rs. 9,904.00 has been added in the bills of Shri Kundan Singh, the petitioner in the instant case and the same amount has been deleted from the accounts of Smt. Kamla Devi Manral. He has however submitted a copy of Forum's order dated 05.09.2019. A copy of bill of connection no. SD25332100012 of Shri Kundan Singh S/o Shri Param Singh for the period 11.03.2020 to 14.05.2020 for a sum of Rs. 16,414.00 including arrears Rs. 14,521.00

as also a copy of the ledger from the period December 2019 to 14.05.2020 which inter alia showed adjustment of Rs. 9,904.00 in compliance of Forum order dated 05.09.2019.

7. The petitioner has submitted a rejoinder dated 21.07.2020 under the signatures of his authorized representative Shri Jaipal Singh. No material information or document has been adduced in this rejoinder and it is merely a repetition/reiteration of what he has already submitted in his petition.
8. Since the petitioner has preferred this appeal being aggrieved with Forum order dated 05.09.2019 in the complaint no. 26/2019 of Smt. Kamla Devi Manral where he was not made a party either by the complainant or by the Forum themselves and here in the instant appeal the appellant has also not made Smt. Kamla Devi Manral a respondent, but the Ombudsman suo-moto has ordered to make Smt. Kamla Devi Manral a respondent in the interest of justice and accordingly she was asked to submit her written statement. She has accordingly submitted her written statement with an affidavit dated 22.07.2020 wherein she has submitted that vide her letter dated 27.03.2019 she had requested the SDO to delete Rs. 9,904.00 from her bill and a corrected new bill be given to her. A reminder dated 04.04.2019 was issued to the department having not received any reply. The SDO vide his letter no. 1135 dated 25.04.2019 has informed that Rs. 9,904.00 has been added in her bill in compliance to CGRF's order. He has further advised that she can approach to the Forum. She accordingly filed a complaint on 01.06.2019 before the Forum. She appeared before the Forum on 13.06.2019 to submit her case. After hearing the Forum passed order dated 05.09.2019 in her favour in her complaint no. 26/2019. She has also mentioned that she had approached the UERC vide her letter dated 03.12.2019 . The Executive Engineer, EDD (South) vide letter 2150 dated 01.10.2019 have ordered for deletion of Rs. 9,904.00 from her account and adding the same in the account of Shri Kundan Singh. The Hon'ble Commission has also been apprised about the action taken by the Executive Engineer vide his OM dated 01.10.2019 and the Hon'ble Commission has also conveyed the action taken by the department to her vide their letter dated 22.01.2020. She has further averred that in any of her letter as well as complaint dated 01.06.2019 before the Forum she has not written that the disputed amount Rs. 9,904.00 after deletion from her account be added in the bills of Shri Kundan Singh

S/o Shri Param Singh 05, Vyomprasth, GMS Road, Dehradun neither the Forum had directed to add this disputed amount in the account of aforesaid Shri Kundan Singh. She has further mentioned that she has nothing to do with the disputed amount having been added in the bills of petitioner here. She has averred that she has already submitted her case before the Forum and has nothing to say further. She has also requested that being a widow and a fourth class employee she may not be harassed in future. She has substantiated her above reply with all referred letters with annexure no. 1 to 9.

9. Records available on file including SDO's letter no. 1974 dated 28.07.2020, received on 28.07.2020 have been perused and arguments from all the three parties have been heard. Case file of appeal no. 11/2017 of Shri Kundan Singh S/o Shri Param Singh SD25332/100012 decided in favour of the petitioner vide Ombudsman's order dated 18.07.2017 has also been perused.
10. It is borne out that facts and issues in the instant appeal are the same as in case no. 11/2017 of the same petitioner decided by Ombudsman vide order dated 18.07.2017 wherein the respondent was directed to credit disputed amount of Rs. 9,904.00 to the account of the petitioner as the said amount was deposited by six number receipts issued on different dates and which as per records available in the case file 11/2017 were deposited in cash and all these receipts bears connection no. SD25332/100012 of the petitioner. The said order had already been complied with by the respondent Executive Engineer by allowing credit entry of the disputed amount in the account of the petitioner and as such the said order had become final. The respondent have however acted beyond the scope of the said order by adding the disputed amount to the account of Shri Kundan Singh S/o Shri Prem Singh connection no. SD25332045567 as Ombudsman had not directed to add this disputed amount in the ledger account of the said Shri Kundan Singh S/o Shri Prem Singh (the connection now exists in the name of Smt. Kamla Manral widow of the said Shri Kundan Singh S/o Shri Prem Singh). Smt. Kamla Manral being aggrieved with respondent's action of adding the disputed amount to her account has approached the Forum where her complaint was registered as case no. 26/2019 and decided by the Forum in her favour vide order dated 05.09.2019. The respondent Executive Engineer vide OM no. 2150 dated 01.10.2019 has ordered for reduction of Rs. 9,904.00 from the account of Smt.

Kamla Devi with connection no. SD25332045567 in compliance to Forum order dated 05.09.2019 in her complaint 26/2019 but have further ordered for adding this disputed amount in the account of the petitioner here Shri Kundan Singh connection no. SD25332100012 simply on the basis that “क्योंकि राजस्व की accounting के लिए आवश्यक है कि उक्त धनराशि की धनात्मक परिविष्टि का समायोजन किया जाए इसलिए उक्त धनराशि रू0 9,904.00 उपभोक्ता श्री कुन्दन सिंह के संयोजन सं0 SD25332100012 में जोड़े जाने के आदेश पारित किये जाते हैं।” secondly it was beyond the scope of Forum’s order dated 05.09.2019 wherein they have not directed to add this amount to the account of the aforesaid connection but they have simply ordered to delete the said amount from the account of Smt. Kamla Devi Manral.

11. In view of the facts of the case, the Forum’s order dated 05.09.2019 in complaint no. 26/2019 and respondent’s compliance vide aforesaid OM dated 01.10.2019 it is clarified as below:

- i) Since the issue in the present appeal and the previous appeal 11/2017 before the Ombudsman are the same so the *ratio-dicidendi* (grounds of decision) shall be the same as that was in the earlier appeal. As such the order dated 18.07.2017 issued in the earlier appeal shall prevail and is reiterated here.
- ii) The aforesaid order dated 18.07.2017 duly complied with by the respondent had become final and therefore on the principle of *estoppel* which precludes a person from asserting something contrary to what is implied by a previous pertinent judicial determination, prevents the Forum from issuing any order in contravention to the Ombudsman’s aforesaid orders dated 18.07.2017 as well as action taken by the respondent in compliance of Forum order dated 05.09.2019 vide OM dated 01.10.2019 as such, their orders cannot therefore be appreciated. As such aforesaid Forum order as well as respondent’s OM dated 01.10.2019 are set aside.
- iii) Further an adjudicated matter shall be deemed correct keeping in line with the principle of *res-judicata pro veritate habetur* and in view of this principle also the Ombudsman’s order dated 18.07.2017 still holds justified and shall prevail. The petition is therefore allowed. The respondent are directed to credit

the disputed amount viz. Rs. 9,904.00 to the account of connection no. SD25332100012 of the petitioner.

12. Whereas despite repeated requests the respondent Executive Engineer has failed to submit the receipts issued by them for this disputed amount, however, the record submitted in the case file 11/2017 and as appeared to have been verified by the then Executive Engineer. The said amount is claimed to have been deposited by both parties Smt. Kamla Manral as well as the petitioner in cash in the account of connection no. SD25332100012 belonging to the petitioner. On examination of the old file it has been found that Rs. 1789.00 against 2 bills no. 7461241 and other handmade bill both for the period 28.05.2006 to 26.07.2006 issued to connection no. 100012, 2 nos. receipts viz. no. 000848/05 dated 10.09.2006 and 001942/29 dated 18.09.2006 have been issued. The possibility of having issued such double receipts in respect of other bills cannot be ruled out for want of documents by the respondents. Since Smt Kamla Devi Manral has claimed that she had ignorantly paid the bills of the petitioner which were delivered to her, it appears that gross irregularity might have been committed by the staff of the concerned division in delivering the bills and receiving payments. It is therefore hereby directed that the UPCL management may depute a Chief Engineer to enquire into the matter and submit his report within a period of 60 days from the date of this order to the management and the management may submit a report to the undersigned within next 30 days from the date of receipt of the report from the Chief Engineer, deputed to conduct enquiry in the case along with the action taken by the management against the erring staff for my perusal.

Dated: 30.07.2020

(Subhash Kumar)
Ombudsman