

**Before**  
**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Misc. Application No. 01 of 2022**

**In the Matter of:**

Filing of Miscellaneous Petition, *inter alia* amongst other grounds concerning refund of Minimum Demand Charges (MDC)/ Late Payment Surcharge (LPS) charges by illegal disconnection and for determining whether Minimum Demand Charges/ Late Payment Surcharge can be imposed, if power supply is disconnected u/s 56(1), without proper and clear 15 days notice u/s 181 r/w Section 50 of The Electricity Act, 2003.

**And**

M/s Uttaranchal Iron & Ispat Ltd.

..... **Petitioner**

**&**

Uttarakhand Power Corporation Ltd.

..... **Respondent**

**Coram**

**Shri D.P. Gairola**

**Member (Law)/Chairman(I/c)**

**Shri M.K. Jain**

**Member (Technical)**

**Date of Hearing: March 11, 2022**

**Date of Order: March 23, 2022**

**ORDER**

The Order relates to the Petition filed by M/s Uttaranchal Iron & Ispat Ltd. (hereinafter referred to as “the Petitioner”) under Section 181 read with Section 50 of The Electricity Act, 2003 in the matter of pending dispute with Uttarakhand Power Corporation Ltd. (hereinafter referred to as “the Respondent” or “Distribution Licensee” or “UPCL”).

## **Background**

2. The Petitioner's company is an induction furnace situated at Jashodhar industrial area Kotdwar, Uttarakhand and has a contracted load of 6000 kVA and is connected to the Distribution Licensee's network for supply of electricity to run its industry. The *lis* between the Distribution Licensee and the Petitioner began in the year 2016 when the first instance of disconnection by Respondent due to non-payment of dues by Petitioner occurred in August 2016.
3. As a consequence to this, the Petitioner approached the Hon'ble High Court of Uttarakhand in the matter. The Hon'ble Court gave directions to the Petitioner to make payments of dues to the Respondent in five equal quarterly installments, vide Order dated 30.11.2016. Interestingly, even before and after the Order of the Hon'ble Court, the Petitioner was adept in approaching Respondent's office for allowing installments for payment of dues which was being granted to it by Respondent time and again.
4. Starting from 2016 onwards, the chronology of non-payment of dues, disconnection due to non-payment of dues, fixing installments on the unpaid dues and revising the installment amount for the outstanding dues continued.
5. Later in the year 2020, the Petitioner approached the Consumer Grievance Redressal Forum (CGRF) seeking stay on the disconnection of supply by the Respondent and holding Respondent liable for charging excess amount as dues from it. The CGRF passed an order dated 04.09.2020 in favor of the Distribution Licensee referring to Regulations of the Commission that provides for disconnection in case of non-payment of dues. Pursuant in this the Petitioner challenged the order of the CGRF before the Ombudsman requesting the Ombudsman:

*"For quashing or reducing the demand charges of Rs. 2,85,29,840.00 from the total arrears of electricity dues of Rs. 6,62,26,629.00 as well as **for refixation of 12 installments** of the remaining outstanding dues of Rs. 3,76,96,789.00 and reducing and **deleting the LPS out of the total arrears shown** in the OM dated 26.12.2019 and 27.12.2019 as well as recovery notice dated 04.09.2020 and recalculating the actual arrears."*

6. The Ombudsman vide the Order dated 10.02.2021 upheld the order of the CGRF and held that:

*"In view of above deliberations wherein their objections have duly been addressed and turned down and as explained in the relevant paras of this order their prayers deleting the so called demand charges of Rs. 2,85,29,840.00 from the total outstanding dues of Rs. 6,62,26,629.00 till November 2019, which have further increased to Rs. 7,45,80,164.00 till August 2020 as per section 3 notice dated 04.09.2020 and have further increased to Rs. 7,68,57,875.00 till September 2020 (as per bill) due to repeated default in making payments in installments granted a number of times cannot be allowed as this amount is a part of the regular monthly bills and is held to be the legitimate revenue and is payable by the petitioners. Further their demand for refixing of 12 installments of the balance amount of Rs. 3,76,96,789.00 can also not be allowed firstly because this is not held to be the remaining outstanding dues against them and secondly for repeated default in making payment in installments allowed a number of times in past. As such their prayers for quashing impugned order dated 25.08.2020 and recovery notice dated 04.09.2020 and installment orders dated 26.12.2019 and 27.12.2019 are also disallowed. The petitioners are liable to pay the total outstanding dues as per bills issued by the respondents till date."*

7. Subsequently, the Petitioner then approached the Hon'ble High Court against the aforesaid order of the Ombudsman. The Hon'ble Court dismissed the Petition as infructuous as the Petitioner had admitted before the Hon'ble Court its liability to pay the entire due and further submitted that it does not wish to challenge the order of the Ombudsman.

8. The Petitioner has now filed the instant petition before the Commission requesting the following relief:

*"It is therefore most respectfully prayed, that the Ld. UERC, Dehradun, shall most respectfully be pleased to pass suitable orders for refund of net excess pre-deposit made during 31.10.2020 and upto 30.06.2021 aggregating to Rs. 2,00,68,776/-, with interest @ 1.25% per month aggregating to Rs. 1,83,65,830/- i.e. total refund of Rs. 3,84,34,606/- and/or allow such consequential relief as expedient in law, on the facts and circumstances of the case."*

9. The Commission vide letter dated 18.01.2022 forwarded the copy of the Petition to the Respondent to submit its comment on the admissibility of the Petition. Meanwhile, a letter dated 21.01.2022 was received from the Petitioner requesting the Commission to stay the payment of monthly installments of Rs. 40 lacs.
10. Thereafter, Respondent filed its comments on the admissibility of the Petition vide letter dated 07.02.2022 and the Commission communicated to the parties that hearing for admissibility is scheduled for 11.03.2022.
11. On the date of hearing, the counsels of the parties vehemently argued each sides on the question of admissibility of the Petition.

**Submission by Petitioner:**

12. The Petitioner made the following submissions:
  - (1) On the issue of admission, the Petitioner requested that the instant Petition and the argument therein touches upon the elements of section 56(1) and section 56(2) of the Electricity Act, 2003 (The Act) which have not being dealt in any other forum and therefore, this Commission has full jurisdiction to proceed with the matter.
  - (2) That the Commission under the scheme of the Act determines the tariff for electricity and under section 50 of the Act specifies the Supply Code which provides for recovery of electricity charges, billing of electricity, disconnection of supply for non-payment etc. and is therefore the only competent authority to clarify on the charges raised against the Petitioner for the period when the supply was disconnected.
  - (3) That the pure question of law can only be raised before the competent authority which in the instance case is the Commission to decide upon the legality of the charges levied on the Petition and in no other forum this issue on the question of law is raised.
  - (4) During the period of September 2016, October 2016, November 2016, March 2017, April 2017, May 2017, June 2017, July 2017, August 2017, March 2021, April 2021, May 2021 & June 2021, the power supply was disconnected by UPCL without any advance notice for disconnection as is contemplated under section 56 (1) of the (Act) and during the said period the power consumption was nil,

however, Minimum Demand Charges (MDC) and Late Payment Surcharge (LPS) were imposed in the bills.

- (5) That as per section 2 (15) of the Act, a “Consumer” means any person who is supplied with electricity for his own use by the Distribution Licensee however, on the peculiar circumstances of the case and during the period of disconnection, since electrical energy was not supplied to the Petitioner and electric line was disconnected, the Petitioner cannot be treated as consumer and must not be levied with any charges.
- (6) That there is no provision in the Act or in the Regulations or in the Tariff Order of the Commission empowering the Distribution Licensee to realize demand charges from the consumer during the period when supply is disconnected. The Distribution Licensee has illegally charged for the disconnected period.

**Submission by Respondent:**

13. UPCL vide its letter dated 07.02.2022, submitted its reply wherein it has stated that:

- (i) The Present petition has been filed under section 181 r/w section 50 of the Act. No Petition lies before the Hon’ble Commission under the said provisions of law.
- (ii) The present dispute is purely a consumer billing dispute. This type of dispute is not amenable to the jurisdiction of the Hon’ble Commission. It is pertinent to mention that the competent forum/authorities have already decided the matter.
- (iii) The Petitioner knowing fully well that the relevant issue raised in the current petition have already been disposed off and decided by the competent authorities and cannot be raised and heard again.
- (iv) The Petitioner has stated that the writ petition were not argued by the counsel for the petitioner before the Hon’ble High Court due to which the writ petition was withdrawn. It is not only a lame excuse and incorrect representation of facts. The Petitioner can only avail the remedy to approach the Hon’ble High Court again and pray for re-admission/ rehearing of the writ petition but on such averments the present petition cannot become maintainable.
- (v) The Petitioner himself has not stated any fresh cause of action.
- (vi) The Petition is based upon the grounds which have already been decided by the competent court/authority and cannot be heard again.

- (vii) The Petition is barred by the principle of Res-judicata.
- (viii) Petitioner is a habitual and persistent wilful defaulter and have breached in payment of installment almost every time.
- (ix) The Petition is totally malafide and amounts to misuse of judicial process, the petition needs to be dismissed with heavy cost so as to desist such malafide endeavours in future, which waste precious time of the Hon'ble court.

### **Commission's Observations, Views & Decision:**

14. The Commission has examined the instant Petition and the counter affidavit filed by the Respondent on the question of admissibility of the Petition. The Commission during the hearing heard the counsels of the parties in detail who made elaborate arguments on each side. On the basis of the written and oral submissions, it is evident and clear that Petitioner is a consumer of Distribution Licensee and has filed the instant matter for the alleged wrong billing by it. For the purpose of admissibility of the matter, following questions are needed to be addressed:-
  - (1) Whether this Commission can entertain an individual consumer's billing grievance?**
  - (2) Whether the issue in hand is deliberated upon by other competent forums?**
  - (3) Whether the issue in the instant matter is just a billing dispute or there is a cardinal question of law that needs to be addressed by this Commission?**
15. Let us begin with the first question which delves into the jurisdiction of the Commission in an individual consumer billing dispute. The issue with regard to the jurisdiction of the State Regulatory Commissions in entertaining a billing dispute of consumer has been dealt by the Hon'ble APTEL at numerous occasions. In the matter of Power Transmission Corporation of Uttarakhand Limited v. Uttarakhand Electricity Regulatory Commission dated 30/01/2017 in Appeal No.226 of 2014, the Hon'ble APTEL has held that:

*"Thus, the State Commission can entertain and decide complaint between consumers and licensees where there is a violation of the provisions of the said Act or the regulations*

*framed by the State Commission or orders passed by the State Commission. A **pure consumer-licensee dispute like a billing dispute will lie before the CGRF**. What is a pure consumer-licensee dispute will depend on facts and circumstances of each case.”*

[Emphasis Added]

In another judgment dated 20.11.2009 in appeal no.165 of 2005 in the matter of Madhyachal Vidyut Vitran Nigam Ltd & Another Vs Uttar Pradesh Electricity Regulatory Commission & Another, the Hon’ble Tribunal has decided as under:

*“07) The powers of the Commission are enumerated in section 86 of the Act. One of the powers enumerated therein is the power to adjudicate a dispute between the licensees and generating companies and to refer any dispute to arbitration. **There is no power given to the Commission to adjudicate upon disputes between licensees and consumers.** The Commission framed the Electricity Supply Code 2005 in exercise of powers conferred by section 50 and section 181, read with sections 43 to 48, 50, 55 to 59 of the Act which was notified on 18.02.05. The Supply Code, inter alia, provided for setting up of CGRF in accordance with UPERC Consumer Grievance Redressal Forum and Ombudsman Regulations 2003 as amended from time to time. This also provides that any consumer aggrieved by non-redressal of his grievance by CGRF may make a representation for the redressal of his grievance to the Ombudsman appointed by the Commission. Earlier to that the Commission had framed UPERC (Consumer Grievance Redressal Forum and Ombudsman Regulation 2003) which came into effect on 09.12.03. These Regulations provided an appeal before the State Regulatory Commission from the order of the Ombudsman. There was no provision at any point of time for an appeal to the Commission from the CGRF.*

*08) The Commission cannot assume jurisdiction to hear the appeal from the order of CGRF simply because the Ombudsman had not been established till then. The jurisdiction of the Commission has to be granted by the legislature. The legislature not having granted any such power the Commission could not have assumed such a jurisdiction. The Commission did not have any original jurisdiction to decide the question as section 86 does not give any such power to the Commission.*

*09) In our earlier judgment, in M/s. Polyplex Corporation Ltd. Vs. Uttaranchal Power Corporation Ltd. & Ors. in appeal No.220 of 2006, this Tribunal held that no*

*petition/appeal/application lies before any Regulatory Commission or this Tribunal in respect of billing matters. We also held that no petition/appeal/application lies to any Regulatory Commission or Appellate Tribunal from an order passed by the Ombudsman or CGRF or any other body like the Appellate Committee. The Hon'ble Supreme Court in the case of Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. (2007) 8 SCC 381 held that section 86(1) (f) of The Electricity Act 2003 which prescribes the adjudicatory functions of the State Commission does not encompass within its domain complaints of individual consumers and that it only provides that the Commission can adjudicate upon the disputes between the licensees and the generating companies and to refer any such dispute to arbitration. The Supreme Court affirmed that this does not include in it a grievance of an individual consumer. The Supreme Court further held that a proper forum for that is section 42(5) and thereafter section 42(6), read with the Regulation, if any, which provide for establishing the CGRF and the Ombudsman.*

*10) In view of the above discussion, we hold that the order dated 13.04.05 was entirely without jurisdiction. We also hold that the Commission could not have proceeded to impose any penalty for non-compliance with the order dated 13.04.05. Accordingly, both the orders dated 13.04.05 and 23.08.05 are liable to be set aside. Hence, the appeal is allowed and the orders dated 13.04.05 and that of 23.08.05 are set aside."*

[Emphasis Added]

From the above it is clear that the Commission must avoid delving into the individual consumer dispute for which appropriate forums have been established under section 42 (5) and 42 (6) of the Act.

16. Regarding the second question and Petitioner's submission that the instant issue has not been deliberated upon by any other Forum appears to be untrue in light of the present facts. To verify this, let us reiterate the litigation history in this matter;

The Petitioner has raised the issue before the CGRF requesting the CGRF to hold Respondent liable for charging excess amount as due from it. This request of the Petitioner was rejected by the CGRF. Aggrieved by this decision, the Petitioner then approached the Ombudsman requesting;



*“For quashing or reducing the demand charged of Rs. 2,85,29,840.00 from the total arrears of electricity dues of Rs. 6,62,26,629.00 as well as for refixation of 12 installments of the remaining outstanding dues of Rs. 3,76,96,789.00 and reducing and deleting the LPS out of the total arrears shown in the OM dated 26.12.2019 and 27.12.2019 as well as recovery notice dated 04.09.2020 and recalculating the actual arrears.”*

The Ombudsman vide the Order upheld the order of the CGRF and has observed that:

*“19. From the above it is clearly established that connection remained disconnected during the aforesaid period intermittently at a number of times temporarily, so situation of getting the connection permanently disconnected and termination of agreement never arose. It is clarified that a consumer remains a bonafiedly consumer even during the period of temporary disconnection for nonpayment of dues and agreement Executed for supply of electricity between the consumer and the Licensee still remains operative and therefore billing has to be continued during such period of temporary disconnection although the consumer might have not drawn any demand or energy during such period of disconnection. There is no provision for not billing during the period of temporary disconnection in either Tariff or in any of the Regulations. As such billing during the period of temporary disconnection for demand charges and levy of LPS on such charges is a bill or/and a part of the bill and being legitimate revenue of the respondent corporation is payable to them by the consumer (the petitioner) and they are entitled to recover such revenue, which is a part of outstanding dues which have accumulated over a period due to nonpayment by the petitioner, even in installments. As such their request for quashing or reducing the demand charges of Rs. 2,85,29,840.00 from the total arrears of electricity dues of Rs. 6,62,26,629.00 cannot be acceded to. As regards their request for refixing 12 equal installments of the rest of outstanding dues of Rs. 3,76,96,840.00 (Rs. 6,62,26,629.00 – Rs. 2,85,29,840.00) towards the payment of total remaining dues, it is clarified that as their demand for deleting a sum of Rs. 2,85,29,840.00 as demand charges is turned down as explained earlier in this para, their request for refixing 12 installments for the said amount cannot*

*be accepted as they are liable to pay the total outstanding dues including the bill amounts for the period of temporary disconnection.*

20. *The petitioner have misinterpreted the concept of billable demand, as according to them since during the period of disconnection no demand was recorded in the meter so there could be no billable demand. It is clarified that since during the period of temporary disconnection, a connection released under an agreement between the consumer and the supplier remains alive and the consumer still remains a consumer of the Licensee in terms of section 2 (15) of Electricity Act, 2003 so he is liable to be billed under the provisions of the tariff even if no demand and energy has been recorded in the meter during the period of such temporary disconnection. The billable demand is defined under the appropriate rate schedule of UERC Tariff Orders as:*

*“Billable demand shall be the actual maximum demand or 80% of the contracted load whichever is higher.” Further sub regulation 1.1 (1) (o) and (w) of Supply Code Regulations, 2007 are relevant which are reproduced below:*

*o) “Demand charges” means the amount chargeable for the billing cycle or billing period based upon the billing demand in kVA; w) “Fixed Charges” means the amount chargeable for the billing cycle/billing period based upon contracted load;*

21. *Since the connection was disconnected and reconnected temporarily a number of times as per details given above due to nonpayment of dues even after granting the facility of payment in installment a number of times, disconnection of supply to the petitioner by the respondent was a correct and lawful action in accordance with section 56 (1) of Electricity Act, 2003. Petitioner’s objection that a disconnection notice was never given to them by the respondent for disconnection, the action of the respondent was illegal and arbitrary, is not sustainable in view of the fact that each bill issued by the respondent is a bill cum notice which is in confirmation of the compliance of section 56 (1) of the Act and as such no separate notice was required to be given.*

*...*

26. *In view of above deliberations wherein their objections have duly been addressed and turned down and as explained in the relevant paras of this order their prayers deleting the so called demand charges of Rs. 2,85,29,840.00 from the total outstanding dues of Rs. 6,62,26,629.00 till November 2019, which have further increased to Rs. 7,45,80,164.00 till August 2020 as per section 3 notice dated 04.09.2020 and have further increased to Rs. 7,68,57,875.00 till September 2020 (as per bill) due to repeated default in making payments in installments granted a number of times cannot be allowed as this amount is a part of the regular monthly bills and is held to be the legitimate revenue and is payable by the petitioners. Further their demand for refixing of 12 installments of the balance amount of Rs. 3,76,96,789.00 can also not be allowed firstly because this is not held to be the remaining outstanding dues against them and secondly for repeated default in making payment in installments allowed a number of times in past. As such their prayers for quashing impugned order dated 25.08.2020 and recovery notice dated 04.09.2020 and installment orders dated 26.12.2019 and 27.12.2019 are also disallowed. The petitioners are liable to pay the total outstanding dues as per bills issued by the respondents till date. However, subject to adjustment of such payments which might have been made by the petitioners against the total outstanding dues in compliance to the condition of stay order granted by the undersigned as referred above in this order. The respondents are at liberty to realize their total outstanding dues from the petitioners by adopting such means as are available to them under the provisions of Electricity Act, 2003, relevant UERC Regulations as also Dues Recovery Act, 1958. Stay granted on 07.10.2020 further revalidated on 09.10.2020 and confirmed on 02.11.2020 stands vacated with immediate effect."*

From the above, it is clear that the issue has already been addressed by the Forums and that to in detail. The order of the Ombudsman is considered final and is not open to review/revision by the Commission. In this regard, the Hon'ble APTEL in the matter of, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. DLF Services Ltd. has held that:

*"The State Commission in law cannot usurp either the jurisdiction of the Grievance Redressal Forum or the Ombudsman. In respect of the grievance of the consumers, the*

*specific forum of redressal and representation to a higher authority are provided and the regulatory commission has no jurisdiction apart from the fact that it is either the appointing authority or the authority conferred with the powers to frame Regulations, **and not even an Appeal power has been conferred on the State Commission with respect to consumer grievance.***"

[Emphasis Added]

Besides above, and pursuant to the order of the Ombudsman, the Petitioner had approached the Hon'ble High Court challenging the Order of the Ombudsman, however, later, the Petitioner itself agreed before the Hon'ble Court its liability to pay the entire dues raised against it. The Petitioner is hopping from one Forum to other to find escape from its liability to pay the dues.

17. With regard to the third question which talks about whether the issue in the instant matter is just a billing dispute or there is a cardinal question of law; the Petitioner has submitted that the instant matter needs the attention and clarification of the Commission as there is ambiguity with regard to recovery of charges for the period where the supply is temporarily disconnected. To answer this question, let us import the relevant Regulation which read as:

*"4.1 The Licensee may issue a disconnection notice in writing, as per Section 56 of the Act, to the consumer who defaults on his payment of dues giving him 15 clear days to pay the dues. Thereafter, the Licensee may disconnect the consumer's installation on expiry of the said notice period. If the Consumer does not clear all the dues including arrears within 6 months of the date of disconnection, such connections shall be disconnected permanently."*

Further, the Commission in its Tariff Order dated 21.03.2018, while abolishing Minimum Consumption Guarantee Charges, had clarified that:

"...

*The Commission is of the view that Fixed/Demand Charges are now applicable for all the categories. **The basic objective of Fixed/Demand Charges as well as MCG charges is to ensure certain level of revenue to the Utility even when the consumer is not consuming any electricity.** Considering the progress towards loss reduction and improvements achieved by UPCL with respect to metering and billing issues and*

*suggestions of various stakeholders, the Commission as a step towards tariff rationalisation measure and simplifying tariff structure has decided to abolish the levy of MCG charges for entire Industrial category and for Non-Domestic consumers. ..."*

**[Emphasis added]**

From the above, it is clear that the distribution licensee is entitled to charge Fixed/ demand charges as well as MCG charges from the consumer even when the consumer is not consuming any electricity or when the connection is temporarily disconnected, hence, no ambiguity *per se* exist in the matter.

Further, on the submission of the Petitioner that 15 days clear notice is not provided to it by the Distribution Licensee before disconnecting the supply and that the bills issued to it cannot be construed as disconnection notice and that a separate notice 15 days prior to disconnection of supply should be issued, it is to clarify that, bill issued by the Distribution Licensee is a bill-cum-disconnection notice, it is for the reason that the Distribution Licensee should not engage/burden its office and machinery in issuing bills and notice separately, when a combined bill-cum-disconnection notice serves the purpose. The intention of section 56(1) of Act is to ensure intimation to the consumer 15 days prior to the date of disconnection is achieved when a bill declaring date of disconnection is communicated/issued 15 days in advance of such purported date of disconnection to the consumer. Moreover, this practice of issuing bill-cum-disconnection notice is not new and is not restricted in this State but is also conveniently in vogue in other States as well.

In times when a blue tick on WhatsApp messenger is recognized as legal mode of communication, a printed bill communicating the date of disconnection cannot be considered invalid. In fact, the Commission has recognized bill-cum-disconnection notice as a legit mode of communicating disconnection date under section 56(1), through Regulation 2.2.2(14) of the UERC (The Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020. No further clarification whatsoever is required in the matter when the law is loud and clear.

18. Petitioner's case is a classic case of trying to create something out of nothing. The Commission's view is clear as is provided in the Tariff Order above and is available on the website of the Commission for the public. There is no ambiguity, and the

matter does not warrant any clarification. The Petitioner has a liability to pay for the services it has consumed, and it must pay for it. Trying to find ways to circumvent its obligation to pay dues before this Commission is a bogus attempt. UPCL must foil such attempts of Petitioner, maneuvering to wriggle out of its obligation to pay such exorbitant dues, for saving itself from succumbing to high debts.

19. The instant case is a consumer dispute which was rightly placed before the CGRF and then before the Ombudsman. The matter is final once the Ombudsman has given its view. The Commission is not an appellate authority to delve and fiddle into the findings of the Ombudsman when the cause of action before the Forums and before the Commission is same though wrapped in different covering of legislative provisions. Moreover, the Petitioner has willfully surrendered before the Hon'ble High Court its liability to pay the dues, if the Petitioner now feels remorse, this Commission is not the right door for repentance.
20. In light of the above, the Commission is of the view that the Petitioner does not have a legit case and is only attempting ways to delay the payment of dues. Therefore, the present Petition is held not admissible and the Commission has decided to reject the same on the admissibility.

Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law) / Chairman (I/c)**