

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Sarla Industries
Manufacturer Color TV,
LCD and DVD,
F-14, SIDC Industrial Area,
Bhimtal, Nainital, Uttarakhand

Vs

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

Representation No. 39/2023

Order

Dated: 21.11.2023

Being aggrieved with Consumer Grievance Redressal Forum, Kumaon Zone, (hereinafter referred to as Forum) order dated 03.08.2023 in complaint no. 179/2023 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Nainital, Uttarakhand (hereinafter referred to as respondent), M/s Sarla Industries, Manufacturer Color TV, LCD and DVD, F-14, SIDC Industrial Area, Bhimtal Nainital, Uttarakhand (petitioner) has preferred this appeal for setting aside the additional amount of Rs. 2,76,651.75 added in the bill for February 2023 and for quashing Forum order under reference as also other reliefs as mentioned in the petition.

2. In the instant appeal dated 01.09.2023 preferred by the petitioner M/s Sarla Industries has averred as follows:
 - i) The instant appeal is preferred against Forum order dated 01.08.2023 (the correct date is 03.08.2023) passed by the Forum in their complaint no. 179/2023. The complaint was dismissed by the Forum vide aforesaid order out rightly without appreciating and considering the documents placed on records judiciously.



- ii) The referred complaint was instituted before the Forum against respondent for raising arbitrary, illegal, unjustified and unwarranted demand of Rs. 2,76,651.75 raised through electricity bill dated 09.03.2023 for the month of February 2023.
- iii) The petitioner is a consumer of the respondent UPCL with connection no. 590K000009200 for contracted load 40 KW, however the load is being shown 25 KW in the bills due to not updating the enhancement of load.
- iv) The factual matrix leading to filing of the present grievance petition have been detailed as below:
- (1) The petitioner is a commercial unit engaged in electronics business located at Bhimtal, Nainital.
 - (2) In the year 2022, a person from the department visited him and apprised that an amount of about 9 lakhs got added against him on account of a mistake by the department and requested to refund the amount. The petitioner trusting the respondent deposited a sum of Rs. 10,60,000.00 on 01.02.2022.
 - (3) On receiving impugned bill he visited respondent's office to enquire about the additional amount, which was whemently denied by the petitioner. The respondent did not provide any document or explanation for impugned bill and refused to revise the bill and sent the bill for subsequent months without removing the arbitrary assessed amount.
 - (4) Since the respondent did not do anything regarding his grievance he approached the Forum with a complaint which was registered as complaint no. 179/2023 and was dismissed by the Forum vide its order dated 03.08.2023.
 - (5) There was a total denial of the principle of natural justice by the Forum which entails so cause notice, reply, opportunity of hearing and a speaking order dealing with rival submission.
 - (6) The ensuing dispute raised by the petitioner in this appeal is based on Electricity Act, 2003, Indian Electricity Rules, 1956, CEA notification dated 17.03.2006 and UERC regulation dated 29.10.2020 and it is being brought on record that the judicial discipline entails that the powers of



the distribution licensee (UPCL) are not unbridled but are circumscribed with mutatis mutandis, are enshrined in the electricity act, rules, UERC regulations and electricity supply code respectively.

(7) The present appeal is being preferred being aggrieved with the aforesaid order dated 03.08.2023 passed by the Forum in petitioner's complaint no. 179/2023 and the same is preferred on the following amongst other grounds.

- A. Because the additional amount was added arbitrarily and secretly without any details or breakup which is against principles of natural justice and fair business practice.
- B. Because the impugned amount raised by UPCL has been issued in a most illegal, obscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner in clear violation of the settled proposition of law, resulting in manifest injustice and causing serious prejudice to the petitioner and hence the same deserves to be quashed and set aside.
- C. Because the action of UPCL is in clear violation of principles of natural justice, equity and good conscience in as much as no notice or opportunity of being heard was given to the petitioner before raising the impugned demand.
- D. Because it is well settled proposition of law that a person cannot be penalized or asked to pay undue amount by the state without the same actually having been fallen due and is not permissible in law because no tampering of the metering system was done by the petitioner as no such allegation was leveled by the respondent.
- E. Because the Forum did not consider and peruse the following written and oral submissions made by them and dismissed the complaint.
 - a) That the interest charged on account of LPS is illegal, per sec, as no bill was issued or pending against the petitioner for the period for which LPS was calculated.
 - b) That under good gesture on request of the respondent, the petitioner deposited the amount as apprised by the

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respondent, that charging interest thereupon when the amount was deposited and that too after a period of one year is not only against fundamental principles of natural justice but also against fair business practices.

- c) That the Forum rejected the petition on the grounds that charging of LPS is correct as per UERC regulation. It is pertinent to mention that LPS becomes applicable only when the bill has been raised and the consumer fails to deposit the said bill within stipulated time. That the respondent never raised the bill for the said amount mentioning that such payment was due and the cutoff date by which the payment has to be made, hence the amount never became due on the petitioner and charging of LPS is illegal and bad in eyes of law.
- d) That the amount of Rs. 9,00,017.00 was adjusted in the month of March 2019 as can be verified from bill dated 05.04.2019 for the month of March 2019. That the amount of Rs. 9,00,017.00 was again added in the month of March 2021 which can be verified from the bill dated 05.04.2021 for the month of March 2021.

That it is pertinent to mention, it is established beyond doubt that in the bills generated dated 05.04.2019 and 05.04.2021 and sent to the petitioner there is a gap of 2 years and as per section 56 (2) (Disconnection of supply in default of payment) of the Indian Electricity Act, 2003, which states "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of 2 years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

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Thus the respondent had not shown the amount of Rs. 9,00,017.00 continuously as arrear for two year and hence the recovery of the same after a period of 2 years is illegal and against law Hence the amount deposited by the petitioner on the instance of respondent, against the amount of Rs. 9,00,017.00 purported to be added by mistake against the petitioner, is to be refunded along with applicable interest.

- e) That if the liability of any payment of interest or the complete amount as mentioned aforesaid exist, it lies with the erring person of the department who is responsible for not issuing the proper bills in accordance with the UERC regulations.

F. That under the above circumstances petitioner is left with no alternative but to approach the Hon'ble Ombudsman, Electricity by way of present appeal for necessary relief and redressal. It is humble and respectful submission of the petitioner that the impugned assessment is liable to be quashed and set aside.

Prayer:

In the premises aforesaid the petitioner has made following prayers:

- i) Call for records of the case.
- ii) Quash and set aside additional amount Rs. 2,76,651.75 illegally and arbitrarily charged in the bill for the month of February 2023 dated 09.03.2023.
- iii) Quash and set aside Forum order dated 03.08.2023 passed in complaint no. 179/2023.
- iv) Order the respondent to refund an amount of Rs. 9,00,017.00 as recovery of the same is barred under section 56 (2) of Electricity Act, 2003.
- v) Issue necessary directions to UPCL not to disconnect the supply on being made regular consumption charges and not to take any other coercive action till final decision of the present petition.
- vi) Direct the respondent to accept payment of current bills and not to charge LPS till redressal of the dispute.



vii) Pass any other order or direction as deemed fit.

3. After hearing both parties and perusal of records available on file the Forum being of the view that LPS has rightly been charged by the opposite party have dismissed the complaint no. 179/2023 vide order dated 03.08.2023.
4. The respondent Executive Engineer has submitted a written statement along with affidavit under oath on 26.09.2023 wherein he has submitted point wise reply as follows:
 - i) The consumer M/s Sarla Industries connection no. 590K000009200 did not pay the bill for the month of 02/2019 amounting to Rs. 15,43,839.00 within the prescribed due date of the payment of the bill.
 - ii) A sum of Rs. 9,00,017.00 received in the revenue accounts of the division through NEFT on 26.03.2019 was credited by default in the accounts of the petitioner on 26.03.2019 as no connection no. was given and a sum of Rs. 15,43,839.00 was outstanding against the petitioner.
 - iii) The petitioner did not intimate the credited amount to the department so, the bill could not be corrected.
 - iv) Due to credit allowed in the accounts of the petitioner by a mistake by the department LPS could not be charged even after nonpayment of the bill amount.
 - v) After confirmation by the Executive Engineer, PWD Bhimtal that the said amount was deposited by PWD against their connection no. 590K000003172, the credit of the said amount was allowed in the accounts of PWD and debited in the account of the petitioner and LPS for 24 months amounting to Rs. 2,70,005.21 was added in the bill dated 07.03.2023.
 - vi) The petitioner deposited the principle amount Rs. 9,00,017.00 on 01.02.2022, but amount of LPS has yet not been paid as is applicable under tariff.
 - vii) So the petitioner may be directed to deposit LPS amounting to Rs. 2,70,005.21 payable on the principal amount on 9,00,017.00 for a period of 24 months.



5. The petitioner has submitted a rejoinder along with an affidavit dated 16.10.2023 wherein point wise reply to the written statement has been given as follows.

- i) The petitioner has submitted that the respondent has not given para wise reply to the averments made by them and have neither denied the submissions hence all the facts as submitted by the petitioner are all admitted by the respondent and are factual position with respect to the instant dispute.
- ii) Contents of para i) are not admitted and denied in totality. That under section 56 (2) of Electricity Act, 2003 recovery of any amount beyond a period of 2 years is barred.
- iii) Contents of para ii) is denied in totality. The petitioner was unaware of any such things however, on the visit of the departmental official and requesting for payment of Rs. 9,00,017.00 the same was deposited under good faith.
- iv) Contents of para iii) are not correct as presented.
- v) Contents of para iv) are denied in totality. The LPS is due as per UERC tariff order/regulations only when the amount as reflected in the bill cum notice is not submitted within the due date. That when the amount due was not shown in the monthly bill how can the petitioner be accepted that the said amount can be deposited, thus charging of LPS for a period of 2 years without issuing the bill in accordance with UERC tariff order/regulation is null and void.
- vi) Contents of para v) are not true as presented. It is not the concern of the petitioner as to how the respondent process and issue the bills. The petitioner is only concerned with the bills that are issued to him. That further the department had made the petitioner to deposit Rs. 9,00,017.00 which is against law because as per clause 56 (2) of Electricity Act, 2003 the said amount has to be reflected continuously for a period of 2 years as arrears in electricity bill, so as to get them recovered.
- vii) Contents of para vi) are not true as presented. On the request of an official of the respondent for depositing the said amount and after assurance that no other financial implications will arrive subsequently, the amount was deposited. That no LPS is due on the petitioner and amount of Rs. 9,00,017.00 is to be



refunded along with applicable interest as per section 62 (6) of Electricity Act, 2003.

- viii) Contents of para vii) are denied in totality and no LPS is due on the petitioner. Per contra the respondent is liable to return the amount which has been recovered illegally from the petitioner. It is pertinent to mention that if the said amount had been shown as due at the relevant time the petitioner would have deposited the same within due date.
- ix) It is therefore prayed that the Hon'ble Ombudsman would be pleased to take on record this rejoinder and allow the petitioner to argue the matter both on the averments made in the appeal as well as countered to the written statement through this rejoinder. The petitioner if the Court allows the same shall furnish any evidence/document/judgment to substantiate the pleadings of the petitioner for which act of kindness the petitioner shall as in duty bound ever pray.
6. Hearing in the case was held on scheduled date 30.10.2023. The petitioner Karan Rawat appeared himself and the respondent was represented by Shri Ram Singh Bisht, AE (R). Both parties argued their respective case. Arguments were concluded and 21.11.2023 was fixed for pronouncement of order.
7. After hearing arguments from both parties and perusal of records it is borne out that credit of Rs. 9,00,017.00 was made in the accounts of the petitioner by the department in the month of February 2019. The respondent categorically admitted that this credit was allowed to the accounts of the petitioner by a mistake by them. In fact a sum of Rs. 9,00,017.00 was received in the accounts of the respondent through NEFT in the month of 02/2019 and as there was no reference of the connection no. against which this amount was received in their accounts and as dues were outstanding against the petitioner at that time so the credit of Rs. 9,00,017.00 received through NEFT was allowed to his (petitioner's) accounts. However, after receiving a confirmation from the Executive Engineer, PWD a debit entry was made in the account of the petitioner and the amount was credited to the account of Executive Engineer, PWD and a sum of Rs. 2,70,005.21 was added in the bill dated 07.03.2023 of the petitioner towards LPS for 24 months. The updated amount of the LPS as appears in the bill dated 09.03.2023 for the month of February 2023 is Rs. 2,76,651.75. The petitioner has submitted that


they were not aware of any credit entry in their account in the year 2019 as also no such intimation was received from the respondent about any such credit entry. Further neither any such sum was shown as arrears in subsequent bills for a period more than 2 years and as such no such sum is chargeable from them by the department in accordance with section 56 (2) of Electricity Act, 2003 and they have claimed that a sum of Rs. 9,00,017.00 deposited by them on the verbal request of department official on 01.02.2022 be refunded to them along with interest as payable under section 62 (6) of Electricity Act, 2003. Further as the aforesaid sum was deposited by them simply on the verbal request of the departmental official immediately even having received on bill, no LPS is chargeable and therefore a sum of Rs. 2,76,651.75 demanded by the respondent be waived off as the same is not leviable being illegal and arbitrary.

A perusal of the records clearly shows that the respondents have made gross mistake in making credit entry in the accounts of the petitioner in the year 2019 against a sum of Rs. 9,00,017.00 received in their account through NEFT without ensuring that from which consumer the said amount was received in the respondent's account and they arbitrarily allowed credit of this amount to the petitioner and which was not intimated to him till the Executive Engineer, PWD confirmed that the said amount was deposited by him (PWD) in 2019 through NEFT against their connection no. 590K000003172 and it was on intimation by Executive Engineer PWD that the credit was made against the account of Executive Engineer, PWD against the aforesaid connection and was debited from the account of the petitioner. Although petitioner's claim that the said amount of Rs. 9,00,017.00 was not payable for having not been shown as arrear for more than 2 years in accordance with section 56 (2) of the Act, however they deposited the said amount on the verbal request of the departmental official on 01.02.2022 i.e. even after a period of more than 2 years and have claimed that this should be refunded to them along with interest. Since the credit entry was allowed in their account by a mistake by the department and in fact this amount was payable by the petitioner, its refund along with interest as demanded by the petitioner is not admissible and cannot be given to them and this request of the petitioner is turned down. However, as no arrears of the said amount of Rs. 9,00,017.00 were shown in all the subsequent bills continuously for more than 2 years and the said amount was deposited by the petitioner on 01.02.2022 simply on verbal request of the respondents, however the LPS charged by the respondent through the bill dated



09.03.2023 for the month of 02/2023 amounting to Rs. 2,76,651.75 is not justified and the same is therefore liable to be waived off. The respondents are accordingly directed to withdraw the demand of aforesaid LPS which is waived off through this order. The petition is partially allowed. Forum order is set aside.

Dated: 21.11.2023


(Subhash Kumar)
Ombudsman