

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Sri Samit Agarwal S/o Sri L.P. Agarwal
Ambika Vihar, Nainital Road, Haldwani, Distt. Nainital, Uttarakhand.

Vs

1. Consumer Grievance Redressal Forum, Kumaon Region, Haldwani, Nainital, Uttarakhand
2. The Executive Engineer, Electricity Distribution Division (Urban), Uttarakhand Power Corporation Ltd., Haldwani, Distt. Nainital, Uttarakhand.

Representation No. 03/2009

Order

This representation has been filed by one Sri Samit Agarwal S/o Sri L.P. Agarwal, Ambika Vihar, Nainital Road, Haldwani, Distt. Nainital, who is the owner of Prem Picture Palace, Haldwani (Petitioner) and has electric connection no. A261/001128 for 16.96 Kilo Watt. The petitioner's contention is that the electricity meter installed at his premises had not been working properly, intimation of which was given in writing to UPCL on 22.05.2007. After about 2 months, that is on 20.07.2007 a check meter was installed and the sealing certificate was prepared by the Junior Engineer. Thereafter on 07.08.2007 the old meter was removed and replaced by the check meter installed earlier. In the sealing certificate prepared for 07.08.2007 it is mentioned for the first time that the box seal and body seal were found tampered. The certificate also carries the endorsement "IDF".

2. Based on the above certificate, respondent no 2 issued a notice to the petitioner for suspected theft detected on 07.08.2007 requiring him to file his reply by 17.08.2007 failing which action was to be initiated under section 135 of the Electricity Act 2003. The petitioner filed his reply on 23.08.2007 in which it was explained that he could not file the reply within the stipulated period as he was out of station. However the respondent no 2 had already issued an assessment order on 22.08.2007 requiring the petitioner to pay a sum of Rs 4, 36,138.00. Aggrieved by this assessment order the petitioner approached the Consumer Grievance Redressal Forum, Kumaon zone, Haldwani (Forum). The Forum vide their order dated 31.01.2009 concluded that the matter is not of section 135 of the Act but of suspected theft and rejected the petitioner's complaint. Aggrieved by this order of the Forum the present representation has been filed.

3. The matter has been contested by respondent no 2 claiming that the petitioner's complaint regarding defective meter was not received and the assessment order passed under section 126 has not been challenged before the appellant authority u/s 127 of the Act. Further provisions of section 135 are not relevant in the present case. It has also been alleged that copies of letter dated 22.05.2007 and the sealing certificate dated 07.08.2007 filed by the petitioner are not genuine copies but have been interpolated with. Further the assessment order dated 22.08.2007 having been passed u/s 126 of the Act the Forum had no jurisdiction to entertain the complaint.
4. The petitioner has also filed a rejoinder thereafter both the parties were heard and they completed their arguments on 18.08.2009.
5. I have carefully gone through the record and heard the arguments presented by the two parties. Before coming to the merits of the case, the allegation about interpolations in the documents made by the respondent, which is a serious allegation, needs to be dealt with. It has been alleged by the Respondent that that petitioner's letter dated 22.05.2007 has actually not been received by the respondent, and the copy filed with the petition, has been interpolated. What interpolation has been done in the document has not been specified nor the endorsement regarding receipt of the letter been disputed or disproved. It has also been alleged that on the copy of the sealing certificate dated 07.08.2007 the words "IDF" have been added and are not there in the original document. Here again no effort has been made to substantiate the charge or produce the original document to establish the alleged manipulation. In fact apart from making these allegations, no effort has been made by the respondent to substantiate his charge or to take appropriate legal action against the Petitioner for his alleged criminal act. Accordingly they remain mere unproved allegations and deserve to be rejected.
6. The legality and validity of the action taken by the respondent needs to be tested in accordance with the provisions of the Electricity Act 2003 and the Rules and Regulations framed there under. For this it is important to go into the factors that triggered off the respondent's actions. This could be the complaint about the defective meter as claimed by the petitioner or inspection of the petitioner's premises u/s 126/135 of the Act as claimed by the respondent.
7. Forum in their order have concluded that this matter is not of theft of electricity u/s 135 but of suspected theft and therefore the petitioner does not deserve any relief. Unfortunately the impugned order only gives this conclusion and is silent on the reasoning or facts on which it is based. The notice dated 10.08.2007 given to the petitioner clearly states that if no reply is received within the stipulated period, case of theft of electricity u/s 135 of the Act will be registered. As stated above petitioner's reply to this notice did not reach the respondent within the stipulated period and the same resulted in issue of respondent's order dated 22.08.2007. Such being the case it is clear that the respondent's action was initiated u/s 135 and Forum's contrary conclusion is misconceived. Para 5.1 of The Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations, 2007 referred to hereafter as Supply Code lays down detailed procedure for booking cases of theft of electricity including assessment of amount payable by the consumer. Scrutiny of the action taken by the respondent reveals substantive deviations from the laid down procedure which

are not mere technical deviations but do indeed vitiate the action that has been taken. Some of these are listed below:

- a) Inspection of petitioner's premises carried out on 20.07.2007 and 07.08.2007 has been done by officers other than those authorised by the state government on 24.01.2007 u/s 135 (2) of the Electricity Act 2003.
 - b) Reports of inspections carried out on both these dates have not been prepared in accordance with provisions of Para 5.1.1 (4) of the Supply Code and what have been produced are the sealing certificates. Sub para (5) of this para specifically requires the inspection report to clearly indicate whether sufficient evidence substantiating theft of energy was found or not and details of such evidence should be recorded. This has not been done. The reported dated 20.07.2007 is totally silent on this aspect while that dated 07.08.2007 states tampering of seals but also has the endorsement (IDF). The respondent has challenged this endorsement as forged but has not produced any evidence to substantiate the same.
 - c) Sub paras (7) (7A) and (7B) of Para 5.1.1 require that when sufficient evidence has been found, consumers supply should be disconnected, written complaint about the offence should be filed with the local police station within 24 hours of such disconnection, and assess the electricity charges payable by the consumer. Of these actions respondent has only carried out the assessment and has chosen not to file complaint with the local police station though the same is mandatory nor was the supply disconnected.
 - d) The assessment of charges payable by the petitioner is required to be done in accordance with clause (4) of sub-regulation (5.2.3) of regulation 5.2 both for cases of theft and those initiated for suspected theft. Therefore for the purpose of assessment of consumption it is not relevant whether the action had been taken for theft or for suspected theft of electricity. For making this assessment inspection of the petitioner's premises is required to be done by the assessing officer and a report prepared in accordance with clause (4) of sub-regulation (5.2.1) of regulation 5.2 of the Supply Code. Such inspection of premises by the Assessing officer has not been done.
 - e) Clause (2) of Sub-regulation (5.2.2) of regulation 5.2 requires the licensee to pass a speaking and reasoned order which precedes the assessment order to be passed under clause (4). This has also not been done.
8. It will be seen from above that the action against the petitioner has not been taken either in accordance with sub-regulation (5.1) or sub-regulation (5.2) of regulation 5 of the Supply Code. The notice dated 10.08.2007 has been given for theft of Electricity, but thereafter the issue of theft has been dropped and only an assessment has been done. At no stage a reasoned and speaking order has been passed either in terms of sub-regulation 5.1 or sub-regulation 5.2 of the Supply Code. The inspections that have triggered action against the petitioner have been made by officers other than those authorised under law and that too without recording the prescribed inspection reports.

9. For reasons discussed above the action taken against the petitioner and the consequential charges demanded from him cannot be upheld. The entire exercise has been conducted in an arbitrary manner totally different from that prescribed under the law and is therefore vitiated. Accordingly Forum's order dated 31.01.2009 and licensee's demand order dated 22.08.2007 are hereby set aside. The licensee will however be free to initiate and take fresh action against the petitioner but only after following strictly the provisions of the Electricity Act 2003 and the Supply Code issued by the Commission.

Dated: 21.08.2009

Divakar Dev
Ombudsman