

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Electronic Service & Training Institute
Kaniya, Ramnagar,
Distt. Nainital, Uttarakhand

Vs

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

Representation No. 31/2021

Order

Dated: 28.01.2022

Being aggrieved with Consumer Grievance Redressal Forum, Kumaon Zone (hereinafter referred to as Forum) order dated 06.06.2021 (as per order the correct date is 08.06.2021) in complaint no. 121/2007 (Misc. complaint by Executive Engineer, EDD, Ramnagar) before the said Forum, M/s Electronic Service & Training Center, Kaniya, Ramnagar, Distt. Nainital has preferred this appeal against UPCL through Executive Engineer, Electricity Distribution Division, Ramnagar, Distt. Nainital (hereinafter referred to as respondent) with an application for condonation of delay (the petition was admitted after condonation of delay).

2. The petitioner has submitted that they are a society known as Electronic Service and Training Center, Kaniya, Ramnagar, Nainital registered under the Societies registration Act. They are a non commercial organization doing social objectives to train unemployed youth to make them suitable for their employment. They are a consumer of UPCL with connection no. RRO-K000003209. They had applied for a 200 KW connection for which an agreement was executed on 11.03.1988, prior to September 2003 they were being billed under rate schedule LMV-4 but the respondent without giving any information or notice has changed the rate schedule from LMV-4 to RTS-2, which shows violation of the agreement. UPCL issued a tariff order which was applicable w.e.f. 20.09.2003. According to this tariff RTS-2 consumers are liable to pay minimum charges as per RTS-2. The respondent did not

give any information regarding this new tariff as required under the agreement. After implementation of RTS-2 the respondent started raising bills on minimum consumption, with this the problem was started. They however paid bills according to actual metered consumption till September 2003. The executed agreement itself shows that there was no minimum consumption guarantee and as such they have been paying bills regularly as per their actual consumption till September 2003. A Writ petition no. 610/2006 was filed before the Hon'ble High Court, Nainital to resolve the issue. A second agreement was executed with the respondent on 03.05.2010 under RTS-2. After execution of this agreement they have no objection to pay as per RTS-2 but the respondent are claiming balance prior to the execution of this second agreement. The Hon'ble High Court ordered on 07.06.2005 that they (the petitioner) is liable to pay minimum charges as RTS-2 from June 2005 onwards subject to the final decision for the period prior to June 2005 they had to pay only the metered consumption. The Hon'ble High Court in the above petition ordered on 04.11.2006 that representation be submitted to CGRF, Haldwani and the Forum shall decide the dispute within a period of 2 months. Accordingly they approached the Forum on 07.12.2007 with a complaint registered at 121/2007 in the said Forum. The CGRF, Haldwani decided the case on 25.10.2008 and issued following order.

- i) The consumer is entitled to reduction of load from 200 KW to 100 KW
 - ii) For the period prior to June 2005 the payment of Rs. 4,42,802.00 shall be treated as full and final payment and no arrear shall be levied or shown in the next bill of electricity consumption of consumer.
 - iii) The consumer shall pay electrical charges after June 2005 as per RTS-2 which was then applicable.
3. In compliance of the aforesaid order of the Forum they paid a sum of Rs. 4,42,802.00 vide receipt dated 28.06.2005. After depositing the said amount, the respondent in disobedience of the Forum's order again started showing the balance of Rs. 5,57,051.00 in next bills regularly and also included surcharge, interest in violation of Forum's order dated 25.10.2008. The respondent approached Hon'ble High Court with filing a Civil Writ Petition no. 1933 of 2009 against Forum's judgment dated 25.10.2008 stating that they were now obeying Forum's judgment and sending

estimated huge amount bill to them. The Hon'ble High Court decided this writ petition on 28.03.2019 with the following judgment:

“Part 13 – in the aforesaid peculiar circumstances, the impugned order so far it relates to the question about the liability of the respondent to pay the meter charges for a period prior to June 2005, is concerned, since being a non-reasoned and without application of mind is being set aside, and the matter remitted back to the CGRF only for the limited question to decide issue with regard to the liability of the respondents for payment of meter charges for the period prior to 2005.”

4. The respondents (UPCL) approached the Forum with a review petition of case no. 121/2007 on dated 27.10.2020. The Forum decided the above case in favour of UPCL by ordering that the opposite party (the petitioner) is liable to pay electricity charges as per RTS-2 for a period prior to June 2005. The UPCL raised a bill amounting to Rs. 9,99,853.00 for the period October 2003 to May 2005 out of which the petitioners had already paid a sum of Rs. 4,42,802.00 in compliance to Forum's order dated 25.10.2008. The balance amount of Rs. 5,57,051.00 has now increased to Rs. 24,36,626.00 as per respondent's letter dated 03.08.2021 including imposition of LPS. The respondents have threatened disconnection if the aforesaid amount was not paid within 15 days. The UPCL is not entitled to recover the aforesaid huge amount of Rs. 24,36,626.00 as they have been regularly paying the charges from 2003 till date. The latest payment of Rs. 45,471.00 having been paid on 01.10.2021. They have adduced the receipts of payments made for the previous 3 bills. The CGRF has passed 2 contradictory orders as follows:

- i) Order dated 25.10.2008 in which 3 orders were passed as mentioned above.
- ii) Second order dated 08.06.2021 says as follows:

“जून 2005 से पूर्व दिनांक 20.09.2003 से आरटीओएस02 की विधा के अनुसार विपक्षी प्रार्थी को भुगतान करने का दायित्व रखता है ” (इस आदेश में विपक्षी मैसर्स इलक्ट्रोनिक्स सविसेज एवं ट्रेनिंग सेन्टर है और प्रार्थी यू0पी0सी0एल0 है।)

5. The petitioner has pleaded taking reference of covid-19 that during last 2 years due to covid-19 they have been facing financial problems and in view of that they have requested that the Hon'ble Court should pass an order to set aside the interest and

surcharge which is imposed by the respondent. The Forum's order dated 08.06.2021 is liable to be set aside.

6. Grounds for admission of appeal

- A The respondents after execution of agreement dated 11.03.1988 have converted rate schedule from LMV-4 to RTS-2 without any notice, which is therefore in violation of the said agreement.
- B The second agreement was executed on 03.05.2010 for implementation of new tariff RTS-2, therefore they are liable to charge on RTS-2 w.e.f. date of the second agreement.
- C The Forum in the same matter has passed 2 contradictory orders, the first order dated 25.10.2008 in their favour and the second order dated 08.06.2021 against them. These 2 contradictory orders passed by the Forum in the same matter are questionable.
- D They have been continuously depositing bills as per electric meter from 2005 till date except surcharge and interest, which is against law.
- E The Forum passed 2 contradictory orders in the same matter as such order dated 08.06.2021 is liable to be dismissed and earlier order dated 25.10.2008 may prevail.
- F The respondents are illegally imposing interest and surcharge and thus showing higher amount Rs. 24,36,626.00 as payable by them.

7. Prayer and relief claimed

- i) To set aside or dismiss Forum's order dated 08.06.2021.
- ii) A compensation amounting to Rs. 20,00,000.00 may be awarded for mental and physical harassment caused to them by respondent's action.
- iii) Rs. 1,00,000.00 may be awarded as advocate fee and convenience expenses.
- iv) Surcharge and interest included in the total balance amount of Rs. 24,36,626.00 as demanded vide respondent's letter dated 03.08.2021 may be exempted.
- v) Any other direction or order as deemed fit may kindly be passed.

8. They have substantiated their submissions with documentary evidences as per annexure no. 1 to 11 enclosed with the petition.

9. Either the petitioner or the respondents had approached Hon'ble High Court, Nainital or Forum in the matter, details of which are given below:

- i) Earlier the petitioner has filed a writ petition no. 782/2004 for granting stay. The Hon'ble High Court vide its interim order dated 12.08.2004 directed that no disconnection shall be effected. Against this stay, a stay vacation application no. 2325 of 2005 was filed by the respondents. The Hon'ble High Court decided the matter vide their order dated 07.06.2005 which reads as follows:

“Having considered the submissions made by the learned counsel for the parties and the materials placed on record, we are prima facie satisfied that the petitioner is liable to pay minimum charges as per RTS-2. Hence, the interim order is vacated. For the period from June 2005 onwards, the petitioner shall pay electricity charges as per RTS-2 subject to the final decision in the writ petition. For the period prior to June, 2005, the petitioner need pay only metered charges. The arrears for the period prior to June, 2005 shall be paid within three weeks from today, failing which the respondents will be entitled to disconnect the supply of electricity to the petitioner consumer. The question whether the petitioner is liable to pay charges as per RTS-2 for the period prior to June, 2005 will be decided in the writ petition

Post the writ petition for hearing in the week commencing on 29th August, 2005. The applications are disposed of in the above terms.”

- ii) The petitioner filed writ petition no. 610 of 2006 before the Hon'ble High Court, Nainital against UPCL against the bills raised on RTS-2 rate schedule. The Hon'ble High Court observed that the issue raised in the writ petition is grievance of the consumer therefore it is referable to Forum and accordingly the Hon'ble Court ordered that let the representation be transferred to the Forum and the said Forum shall decide the matter within a period of 2 months. Further the Forum shall decide the question relating to

reduction of the load as statement made in the counter affidavit. The petitioner shall move a fresh application before the Forum annexing therewith copy of the writ petition and counter affidavit filed here. The order passed in the writ petition shall operate till the disposal of the application by the said Forum and the writ petition was accordingly disposed off by the Hon'ble Court vide order dated 04.11.2006.

iii) The petitioner approached Forum with a complaint registered at sr. no. 121/2007 dated 07.12.2007 in the Forum. The Forum passed following order in the said complaint vide their order dated 25.10.2008:

- a) The consumer is entitled to reduction of load from 200 KW to 100 KW
- b) For the period prior to June 2005 the payment of Rs. 4,42,802.00 shall be treated as full and final payment and no arrear shall be levied or shown in the next bill of electricity consumption of consumer.
- c) The consumer shall pay electrical charges after June 2005 as per RTS-2 which was then applicable.

(The petitioner accordingly deposited Rs. 4,42,802.00 vide receipt dated 28.06.2005)

iv) The UPCL filed a writ petition no. 1933/2009 against Hon'ble High Court's order dated 07.06.2005. The writ petition was decided by the Hon'ble High Court vide their order dated 28.03.2019, which reads as follows:

"In the aforesaid peculiar circumstances, the impugned order so far it relates to the question about the liability of the respondents to pay the meter charges for a period prior to June 2005, is concerned since being a non reasoned and without application of mind is being set aside, and the matter remitted back to the CGRF only for the limited question to decide issue with regards to the liability of the respondents for payment of meter charges for the period prior to 2005."

v) Accordingly the UPCL filed a review complaint of the original complaint 121/2007 before the Forum on 27.10.2020 as per directions of the Hon'ble

High Court which was decided by the Forum vide their order dated 08.06.2021 which reads as follows:

“जून 2005 से पूर्व दिनांक 20.09.2003 से आर0टी0एस02 की विधा के अनुसार विपक्षी प्रार्थी को भुगतान करने का दायित्व रखता है ”

10. The instant petition has been preferred by the petitioner M/s Electronics Service & Training Center (Kaniya) against UPCL being aggrieved with Forum's aforesaid order dated 08.06.2021 with the prayers as made in their petition under the head “prayer and relief claimed”.
11. The respondent, Executive Engineer has submitted his written statement dated 02.12.2021, wherein he has submitted as follows:

That the petitioner has a 100 KW connection no. RROK000003209. Further an agreement was executed by the appellant on 11.03.1988 for a contracted load of 200 KW. The petitioner was being billed under LMV-4 in which bills were issued on actual consumption of electricity. The UERC issued a Tariff order (order dated 08.09.2003) effective from 20.09.2003 in which petitioner's category was changed from LMV-4 to RTS-2 in which provision of minimum consumption guarantee was introduced. The petitioner objected to pay MCG and approached Forum on 21.04.2004 against the bills of MCG. The Forum decided the case vide their order dated 02.07.2004, wherein they held that bills were being wrongly calculated for the following heads viz. minimum guarantee has wrongly been charged and capacitor charges @ 5% have also been levied on MCG while it should have been charged on the actual consumption and accordingly the Forum ordered to the respondent to raise the correct bill within a week and allow adjustment of excess bill. A petition was filed by the respondents before Hon'ble High Court Nainital in the month of August 2004 against the said order, however the petitioner paid Rs. 4,42,802.00 on 28.06.2005 towards the bill from October 2003 to May 2005 which were based on actual consumption only. In April 2006 the appellant filed supplementary affidavit before Hon'ble High Court mentioning non compliance by the department in reducing load from 200 KW to 100 KW. The Hon'ble High Court directed the appellant to represent the matter before the Forum who shall decide the same within 2 months. The petitioner accordingly filed a fresh complaint before the Forum which was decided by

the Forum vide order dated 25.10.2008 wherein they directed that the petitioner is entitled for reduction of load from 200 KW to 100 KW. Further for the period prior to June 2005. The payment of Rs. 4,42,802.00 shall be treated as full and final payment and no arrears shall be levied or shown in the next bill. The respondents preferred a review complaint before the Forum against the aforesaid order but the same was rejected by the Forum vide order dated 16.05.2009 therefore a writ petition was preferred before the Hon'ble High Court registered as no. 1933/2009. The Hon'ble High Court referred the case back to the Forum vide order dated 28.03.2019. As directed by Hon'ble High Court vide order dated 28.03.2019 filed a review application before the Forum. The Forum decided the same vide order dated 08.06.2021 wherein the petitioner was directed to pay in accordance to RTS-2 for the period 20.09.2003 to June 2005. Accordingly a notice was issued to the petitioner on 03.08.2021 for payment of outstanding dues Rs. 24,36,626.00 up to 22.07.2021.

12. The respondents have further submitted para wise reply to the petition which is available on the file.
13. The petitioner submitted a rejoinder on 31.12.2021 along with an affidavit under oath. No new facts or evidences about the case have been submitted and the rejoinder is more or less a repetition or reiteration of what they have already averred in their petition.
14. Hearing in the case was held on 18.01.2022 both parties appeared and argued their respective case. The counsel for the petitioner also submitted an application for mediation and conciliation. The arguments were concluded with mutual consent. Order was reserved for 28.01.2022.
15. Records available on file including a written argument dated 18.01.2022 of the petitioner's counsel, which has been received through email on 21.01.2022, have been perused and relevant tariffs applicable prior to 20.09.2003 and thereafter has also been perused. Arguments from both parties were heard. It has been observed that a 200 KW connection was given to the petitioner under an agreement executed between the parties on 11.03.1988. Clause 7 of the agreement provides that "*the consumer shall pay for the supply of electric energy at the rates enforced by the supplier from time to time as may be applicable to the consumer.*" While the petitioner has claimed that as

per the said agreement their tariff cannot be changed. As per the tariff prevailing at that time the rate schedule LMV-4 was applicable to the petitioner and billing accordingly done by the respondents. This rate schedule provides for fixed charges as well as electricity energy charges as per actual consumption. After coming into force the Electricity Act, 2003 w.e.f. 10.06.2003 the electricity regulatory commissions were set up and accordingly UERC was also set up. The UERC issued its first tariff vide order dated 08.09.2003 which was made effective from 20.09.2003 under which rate schedule RTS-2 is applicable to the category of consumers to which the petitioner belongs. Which provides for charging minimum consumption charges w.e.f. the date of implementation of this tariff i.e. 20.09.2003 and onwards and therefore the provisions of the old tariffs LMV-4 in which there was no provision for charging MCG ceases to be operative and billing under RTS-2 which inter-alia provides MCG w.e.f. 20.09.2003 and onwards is justified being as per provisions of the tariffs ordered by the UERC and as such the bills raised by the respondents on RTS-2 w.e.f. 20.09.2003 and onwards till date are held to be correct and justified and as such a sum of Rs. 24,36,626.00 up to 22.07.2021 demanded by the respondent vide their notice dated 03.08.2021 and any sum further accrued as a result of subsequent bills is payable by the petitioner and in the event of nonpayment, the respondent are at liberty to realize their dues by adopting such means including disconnection as available to them under law/regulations and/or liquidation of outstanding dues as arrear of land revenue under Government Undertaking Dues Recovery Act, 1958, if such situation arises, which had duly been adopted in the state of Uttarakhand. It is also clarified that since every tariff order is duly notified in the gazette, so no separate notice for implementation of any tariff order is required to be given to any consumer. It is also appropriate to mention here that the petitioner under para 24 of their petition as well as under point no. (iv) of para 29 "prayer and relief" claimed of their petition, have demanded exemption from payment of LPS and interest included in the gross amount of Rs. 24,36,626.00 as per demand dated 03.08.2021 and have not demanded any exemption from payment of the principal amount included in the aforesaid gross amount which suggests that in spite of all their pleas, they agree to pay the bills issued by the respondent after 20.09.2003 on rate schedule RTS-2 of the tariff orders issued by UERC in exercise of the powers conferred upon it under Electricity Act, 2003.

Their request for exemption from payment of LPS/interest cannot be acceded to as the same are leviable under the provisions of the relevant tariffs.

16. As regards the petitioner's request for mediation and reconciliation it is clarified that such request cannot be acceded to being outside Ombudsman's jurisdiction. The Ombudsman however has to decide a case and give its award as per sub regulation 6 (1) of UERC (Appointment and Functioning of Ombudsman) Regulations, 2004 which reads as follows:

"After considering the representations and hearing the parties to the representation, the Ombudsman shall pass a speaking order giving the award with detailed reasoning that he thinks fair in the facts and circumstances of a case. While making an award, the Ombudsman shall be guided by the evidence placed before it by the parties, the principles of applicable law and practice, directions, instructions, guidelines and regulations issued by the Commission from time to time, and such other factors which in its opinion are necessary in the interest of justice."

This order is therefore, being issued in accordance with above regulations.

17. Further it is also clarified that as per ruling of Hon'ble Supreme Court in Civil Appeals Nos. 1215-16 of 2001 in judgment dated 10.12.2007, (referred in petition no. 29/2013 preferred before Ombudsman) commitments made by the Government/Discom in the tariffs issued by them prior to the tariffs issued by UERC the first of them being the tariff order dated 08.09.2003, are not binding upon UERC. The abstract of the aforesaid ruling is reproduced below:

Hon'ble Supreme Court's opinion

"Since such benefits have not been recognized by the Act of 1999, therefore, up to the date of coming into force of the Act of 1999, all the benefits which were being given to the respondent entrepreneurs shall be protected by invoking the principle of promissory estoppel but after coming into force of the Act of 1999, which is primary legislation enacted by the State Legislature the benefits from the date the Act has come into force, cannot be made available to the respondents."

Order

“Therefore, as a result of our above discussion, we hold that the view taken by the Allahabad High Court on revoking (sic invoking) the principle of promissory estoppel is correct and the respondent units will be entitled to such benefits till the U.P. Electricity Reforms Act, 1999 came into force. Since after coming into force of the Act of 1999, no such concession has been granted, therefore, the concession shall survive till the Act of 1999 came into force. The appeals are accordingly disposed of with no order as to costs.”

18. The petition is therefore dismissed. Forum order is upheld. The stay granted on 29.10.2021 and further extended till hearing of the case stands vacated with immediate effect. As per records their contracted load has duly been reduced from 200 KW to 100 KW as per their request.

Dated: 28.01.2022

(Subhash Kumar)
Ombudsman