

Before the Hon'ble Ombudsman
U.E.R.C., 24 Vasant Vihar, Phase-II,
Dehradun-248006
Phone -(0135) 2762120

Case: Representation No. 5/2005 dated 19.4.2005

Complainant.

Dr. A.B.Garg, Chairman,
Dr. Nagendra Singh Charitable Trust,
Rani Pushpa Bhawan,
Nagendra Nagar 3 Km.Stone,
Delhi Road,
P.O. Milap Nagar,
Roorkee-247666.

Vs.

Respondents.

1. Chairman Consumers' Grievances
Redressal Forum,
Garhwal Zone,
120 Haridwar Road, Dehra Dun.
2. Uttaranchal Power Corpn.Ltd.,
through its C.M.D.
3. Executive Engineer,
Electricity Distribution Division,
Uttaranchal Power Corpn.Ltd
Roorkee,
Distt. Dehra Dun.

In the matter of:

Representation against the non-reply of the letter No. 10/D/NSCT/05 dated 22.3.2005 addressed to the learned Chairman of the Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun and subsequently against the decision of the Learned Consumers' Grievance Redressal Forum, Garhwal Zone dated 7.4.2005 dismissing the complaint and ordering payment of the full amount of the bill amounting to Rs. 78,294.32 (including surcharge).

Quorum

Sri J.C.Pant
Date of Award

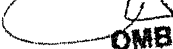
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Ombudsman.
27.7.2005

AWARD

The above representation was initially received as a complaint that the learned Forum had not replied to the Complainant's letter No. 10/D/NSCT/05 Dated 22.3.2005. Accordingly a letter was issued to the Forum to clarify if the case was subjudice. But no reply was received till 2.5.2005.

The complaint had to be thus listed as a case of non-redressal and notices were issued to both the parties and the respondents were directed to submit their point-wise reply of the complaint being sent to them. Accordingly the first hearing was fixed on 11.5.2005.


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On 11.5.2005 only the Complainant was present. No one had come up from the Licensee. The Licensee's reply to the complaint was awaited. The next date for hearing was fixed for 25.5.2005.

On 25.5.2005 the Licensee was absent and it was observed that the Complainant who was earlier instructed to pay the amount which they had admitted had not been paid by them so far. The Licensee had not sent their report so far. They were to be reminded to do so. The date 15.6.2005 was then fixed for the next hearing. Notices were issued accordingly on 26.5.2005 and the Licensee was reminded in it that their point-wise reply was awaited.

On 15.6.2005 the Complainant had already requested for grant of a date after 21.6.2005. Accordingly 29.6.2005 was fixed for arguments. The Licensee had still not sent replies. They were to be reminded. Notices were accordingly issued to the parties on 15.6.2005.

On 29.6.2005 the Complainant was present. Although the Licensee's reply had come no one was present from their side. The Complainant was told to submit his counter reply to the Licensee's reply, and to send a copy of this to the Licensee for their counter reply. The next date 13.7.2005 was fixed for these replies and arguments.

On 13.7.2005 Sri Tejpal Singh, Divisional Accountant (Revenue), Electricity Distribution Division, Roorkee was present on behalf of the Licensee. The Licensee's reply was filed. Arguments were made by the complainant and the Licensee's representative. The next date 27.7.2005 was fixed for the final award.


Facts and circumstances of the case:

1. A connection in the name of "Justice Nagendra Singh memorial, Dr. A.B.Garg, Executive Director Library S/O late Sri Sagar Mal Garg Village Mohanpur, Delhi Road, Roorkee" had been given on 18.7.1998. The above is the name entered in the Agreement Register, which has not been contested by the Complainant and is just about the same as has been shown in the bills being issued by the Licensee. The name entered in the Agreement Register has to be the same as the one under which the consumer applies for the connection, it is then sanctioned the load in that name and thereafter a number of formalities are completed in the same name before the release of the load finally which is also in the same name. So in fact the name has to be the one agreed upon by the Complainant.

2 (a) The Complainant makes no mention of any dispute from the date of connection 18.7.98 till 18.7.2000 the earliest date at which he had entered into correspondence about the so called wrong name in the bill, a period of two years.

2 (b) This letter from the Complainant is 142/R/2000 dated 18.7.2000 which states that the bill is not being received in the name of the Dr. Nagendra Singh Charitable Trust, whereas the facts are as per point No. 1.

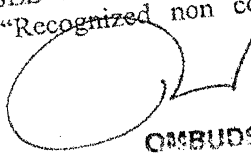
3. The fact is thus that a change of tenancy and mutation of name has been sought vide the above letter and subsequent letters but the Electricity Supply (Consumers) Regulation 1984 published in the U.P. Gazette dated 14.6.1985 prescribes a set procedure and the onus of fulfilling that falls upon the consumer, which cannot be fulfilled by writing of a letter or letters.


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4. During the period 18.7.98 till date the Complainant has not paid any amount to the licensee a period of 7 years now. A grievance of non reply to letters has been held to counter the claim of non payment of a bill to start with and this has continued to be the reason cited for not paying the bill till now. The above Regulation of 1984 also prescribes a set procedure for seeking relief on a wrong bill which has not been followed by the Complainant (Section 19(v), Page 119).
5. The levy of surcharge in case of default in payment of the bill within due date has also been challenged by the Complainant and here again the Regulation prescribes its payment in case of default of non payment (Section 19(ii), Page 119).

EXAMINATION OF THE ABOVE IN THE CASE:

1. In all fairness to the Licensee as far as has been observed they have not made any pretence to being purists in the matter of English usage.
 - 1.1 In so far as missing out the word "Library" after the word "memorial" and incongruously putting in the words "Dr. A.B.Garg, Executive Director" instead is concerned it appears that it has not struck the erstwhile U.P.S.E.B. that any transgression in the use of the English language has been made, perhaps resting assured that what it purports to say is more important than mere form of expression.
 - 1.2 What the words written in the Agreement Register purport to say is that a connection had been given to the "Dr. Nagendra Singh Memorial Library" under the aegis of Dr. A.B. Garg its Executive Director for a 3 K.W. load in village... etc.
 - 1.3 Whether this was for a "non commercial use" or it was a commercially run library can only be stated on the basis of documents taken at the time of the application and subsequently accepted at the time of Agreement. The tariffs in two cases are different so this has a material bearing on the bill.
 - 1.4 The agreement or declaration in order to be valid has to be signed by the consumer's representative. By all accounts we have no grounds to dispute it was not signed by Dr. A.B. Garg who was the Executive Director of the above Memorial Library. It was therefore open for Dr. A.B. Garg to accept or object to the above name. Therefore the Licensee has given the correct name in the Agreement/Declaration and subsequently just about the same in the bill.
 - 1.5 What could have happened while making an entry of the above Agreement in the Agreement Register is that a simple clerical error has occurred as stated in Para 1.1.
 - 2.1 If an obvious inadvertent clerical error had occurred it was open to correction and we see no ground of the Licensee refusing to do so. However the Complainant has not made out a case for a simple correction of a clerical error but a "change of tenancy and mutation of name" and that too after a period of nearly two years from the date of getting the connection.
 - 2.2 But first the issue of non payment for the above period has to be put in the correct perspective. The connection had been given to a library. It is believed that the Rate Schedule LMV-1 vides U.P.S.E.B. Notification No. 8-HC/SEB-V-1974-1204-C/97 dated 3.1.1997 was then applicable to recognized "Libraries" "Recognized non commercial institutions, Societies/trusts....."


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2.3 In any case the onus of proving that the connection was to be run for a "recognized library" "a non commercial institution" be it a library had to be done right at the very beginning when applying for the load and in any case at the time of agreement. The complainant has not made any averment of doing this. If this was not done the next rate schedule could well have been charged by the Licensee as is the case.

2.4 Coming back to the point that the Complainant had not paid the Licensee's dues from the period 18.7.98 till the Complainant's first letter of dated 18.7.2000 there has been no averment of the Licensee that it had issued the first bill timeiy. The Licensee has been often known to be lax in the matter of billing and collection of revenue. But it is just as much inexcusable for the management of this library with its relatively clear cut work load to have not bothered that it was running its electricity without paying for it. That is indeed a poor reflection on the state of management of this Library, especially of its budgeting and finances.

3.1 Regarding the matter of change of tenancy and mutation of name, the relevant Regulation cited earlier needs to be referred at page 109 – Section 9(i) and (ii). It states inter-alia "The consumer shall not, without the previous consent in writing of the supplier, assign or otherwise transfer or part with the benefits and obligations arising under the contract nor shall be the consumer in any manner part-with or create any partial or separate interest therein. However, on the demise of the consumer the mutation of the consumer's name shall be in favour of legal heir/heirs who will take the liability of the connection, if any, and shall sign a fresh agreement/declaration. Provided that no mutation shall be effected till outstanding dues, charges and demands against a service connection for which mutation is sought are paid in full." The last is the operating part of the above regulation which requires full settlement of all outstanding dues prior to the mutation.

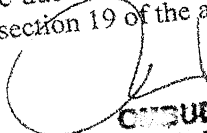
3.2 The writing of 6 to 7 letters by the Complainant for making the mutation does not mitigate their onus of completing the above formalities.

4.1 To address this matter of non payment of accumulated dues the Complainant was directed to make payment of Rs. 46,055.32 at the very first hearing on 11.5.2005 to which he had agreed to do so. He had also earlier admitted as much to the Learned Forum vide his letter thus letter dated 22.3.2005. But the Complainant made no attempt to pay the sum of Rs. 46,055.32 during the period up to the next hearing on 25.5.2005. Instead on that day he went back on his commitment and wanted a written order to do so. This could well have been considered on that date, had the Complainant made a bona fide attempt to pay this amount earlier.

4.2 Apart from clearing all outstanding dues the Complainant had also to furnish documentary evidence of the connection being for a charitable trust to the satisfaction of the Licensee. All these formalities need to be completed at the Licensee's prescribed counter by the Complainant in person and not by writing letters.

4.3 The Electricity Supply (Consumers) Regulation of 1984 also prescribes a clear cut procedure of redressal of a wrong bill which too has not been complied with by the Complainant.

5.1 If a bill is not paid on its first presentation by the due date it imposes the liability of late payment surcharge upon the consumer as per the section 19 of the above Regulation.


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5.2 As mentioned earlier from 18.7.1998 till 8.8.2000 there appears no concessional tariff named LMV-4 for charitable trust, institutions or libraries. The Rate Schedule vide circular No. 93-SC/SEB dated 25.1.1999 for this category is LMV-1 for all "recognized non commercial institutions" which should cover "charitable institutions". The above library has again to be a recognized non commercial institution to avail this tariff.

5.3 The first U.P.E.R.C. tariff was enforced w.e.f. 9.08.2000 which stipulates LMV-4 for charitable institutions and trusts (Page 60 of its tariff report). Here it needs to be said that the Licensee has no need to add an additional meaning to its wording that the charitable institution has to be government aided. This interpretation is belied by the fact that "temples, mosques, gurudwaras" have also been included without any such conditions. It should suffice that the Complainant establishes that the library or the premises where the connection has been given is in fact a charitable institution. The other important point is that this tariff covers the period from 9.8.2000 onwards that too after completion of the above formalities and not from 18.7.98.

5.4 This U.P.E.R.C. Tariff and amendments to it by the U.P.E.R.C. continued to be enforced in the Uttaranchal Power Corporation Ltd. (Licensee) till the Uttaranchal Electricity Regulatory Commission issued the tariff applicable from 8.9.2003. While working out the revised bill the application of the correct tariffs over the period of 7 years has to be scrupulously followed by the Licensee.

5.5 The matter of surcharge is now examined. The Complainant declares that the first bill was received from the Licensee on 10.8.2000. The Licensee has not made any averment that it had issued the bills regularly prior to the above date. It can thus be taken that the first bill was in fact issued around 10.8.2000. The first bill does not carry any surcharge but carries a due date of payment.

5.6 Since the bill was not paid by the due date the provisions of the Regulations enjoin upon the Licensee to impose a surcharge in the next bill, the rate being decided by the tariff in force.

5.7 With regard to the Complainant's assertion of letter No. 8 dated 15.7.2005 that he had sought change in the name on the bill even before receiving the Licensee's first bill, this issue has already been examined that a mutation requires settlement of all outstanding payments on that date as an imperative pre-condition. Regarding the second issue raised in this letter of 18.7.2000 of the applicability of the Tariff LMV-4 the matter firstly rests upon establishing whether it was a charitable institution or not which as observed earlier is a point covered by the mutation proceedings as well. Secondly the Tariff LMV-4 covers the period from 9.8.2000 onwards not earlier as stated earlier). The third aspect of the second issue is the payment of the disputed amount. The Regulation stipulates "In case the consumer disputes the correctness of any bill he shall notify the supplier in writing of the item or items disputed and the grounds of dispute within the due date and shall contact the local office of the Supplier to get the bills corrected within time. If the said bill even then is stated to be correct, the consumer shall deposit the amount of the bill within the due date and may pursue his representation thereafter."

5.8 The final binding is upon the consumer (the Complainant in this case) to deposit the amount in case the supplier is still insistent on the correctness of its bill, which has not been done in this case. This is the legal position laid down by the Regulations and is to be applied universally thus ruling out exceptions.

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5.9 In order to begin the process to settle this case the Complainant must deposit Rs. 46,055.32 as already set out in para 4.

5.10 Thereafter the Licensee must revise the bill incorporating the correct 'end use', whether it had been used for a charitable library (a non commercial institution) right from 18.7.98 onwards or it had been for a commercial institution. The Licensee is within its rights to allay its misgivings on this point but it must revise the bill immediately in accordance with the directions given in the paras 2.3, 5.2, 5.3, and 5.4.

5.11 The surcharge that is payable as per para 5.5 and 5.6 has to be calculated from the date of expiry of the due date given in the first bill.

5.12 The revised bill less the amount of Rs. 46,055.32 has to be settled by the Complainant first to begin the process of mutation of name.

5.13 There is thus no merit in the Complainant's case either with regard to making a "correction of name of the bill" through a letter or letters which as has been observed is a case of mutation of name requiring compliance of prescribed formalities in person as per the Regulation or with regard to the waiver of surcharge that is held to be due upon the Complainant due to non payment of bill within its due date as per the Regulation. As such the decision of the learned Forum in so far as payment of the surcharge that is due is concerned is upheld.


6. The case draws attention once again to what appears an incorrigible state of the Licensee's mind set towards the Reform Process. Not only did the Licensee not respond timely to the issues brought up, it also failed to recognize how the entire process of billing was being run. The process of billing does not appear to have been supervised, when it takes the consumer's belated prompting to raise the first bill. It then fails to recognize that a dispute has arisen. Although the Regulation and even the Act 2003 Section 56 demand that the aggrieved consumer deposits the disputed bill first these must not embolden the Licensee to remain unconcerned about a Complainant's case. In this case it is particularly stressed that it has to see if it obtained sufficient documentation at the time of the agreement that proves the connection to be for a charitable library and not a commercial library. If it is the former then the correct tariff has to be applied right from the start. The Licensee has to apply due diligence to this Award and ensure that the redress is given fairly and scrupulously.

AWARD

Having diligently and carefully considered all the facts and circumstances of the Complainant's representation against the decision of the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun and after giving due hearings to both parties, and having thus examined all the facts as in the preceding paragraphs, I come to the conclusion that the Complainant fails to make out a case against the Licensee with regard to giving a bill in the wrong name which is not the same as a "wrong bill" and again suffers a breach of the Regulation in not depositing the amount of the first bill within the due date and not seeking the remedies and redress after that. That said, the conduct of the Licensee in not being responsive to these proceedings and not taking due cognizance of the failures of its commercial service is also in need of correction. The detailed action plan to affect redress is set out in the earlier body of this Award but the Complainant has to initiate action by first depositing the amount of Rs.

46,055.32 and thereafter the balance amount, as per the procedure suggested in the body of this Award within two months from to-day. I therefore find no merit in the Complainant's case against the decision of the learned Forum, Garhwal Zone and the same is dismissed.

Date: 27.07.05



(J.C. Pant)

Ombudsman

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