

**THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

M/s Kashi Vishwanath Steels Pvt. Ltd.  
Narain Nagar Industrial Estate,  
Bazpur Road, Kashipur,  
Distt. Udham Singh Nagar, Uttarakhand

Vs

The Executive Engineer,  
Electricity Distribution Division  
Uttarakhand Power Corporation Ltd.  
Kashipur, Distt. Udham Singh Nagar,  
Uttarakhand

Representation No. 07/2023

**Order**

Dated: 30.05.2023

Being aggrieved with Consumer Grievance Redressal Forum, Kumaon Zone, Haldwani (hereinafter referred to as Forum) order dated 19.12.2022 in his complaint no. 184/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Kashipur, Distt. Udham Singh Nagar, Uttarakhand (hereinafter referred to as respondent) M/s Kashi Vishwanath Steels Pvt. Ltd., Narain Nagar Industrial Estate, Bazpur Road, Kashipur, Distt. Udham Singh Nagar, Uttarakhand has preferred this appeal for modification of Forum order to the extent, the Forum has refused to grant any interest upon the excess amount retained by the respondent unlawfully and the respondent be directed to make payment of the amount determined by the Forum together with interest.

2. The petitioner, M/s Kashi Vishwanath Steels Pvt. Ltd. has preferred this appeal for modification of Forum order dated 19.12.2022 to the extent, the Forum has refused to grant any interest upon the excess amount retained by the respondent unlawfully and the respondent be directed to make payment of the amount determined by the Forum together with interest. The petitioner has submitted facts of the case as follows:

- i) That the petitioner is a consumer of respondent with contracted load 21500 KVA and connection no. 3367 under the category HT and is governed by rate

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schedule RTS5 of tariff order dated 01.04.2022 for the year 2022-23 clause 7 of the said rate schedule provides that if HT industrial consumers do not receive minimum average supply of 18 hours per day during the month, the demand charges shall be levied 80% of the normal rate or demand charges as provided in clause 7 of the aforesaid rate schedule. The petitioner has stated that in the month of April 2022 they received average supply only about 17.57 hours which was less than 18 hours and consequently the respondent was obligated to bill the petitioner in accordance with clause 7 of RTS5 for the month of April 2022.

- ii) They requested the respondent executive engineer to charge demand charges as per provisions of the tariff but when no attention was given to the lawful demand, they referred the case to Managing Director, UPCL vide their letter dated 11.06.2022 with the request that excess demand charges Rs. 14,78,000.00 (The correct amount is Rs. 14,79,200.00) charged in the bill for the month of April 2022 be ordered to be refunded.
- iii) Having received no response from the respondents a complaint was filed by them before the Forum on 27.09.2022 stating that during the month of April 2022 they received supply less than 18 hours per day as power cut for about 192 hours and 40 minutes was imposed during the said month, respondents charged excess demand charges Rs. 14,78,000.00 in the bill for the month of April 2022 and they also charged late payment surcharge 1.25% on delayed payment for every 15 days delay in payment after due date, hence they requested to allow the same rate of interest @ 1.25% for delay of every 15 days till the date the payment of excess amount for fixed demand charges taken in the bill of April 2022 is refunded.
- iv) In his written statement dated 02.11.2022 submitted before the Forum the respondent accepted the applicability of the aforesaid clause 7 of RTS5 and also that in the month of April 2022 the minimum average supply was less than 18 hours per day and was only 17.55 hours and he requested the Forum to decide the matter on merits. Further vide his letter dated 09.11.2022 the respondent informed that Hon'ble UERC has not given any directions of the adjustment of the late payment surcharge.

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At Ahmednagar, Phase-I,

*[Signature]*



- v) The petitioner vide their letter dated 09.11.2022 requested the Forum for grant of following reliefs:
- a) Direct for the payment of Rs. 14,79,200.00 which is 20% of the demand charges of Rs. 73,96,000.00 paid for the bill of April 2022.
  - b) Direct for the payment of the interest @ 2.5% per month as late payment charges on Rs. 14,79,200.00 till the date of payment.
- vi) The Forum vide its order dated 19.12.2022 accepted the complaint and accordingly directed for revision of the bill and adjusting the excess amount in the bill for the next month, however did not find any justification for granting interest for delayed payment as requested by the petitioner.
- vii) Being aggrieved with Forum's order to the extent of refusal of the interest for delay in the payment of the excess amount charged and has filed the present appeal on the following grounds with the request to grant liberty to raise, plead and argue any other grounds which may be legally available or which the petitioner becomes aware in due course of time on availability of the requisite information.

Ground of challenge:

- a) Forum's order is out rightly erroneous and in the face of it is incorrect. The order is most cryptic and without application of mind on the aspect of granting interest on the amount unlawfully retained. The Forum has failed to provide justice to the petitioner and acted biased in favour of respondent.
- b) The Forum has failed to see that as per law the petitioner is entitled for interest on the amount unlawfully retained or charged in excess of what has been permitted by the Hon'ble Commission.
- c) Forum acted against the regulation and also against justice. The grievance of the petitioner was against unjust and wrongful basis for raising illegal demand charges. The forum should have compensated the petitioner for illegally retained amount.
- d) The Frum has failed to excersice its jurisdiction and grant complete justice to the petitioner, thereby refusing to compensate the petitioner for

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the loss caused due to excess payment demanded and paid to the respondent.

- e) The petitioner is aggrieved by Forum's order so the said order is not legally sustainable being against rules and regulations of Hon'ble UERC and Electricity Act, 2003.
- f) Act of the respondent is arbitrary and unlawful and without any reason and basis and is just based on conjuncture surmises and presumption as also against Electricity Act, 2003 and UERC Supply Code regulation.
- g) There was no justification in respondent's reply by mentioning that the UERC has not given any directions regarding adjustment of the late payment charges.
- h) The Forum as well as respondent have accepted the contentions of the petitioner and yet have failed to provide effective and legal relief to them.
- i) In addition to above the petitioner has mentioned a number of further grounds of challenge as mentioned in the appeal from sr. no. 20 to 38 under the heading grounds of challenge and for the sake of brevity these are not being reproduced here and such further grounds may be perused in the appeal.

viii) Prayer: In view of the premises above the petitioner has made the following prayers:

- a) Forum's order dated 19.12.2022 in complaint no. 184/2022 may kindly be modified and the respondent be directed to pay the petitioner interest @ 2.5% per month on the excess amount of Rs. 14,79,200.00 charged in excess in the form of fixed demand charges in the bill for the month of April 2022 till the actual payment is made.
- b) Delay in presenting the appeal be condoned.
- c) Any other or further relief as deemed appropriate be kindly granted.
- d) Full cost of the complaint and compensation for the harassment and monetary loss be also allowed.

3. After perusal of records the Forum found that in view of supply of less than 18 hours per day given to the complainant in the month of April 2022 charging the demand charges @ 80% of the normal charges is justified legally. As there is no provision for



payment of late payment surcharge @ 2.5% on the excess demand charges charged from the complainant, it will not be possible to consider the same as no such provision exists in the regulations. Although if any LPS has been imposed on the excess demand charges of more than 80% adjustment of such LPS shall be justified. Having observed as above the Forum was of the view that the complaint is liable to be allowed and the Forum accordingly allowed the complaint and directed the opposite party, the excess demand charges more than 80% of the normal charges levied in the bill for the month of April 2022 may be adjusted in the next bill and if any LPS has also been charged on such excess demand charges, the same may also be adjusted and the revised bill may accordingly be issued for the month of April 2022.

4. The respondent, Executive Engineer has submitted his written statement along with affidavit vide his letter no 1254 dated 14.03.2023 wherein he has submitted as follows:

- i) No comments on point no. i) to viii) of the appeal as these points are based on records.
- ii) No comments on points no. ix) & x) of the appeal.
- iii) No comments on point no. xi) of the appeal as contents under this point are based on records.

**Additional submissions**

- i) The original complaint was filed by the petitioner before the Forum on 27.09.2022 for revision/correction of the bill for the month of April 2022 as demand charges in the said bill were not levied @ 80% of the normal rate of demand charges as per provisions of tariff order issued by Hon'ble Commission.
- ii) The Executive Engineer, Test division Kashipur was requested to make available load survey and MRI of the petitioner.
- iii) The Executive Engineer, Test division supplied load survey reports power events and MRI report to the respondent vide his letter dated 29.10.2022.

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- iv) After receipt of load survey and MRI of the meter of the petitioner, the details of average supply given to him was submitted to the Forum vide his letter dated 02.11.2022.
  - v) The Forum decided the complaint no. 184/2022 of the complainant vide its order dated 19.12.2022 in favour of the complainant and directed the opposite party to issue a revised bill for the month of April 2022 in accordance with its orders.
  - vi) In compliance to Forum order dated 19.12.2022 orders for adjusting Rs. 14,79,200.00, the excess demand charges levied in the bill for the month of April 2022 were issued vide OM dated 28.12.2022 and the compliance was reported to the Forum vide his letter no. 428 dated 24.01.2023.
  - vii) The respondent has submitted that a sum of Rs. 14,79,200.00 charged in excess for the month of April 2022 in which month average per day supply for less than 18 hours per day (supply given 17.55 hours per day) has already been adjusted in the bills of the petitioner in accordance with clause 7 of UERC tariff order dated 26.04.2021 which reads as "Demand charges for HT Industry. If the minimum average supply to any HT industry consumers is less than 18 hours per day during the month, the Demand Charges applicable for that HT Industry Consumer shall be 80% of the approved Demand Charges for HT Industry."
  - viii) The respondent has further submitted that no LPS was imposed on the adjusted amount as mentioned above and neither any provision for payment of interest on such adjusted amount exists.
5. The petitioner has submitted a rejoinder dated 06.04.2023 along with affidavit under oath wherein he has submitted as follows:
- i) Para i) of written statement (replies to para 1 to 8 of the appeal) which are admitted hence needs no reply. Non denial by the respondent is deemed admission of the correctness of the facts stated therein para 1 to 8 of the appeal are correct and the same are being reiterated.
  - ii) Para ii) of ws (replies to para 9 & 10 of the appeal) which are admitted hence needs no reply. Non denial by the respondent is a deemed admission of the

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correctness of the facts stated therein para 9 and 10 of the appeal are correct and the same are being reiterated.

- iii) Para iii) of ws (replies to para 11 of the appeal) which is also not denied hence needs no reply. Non denial by the respondent is deemed admission of the correctness of the facts stated therein para 11 of the appeal are correct and the same are being reiterated.

Additional submissions:

- iv) Para iv) of ws is a matter of record pertaining to the facts of filing the complaint, hence do not require any reply.
- v) Para v)&vi) of the ws is a matter of record pertaining to the facts of rightful demand of the petitioner for the load survey and MRI record which should even otherwise have been supplied by the respondent to the petitioner, hence do not require any reply. It is pertinent to mention here that the case of the petitioner before the Forum stood proved and the contentions of the petitioner for having charged the petitioner in excess and that in the month of April 2022 the powercut was for about 192 hours and 40 minutes which was less than the minimum guaranteed power supply as per clause 7 of RTS5 of applicable tariff order and petitioner is entitled for the refund of extra charges Rs. 14,78,000.00 in the next monthly bill has been upheld by the Forum.
- vi) Para vii) of the ws pertains to record and hence needs no reply.
- vii) Para viii) of ws pertains to filing of complaint no. 184/2022 before the Forum and acceptance of complaint by the Forum vide its order dated 19.12.2022 that all these contentions pertain to record and are not controverted, hence needs no reply.
- viii) Contents of para ix) of ws so far pertains to record needs no reply, however it is submitted that the contentions of adjusting the amount Rs. 14,79,200.00 is not the issue before this Hon'ble Court. The respondent was legally bound to give the adjustment of the amount illegal detained with them together with the interest as respondent have utilized the said amount and earned interest on the same, to which they were not entitled. Further the grant of interest is in the form of compensation to the petitioner similar to the charging of the late

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payment surcharge charged by the respondent, while realizing the amount paid with delay. Contentions of petitioner in appeal with regard to the payment of interest of the said amount are correct and the same are being reiterated.

- ix) Contents of para 10 of ws so far pertains to record needs no reply. Rest of the contentions as represented are wrong and denied. The respondent could not have issued the bills without doing the said determination, the respondent by charging 100% demand charges instead of 80% have committed an illegality, which was further perpetuated by raising the incorrect demand on this basis and accepting the payment in excess to which they were not entitled. The respondent have clearly violated the provisions of tariff and are legally not entitled to charge anything over and above the tariff so determined.
  - x) Para 11 of written statement as stated is wrong and denied. The provisions of Electricity Act, 2003 itself categorically provides that the interest shall be payable on the amount charged in excess of the tariff determined by the Commission.
  - xi) In light of the facts and grounds mentioned in the appeal and in the present replication, the appeal is liable to be allowed and the written statement of the respondent is liable to be rejected. The petitioner is also entitled to the cost of the appeal as the respondent has constrained the petitioner to file the same due to their illegal acts against the statutory provisions.
6. Hearing in the case was fixed for 03.05.2023 which was subsequently postponed to 17.05.2023 on petitioner's request. The hearing was accordingly carried out on 17.05.2023. Both parties appeared. Petitioner was represented by authorized representative and AE (R) and DA (R) appeared on behalf of the respondent. Both parties submitted their arguments which were concluded and 30.05.2023 was fixed for pronouncement of order.
7. All records available on file have been perused. Arguments from both parties were heard. Relevant provisions in Electricity Act, 2003 and UERC regulations, 2020 as well as provision in rate schedule RTS 5 under clause 7 of the appropriate tariff as applicable in the instant case has also been gone through.

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8. It is noted that the petitioner is a consumer of respondent company with contracted load 21500 KVA getting supply at 132 KV through an independent feeder emanating from grid substation Kashipur.
9. Admittedly he was given per day average supply less than 18 hours (17.55 hours) in the month of April 2022 as per clause 7 of rate schedule RTS 5 applicable to LT and HT industries, if minimum average supply to any HT industry consumer is less than 18 hours per day during the month, the demand charges applicable for such HT industry consumer shall be 80% of the approved demand charges for HT industry. In view of this provision in the tariff the demand charges in the bill for the month of October 2022 should have been charged 80% of the approved demand charges but a perusal of the bill for the month of April 2022 shows that demand charges amounting to Rs. 73,96,000.00 has been charged at 100% rate i.e. on billable demand as per tariff order. While in accordance with clause 7 the demand in this bill should have been charged at 80% of the approved normal demand charges i.e. 59,16,800.00 so Rs. 14,79,200.00 (Rs. 73,96,000.00 – Rs. 59,16,800.00) has been charged in excess than the admissible demand charges.
10. The petitioner filed complaint before the Forum demanding refund of the said excess amount paid towards the demand charges along with interest for the period they deposited the amount of the bill and till the date excess amount was refunded to them as also they demanded refund of LPS charged on such excess amount towards demand charges, for the month of April 2022 as average per day supply given to them was less than 18 hours per day during the month.
11. The Forum vide their order dated 19.12.2022 in petitioner's complaint no. 184/2022 directed the respondents to refund the excess amount of Rs. 14,79,200.00 deposited by the petitioner along with refund of LPS if any charged on such amount, however the Forum did not pass any order for payment of interest on such excess amount realized from the petitioner.
12. In the instant appeal no. 07/2023 before the Ombudsman the petitioner has prayed for payment of interest on the aforesaid excess amount realized from them, refund of LPS charged on such excess amount deposited by them as also to modify the Forum order.
13. Section 62 (6) of Electricity Act, 2023 which reads as "If any licensee or a generating company recovers a price or charge exceeding the tariff determined



under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee." The bank rate is defined under sub regulation 1.2.(1) (k) of UERC regulations, 2020 which reads as " "Bank Rate" means the prevailing rate notified by the Reserve Bank of India as on 1<sup>st</sup> April of the year"

In view of above statutory provisions the petitioner is entitled to get interest on the excess amount of Rs. 14,79,200.00 realized from him by the respondent towards demand charges. The respondents are therefore directed to pay interest to the petitioner on the aforesaid amount at the prescribed bank rate w.e.f. from the date the petitioner paid the aforesaid amount to the respondent and up to the date on which the said amount was refunded to him. As admitted by the petitioner and as also confirmed by the respondent under para 9 and 10 of his written statement dated 14.03.2023 and as also reflected in consumer's ledger that a sum of Rs. 14,79,200.00 was adjusted on 06.01.2023 in the accounts of the petitioner. Further as confirmed by the respondent in his written statement no LPS was imposed on the aforesaid excess amount paid by the petitioner so no action for adjustment of any LPS as directed by Forum is required to be taken by the respondent. The Forum order dated 19.12.2022 stands modified as per this order. The petition is allowed. No other relief as prayed for by the petitioner is admissible except what has been allowed under Forum order and this order.

Dated: 30.05.2023

  
(Subhash Kumar)  
Ombudsman

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