

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Galwalia Ispat Udhyog Pvt. Ltd.
Narayan Nagar Industrial Area,
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. 26/2021

Order

Dated: 30.11.2021

Being aggrieved with Consumer Grievance Redressal Forum, Kumaon Zone (hereinafter referred to as Forum) order dated 07.08.2021 in their Misc. complaint no. 34/2020, before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division, Kashipur (hereinafter referred to as respondent), M/s Galwalia Ispat Udhyog Pvt. Ltd. Narayan Nagar, Industrial Estate, Kashipur, Uttarakhand (the petitioner) has preferred this petition for ordering to adjust the amount of less payment of Rs. 3,75,434.88 which has erroneously been overlooked by Forum in its order dated 07.08.2021 in aforesaid complaint.

2. The petitioner has submitted that they are a consumer of UPCL under section 2 (15) of the Electricity Act, 2003 having connection no. 3357 at their unit situated at Narayan Nagar Industrial Area, Kashipur, Distt. Udham Singh Nagar.

The petitioner has submitted that they had filed a complaint no. 154/2019 dated 13.11.2019 before the said Forum, which was decided by the Forum against UPCL vide order dated 14.08.2020 wherein the Forum ordered for adjustment of Rs. 1,28,48,312.00 in their favour. The UPCL neither complied with the said order, nor submitted compliance report in time hence complaint no. 34/2020 was preferred before the Forum. Proceedings were again taken up wherein UPCL submitted fresh

data whereas the judgment against compliant no. 154/2019 was passed by the Forum considering all the valid facts on record. During the course of proceedings the UPCL gave less adjustments of Rs. 3,75,434.88 against Forum's order in earlier complaint no. 154/2019. Besides submission of reasons for allowing the said less adjustments the UPCL also submitted calculations saying that all adjustments have been allowed, which is untrue. The Forum overlooking the fact of the said less adjustments given by UPCL, ordered in complaint no. 34/2020 on 07.08.2021 that since all the adjustments have already been given by UPCL the case comes to an end and is disposed off, whereas in fact a less adjustment of Rs. 3,75,434.88 was given by UPCL against Forum's order in complaint no. 154/2019 and therefore this less adjustment needs to be adjusted in their favour. As such the instant appeal is preferred before the Hon'ble Ombudsman against the less adjustments of Rs. 3,75,434.88 made by UPCL against order in complaint no. 154/2019 which was overlooked by the said Forum while deciding complaint no. 34/2020.

3. The petitioner has submitted further that complaint was filed on 13.11.2019 wherein various errors committed by UPCL in the bills raised by them were pointed out. The Forum accepted the complaint no. 154/2019 and after conducting proceedings passed orders for giving adjustments to them amounting to Rs. 1,28,48,312.00 vide order dated 14.08.2020. Details of the adjustments granted by Forum has also been given in the petition which are as follows:

S. No.	Particulars	Amount passed in Forum order
1	Late payment surcharge 11/2017 to 05/2020	1,01,74,776.88
2	Difference in TOD	21,05,269.00
3	Interest on security	2,71,495.00
4	Interest on Security Rs. 1,32,588.00	29,832.50
5	Difference in posting of May 2019 bill	2,66,938.02
	Total	1,28,48,311.40

Against Forum orders for giving adjustment of Rs. 1,28,48,311.40 the UPCL however allowed adjustments of Rs. 1,22,97,407.00 vide their order no. 2913 dated 13.10.2020 for Rs. 60,78,784.00 and for Rs. 62,18,623.00 vide office order 695 dated 06.02.2021 and thus less adjustment of Rs. 3,75,434.88 was given towards LPS from 11/2017 to 05/2020 and 1,75,469.00 towards difference in TOD. While the less adjustment of Rs.

1,75,469.00 was dropped agreeing to the calculations of UPCL and deposited the said amount on 25.11.2020 but disagreed with the less adjustment of Rs. 3,75,434.88 (head wise details of the adjustment granted by Forum, adjustments given by UPCL and less adjustments given by UPCL have also been given in the petition). The petitioner has submitted that the adjustment of Rs. 3,75,434.88 has not been given by the UPCL without any reason and after repetitive submissions finally presented before Forum, the adjustment has not been given for the baseless reasons and based on wrong calculations. The petitioner has submitted that the Forum has overlooked the fact that there was still less adjustment by UPCL of Rs. 3,75,434.88 and decided the complaint 34/2020 ordering that all the adjustments has since been given by UPCL as such the case comes to an end and is disposed off.

In view of their above submissions the petitioner has prayed that UPCL may be directed to give adjustment of the balance amount of Rs. 3,75,434.88 which has erroneously been overlooked by Forum in its order in complaint no. 34/2020. The petitioner has substantiated their submissions with documents such as Forum order dated 14.08.2020 in complaint no. 154/2019, order dated 07.08.2021 in Misc. complaint no. 34/2020, UPCL letter no. 2974 dated 08.07.2021 and their letter no. 84 dated 17.07.2021.

4. **Forum order dated 17.08.2021 in miscellaneous (प्रकिणवाद) complaint no. 34/2020**

The Forum after perusal of all records submitted to them by both parties, hearing arguments from them and after detail deliberations about the case, have disposed off the complaint, saying that as requested for in their original complaint and all the adjustments as ordered in their order in the earlier (original) complaint have since been given to the complainant by the opposite party.

5. **Forum order dated 14.08.2020 in complaint no. 154/2019**

The Forum after perusal of all records as submitted by the complainant and the opposite party as also after perusal of relevant regulations under Electricity Supply Code Regulation 2007 as well as provisions of Tariff and hearing both parties and after a detailed deliberation of the facts of the case arrived at a conclusion that a sum of Rs. 1,28,48,312.00 is adjustable to the account of the complainant under the heads such as LPS, TOD, additional security and interest on additional security for the

period from 11/2017 to 05/2020 and accordingly ordered that a sum of Rs. 1,28,48,312.00 be adjusted in favour of complainant however, they added that the aforesaid amount or any amount worked out by the department as adjustable under the above head wise discrepancies, whichever is undisputable be adjusted.

6. The respondent Executive Engineer submitted his WS vide letter 4592 dated 29.09.2021 wherein he has averred that submissions under para 4 of petition has been wrongly made. The Forum in their order dated 14.08.2020 in complaint no 154/2021 has ordered that *(परिवाद स्वीकार किया जाता है। विपक्षी/विभाग को निर्देशित किया जाता है कि परिवादी द्वारा विवादित अवधि हेतु, उनके बिलों में उजागर विषमताओं, मसलन-विलंब शुल्क अधिभार (LPS) की धनराशि की विसंगति, विभागीय अभिलेखों एवं परिवादी के खातों के सापेक्ष प्रविष्टियों की त्रुटियों के अंतर की धनराशि, प्रतिभूति के विरुद्ध अर्जित ब्याज की धनराशि एवं TOD के विरुद्ध त्रुटियों के कारण अंतर की धनराशि आदि की माह मई-2020 तक के बिलों में उजागर कुल धनराशि रूपया 1,28,48,312.00 (एक करोड़ अठ्ठाईस लाख अड़तालिस हजार तीन सौ) मात्र अथवा विभागीय स्तर पर उक्त विषमताओं के विरुद्ध आंकलित धनराशि जो भी अविवादित हो, का समायोजन परिवादी को उपलब्ध कराना सुनिश्चित करें। विपक्षी उपरोक्त कार्यावाही सुनिश्चित कर भविष्य के बिलों में प्रविष्टि भी सुनिश्चित करें* पारित किया गया है।)

The respondent has submitted that as per records of the department and the calculations arrived at, on the basis of such records and in compliance to Forum's order dated 14.08.2020 in complaint no. 154/2019, all adjustments except Rs. 1,75,469.00 and surcharge amounting to 3,75,434.88 has been adjusted in the accounts of the petitioner. While the petitioner has agreed to deposit Rs. 1,75,469.00, they have filed misc. complaint no. 34/2020 for adjustment of balance amount of surcharge amounting to Rs. 3,75,434.88, the said amount has correctly been imposed as surcharge, in accordance with UERC Tariff Order, so he has requested that the surcharge amounting Rs. 3,75,434.88 has rightly been charged as per tariff order. He has corroborated his submissions with documentary evidences enclosed with the WS which are available on file.

7. The petitioner has submitted a rejoinder vide letter no. GIUPL/2021-22/199 dated 11/10/2021, against para no. 3 and 4 the petitioner has mentioned that UPCL is twisting the facts, the contentions raised are false and misleading Forum has passed order against complaint no 154/2019 considering all the valid facts and relevant information submitted by the parties, it took almost one year to decide the complaint. They have ordered to give adjustment of Rs. 1,28,48,312.00 in the bills and asked

compliance by 15.09.2020. The UPCL did not comply with the orders within the stipulated time therefore, due to non receipt of compliance within the stipulated period misc. complaint no 34/2020 was registered with Forum and the UPCL was expected to file the reply. So it is very well established that UPCL did not comply with the orders of Forum and the same needs to be considered. Since it is established maxim, “Justice delayed is justice denied” complaint 154/2019 was filed on 13/11.2019, judgment was passed by Forum on 14.08.2020 again case was filed for noncompliance by UPCL vide misc. complaint no. 34/2020 which was decided by Forum on 07.08.2021. UPCL did not comply with Forum’s order and at their own passed partial adjustments of Rs. 60,78,784.00 vide office order no. 2913 dated 13.10.2020, while as per Forum order in complaint no. 154/2019, UPCL had to give adjustment of Rs. 1,28,48,312.00.

Against para no 5 and 6 the petitioner has submitted that contention of para 5 of written statement itself establishes that UPCL did not comply with orders in complaint no. 154/2019 as passed by the Forum while Forum passed orders after considering all the valid facts and relevant information submitted by the parties. Misc. complaint no 34/2020 was filed to make UPCL to comply Forum’s order in complaint no. 154/2019 and not to represent the information afresh which was already present on records. The Forum in complaint 154/2019 ordered adjustment of Rs. 1,28,48,312.00 while UPCL, at their own, allowed partial adjustment of Rs. 60,75,784.00 vide their office order no. 2913 dated 13.10.2020. Further adjustment of Rs. 62,18,623.00 was given vide their office order no. 695 dated 06.02.2021 thereby giving a total adjustment of Rs. 1,22,97,407.00. The petitioner has given head wise amount of adjustment ordered by Forum, adjustment given by UPCL and less adjustment as per table given below:-

S. No.	Particulars	Amount passed in CGRF order (in Rs.)	Adjustment given by UPCL (in Rs.)	Less adjustment given by UPCL (in Rs.)
1	Late Payment Surcharge 11/2018 to 05/2020	1,01,74,269.83	97,99,342.00	3,75,434.88
2	Difference in TOD	21,05,269.00	19,29,800.00	1,75,469.00
3	Interest on Security	2,71,495.00	2,71,495.00	-
4	Interest on Security Rs. 1,32,588/-	29,832.00	29,832.00	-

5	Difference in posting of May 2019 Bill	2,66,938.00	2,66,938.00	-
	Total	1,28,48,311.40	1,22,97,407.00	

Agreeing to the calculations of the UPCL less adjustment of Rs. 1,75,469.00 was dropped by them and deposited the amount on 25.11.2020 which is mutually agreed, but less assessment of Rs. 3,75,434.88 is disagreed and refusal by UPCL for its adjustment without any reason is baseless and is based on wrong calculations

In reply to para 8, 12 and 13 the petitioner has submitted that contentions of the respondents are false and misleading the calculations submitted by them are not supported by Tariff orders, they are wrong and baseless as the same amount of LPS has been repeatedly imposed on unpaid amount of the bill for the month of March 2020. Calculations of LPS on the basis of relevant year tariff was presented by them before Forum vide letter dated 17.07.2021 which was overlooked and without giving them opportunity to clarify the same through physical appearance before the Forum, order was passed by the Forum concluding that UPCL has given the required adjustment, which is untrue. Calculations of payable LPS amounts for the month of March 2020 April, 2020 and May 2020 has also been given in the rejoinder and they have worked out the amount 3,75,999.14 as the adjustment amount to be given to them. In view of the premises aforesaid the petitioner has requested that adjustment of less payment of Rs. 3,75,434.88 be ordered to be given to them by UPCL, which has erroneously overlooked by Forum in its order in misc. complaint no 34/2020 considering the valid reasons given in the appeal. They have enclosed copy of UPCL letter no. 2974 dated 08.07.2021 their letter no. 84 dated 17.07.2021 and their affidavit. Regarding reply on para 1, 2, 3, 7, 9, and 11, the Petitioner has stated that being a matter of record, no reply is needed on these paras.

8. Hearing in the case was held on 22.11.2021 as scheduled. Representatives of both the parties appeared and argued their respective cases. The arguments were concluded with mutual consent and order was reserved for 30.11.2021.
9. All documents and evidences submitted by both parties as are available on file, have been carefully perused. Arguments from both parties were heard. It is borne out that the petitioner had filed a complaint before the Forum registered as complaint no. 154/2019 wherein the petitioners have demanded adjustment of the excess amount on

account of disputed amount of LPS, TOD charges, unaccounted for additional securities and interest on additional securities for the period 11/2017 to 10/2019. The Forum deliberated the case in their order dated 14.08.2020 passed in complaint no. 154/2019 in length and the Forum arrived at a conclusion that a sum of Rs. 1,28,48,312.00 is to be adjusted in favour of the complainant on account of the aforesaid heads for the period 11/2017 to 05/2020 however directed the opposite party (the UPCL) to allow adjustment of 1,28,48,312.00 as per records submitted to them or such other sum to be worked out as adjustable on the basis of departmental records and asked for compliance of this order by 15.09.2020 by UPCL. No compliance was however submitted to the Forum by UPCL. The petitioner again submitted a misc. complaint (प्रकिण वाद) no. 34/2020 requesting that orders for adjustment of the balance amount of Rs. 3,75,434.88 be passed as for which UPCL did not give the desired adjustment. The Forum after perusal of the records and hearing parties have disposed off the complaint vide their order dated 07.08.2021 saying that the opposite party (UPCL) had duly complied with the Forum's orders passed in the original complaint by allowing desired adjustment. Being aggrieved with this order and alleging that the Forum has overlooked their own orders dated 14.08.2020 passed in their original complaint no. 154/2019 by not ordering adjustment of the balance amount of Rs. 3,75,434.88 and through this petition have requested that the respondent UPCL be directed to give adjustment of this balance amount of Rs. 3,75,434.88 to them.

10. It is pertinent to mention here that sub regulations 3.3(5) of UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for redressal of grievances of the consumer) Regulation 2019 provides for as follows:-

The Forum, after considering all submissions written or oral made before it by complainant or Distribution Licensee, shall pass speaking orders giving the reasons in support of its decisions. Every order passed by the Forum shall be signed by all the members deciding the case.

11. By virtue of the aforesaid regulation the Forum is required to pass a speaking order. A speaking order means that it should be conclusive and unambiguous, based on the facts brought before the Forum and on the basis of conclusion arrived at by it on the basis of documentary evidences and records placed before the Forum. The Forum in complaint no. 154/2019 passed its order on 14.08.2020 directing the respondent

UPCL to allow adjustment of Rs. 1,28,48,312.00 for a period up to May 2020 on account of the disputed amounts under the heads LPS, TOD, additional security and interest on additional security or of such amount as may be worked out by the respondent based on departmental records. This part of the order that “*Or such amount as may be worked out on the basis of departmental records*” has made this order as inconclusive and ambiguous. Further it means that a latitude has been given to the respondents to work out the amount of adjustment at their own beyond the amount decided by the Forum as a sum of Rs. 1,28,48,312.00 after perusal of the records and hearing parties and as such this order has become not only ambiguous and inconclusive but it appears as if authority for deciding the amount of adjustment has been given to the respondents, which is not only unjustified but is also against the spirit of the regulations and therefore, cannot be appreciated. In view of the aforesaid reasons this part of the order that has made it as ambiguous and inconclusive order is taken as deleted from the order and a sum of Rs. 1,28,48,312.00 as has been concluded as adjustable amount by the Forum is declared as the final amount to be adjusted in the account of the petitioner. Such being the case the claim of the petitioner for balance amount of 3,75,434.88 for adjustment in the instant appeal, which was ignored by the Forum while passing order dated 07.08.2021 in complaint no. 34/2020 before it, is found justified and is therefore hereby allowed. The respondents are directed to give adjustment of this amount of Rs. 3,75,434.88 in the first next bill to be issued after the date of this order. Compliance of this order be reported within 30 days from the date of this order. Forum’s order dated 14.08.2020 in complaint no. 154/2019 stands modified as aforesaid. Forum’s order dated 07.08.2021 passed in misc. complaint no. 34/2020 is set aside. The petition is allowed.

Dated: 30.11.2021

(Subhash Kumar)
Ombudsman