
(2018) 09 UK CK 0086

In the Uttarakhand High Court

Case No : Writ Petition No.201 of 2012 (M/S)

Uttarakhand Power Corporation Ltd.and another	APPELLANT
Vs	
M/s BTC Industries Pvt. Ltd	RESPONDENT

Date of Decision : 25-09-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 09 UK CK 0086

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Naresh Pant, Piyush Garg

Final Decision : Dismissed

Judgement

Alok Singh, J.

1) By means of present writ petition, petitioners seek following prayer, among others:

â??Issue a writ, order or direction in the nature of certiorari to call for the record of the case and set aside the impugned order dated 23.12.2011

passed by Electricity Ombudsman Uttarakhand in Representation No.03/2011, M/s BTC Industries Pvt. Ltd. vs. Uttarakhand Power Corporation Ltd.

& another.

2) Brief facts of the case are that on 16.05.2010, the Executive Engineer, Electricity Distribution Division, Rudrapur, Udham Singh Nagar issued an

assessment bill amounting to Rs.54,61,054/- against the respondent-M/s BTC Industries (hereinafter referred to as the consumer). Thereafter, the

consumer filed a complaint before the Electricity Grievance Redressal Forum, who, in turn, rejected the same.

3) Feeling aggrieved, the consumer made a representation bearing no.3/2011 before the Electricity Ombudsman. After hearing the matter at length,

the Ombudsman allowed the representation of the consumer and set aside the order of the Forum on the premise that the assessment bill has been

raised on hypothesis basis. Hence, present writ petition has been filed by the Uttarakhand Power Corporation Ltd.

4) Learned counsel for the petitioners-Corporation submitted that the Electricity Ombudsman has not properly appreciated the evidence on record.

5) On the other hand, learned counsel for the respondent-consumer supported the impugned order of Ombudsman and contended that the Corporation

on its own raised an assessment bill against the consumer without giving an opportunity of hearing to the consumer.

6) The heart of the matter is that there may be some pilferage of electricity and whether the consumer (respondent herein) was responsible for the

excess use of electricity or not.

7) Learned counsel for the petitioner relied upon a judgment of Honâ??ble Allahabad High Court, Lucknow Bench in U.P. Power Corporation Ltd.,

Unnao vs. Electricity Ombudsman, Lucknow & others 2010 SCC OnLine All 2686. After going through the said judgment, this Court is of the opinion

that with due regard, the said judgment is not applicable in the case in hand. The above decision of Allahabad High Court was rendered in a situation

where a consumer made a representation to the Electricity, Ombudsman, who in turn, passed an order in favour of the consumer and against the

appellant-UP Power Corporation Ltd. Feeling aggrieved by the order of Ombudsman, the appellant filed a petition before the learned Single Judge of

Allahabad High Court. The learned Single, by order dated 16.12.2008, was pleased to hold that the finding of fact recorded by the Electricity

Ombudsman does not seem to suffer from any illegality. When the matter came up before the Division Bench of Allahabad High Court (Lucknow

Bench), the main controversy was whether the appeal filed by the appellant-Power Corporation against the order dated 16.12.2008 of learned Single

Judge is maintainable or not. The Division Bench has held that the appeal filed by the appellant-Corporation was maintainable and, consequently, the

matter was directed to be placed before the appropriate bench for hearing on merits. In the instant case, petitioner-Corporation by way of writ petition

under Article 226 of the Constitution of India is challenging the illegality of the order of Ombudsman.

8) The consumer (respondent herein) had been provided electricity by the Corporation through 33 KV BB Ispat Feeder emanating from 132 KV sub-

station Kichha. Three consumers (viz., M/s BB Ispat, M/s BTC Industries and M/s Bharamri Steels) are connected to the said line. If there was some

pilferage of electricity on the same line, then as to how the Corporation came to the conclusion that the respondent alone was responsible for the

excess use of electricity dishonestly. In this regard, no enquiry was made by the Corporation. Perusal of the impugned order reveals that the

Ombudsman directed the Corporation to submit the following documents:-

(a) Thorough checking report of meters of all three consumers connected to the feeder alongwith the meter at the sending end, as per DGM's

letter dated 15.05.2010.

(b) date of installing check meter at the premises of the respondent and the date of removing the check meter along with its Sealing Certificates.

(c) Tampering report of respondent's meter.

9) The Ombudsman has clearly mentioned in para 16 of the impugned order that the Corporation did not give direct answers to the above queries. It

was further observed by the Ombudsman that in the absence of thorough checking report, meter tampering report and adverse check meter report,

how did the Corporation come to the conclusion that the consumer-respondent had used the excess energy bypassing other two meters. Therefore,

this Court is of the considered view that the Corporation has issued the assessment bill in question in a casual manner and it was based on surmises

and conjectures.

10) Moreover, three consumers (viz., M/s BB Ispat, M/s BTC Industries and M/s Bharamri Steels) were connected to 33 KV BB Ispat Feeder

emanating from 132 KV sub-station Kichha. It has come on record that checking of all electric meters of above-named three consumers were not

carried out and neither the checking report of the meter at the sub-station end nor the tamper report of the respondent's meter was provided to

the Ombudsman. The Corporation was unable to give any explanation as to why it came to the conclusion that M/s BTC Industries alone was

responsible for pilferage of electricity. In para 22 of the impugned order, it was

specifically observed that there was no meter tampering report of the consumer (respondent herein). In order to find a wrongdoer, a check meter was also installed, in addition to regular meter installed in respondent's factory. The said check meter also recorded the same consumption as recorded by the regular meter of the respondent. In a particular period, there was less consumption of electricity in petitioner's factory due to the reason that the production of respondent's factory was minimum as the industry was under repair and maintenance.

11) In view of the observations made above, this Court is of the view that the Ombudsman has rightly held that the assessment bill dated 16.05.2010 has been raised simply on the basis of hypothesis and without establishing beyond doubt that the extra energy has been consumed by the consumer / sole respondent. There is no illegality nor there exists any infirmity in the impugned order passed by the Ombudsman. The writ petition is devoid of merit and is hereby dismissed. No order as to costs.