

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Radha Govind
Seeds and Allied, Products Pvt. Ltd.
Village Kudiowala, Tehsil- Kashipur
Distt. Udham Singh Nagar
Uttarakhand

Vs

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

Representation No. 27/2024

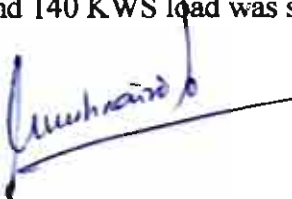
Award

Dated: 18.02.2025

Present appeal/ representation has been preferred by the appellant against the order of Consumer Grievance Redressal Forum, Udham Singh Nagar Zone, (hereinafter referred to as Forum) dated 21.05.2024 in complaint no. 298/2023-24 by which Ld. Forum has dismissed the complaint of appellant M/s Radha Govind Seeds and Allied Products Pvt. Ltd., Village – Kudiowala, Tehsil Kashipur, Distt. Udham Singh Nagar (petitioner) against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Jaspur, Distt. Udham Singh Nagar Uttarakhand (hereinafter referred to as respondent).

2. Facts of the case

- i. The appellant is a company registered under Companies Act, 1956 in the name M/s Radha Govind Seed and Allied Products Pvt. Ltd. situated at Village Kudiowala Tehsil Kashipur, Distt. Udham Singh Nagar, where in a rice mill is installed and it comes under EDD Jaspur.
- ii. A sum of Rs. 1,32,000.00 was deposited as security vide receipt no. 50/D-128132 dated 31.05.2013 and 140 KWS load was sanctioned.



- iii. In view of expansion of his business enhancement of load was felt necessary and therefore a sum of Rs. 2,10,000.00 was deposited with the respondent as security vide receipt no. 25/D-128132 dated 01.06.2019.
- iv. As directed by the department they tried to deposit a sum of Rs. 5000.00 as registration fee but the officials did not get the said sum deposited therefore he was compelled to deposit the said amount through cheque dated 16.06.2019 along with an application with the cheque, which was duly acknowledged by the department vide acknowledgment no. 212706192023 dated 27.06.2019.
- v. Receipt no. 3499803071907070002 dated 03.07.2019 was also issued by the department.
- vi. The contracted load was enhanced from 140 KVA to 350 KVA vide respondent's OM No. 2065 dated 09.08.2019.
- vii. Subsequent to sanction of enhanced load to 350 KVA the same was not exhibited in the bill neither security amount of Rs. 2,10,000.00 was shown in the bill consequently panel demand for excess load was charged at twice the normal rate which was being paid by them as they did not take any notice of that.
- viii. The appellant company could notice in the bill of October 2019 that the enhanced load and security Rs. 2,10,000.00 paid by them is not being shown in the bills.
- ix. After having noted the above a letter dated 20.11.2019 was written to the respondent with the request that enhanced load and security deposit be shown in the bills. The said letter was duly acknowledged by the respondents.
- x. whereafter repeated verbal and written requests dated 27.06.2020, 22.08.2020, 10.11.2021, 18.05.2022 and 16.12.2022 for enhancement of load and security to be shown in the bills.
- xi. Even after that the respondents did not show the enhanced load and security deposit in the bills therefore the appellant company was compelled to deposit the panel demand charges since 09.08.2019 but the respondents did not reply any of their letters neither the enhanced load and security Rs. 2,10,000.00 was shown in the bills/ record.
- xii. In the bill for December 2023 the panel demand charges for excess demand above 140 KVA started imposing at 04 times the normal rate.
- xiii. As it was not possible for them to pay the excess demands at 04 times the normal rate, respondent office was approached where they were informed that

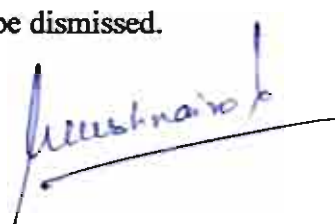
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they have to apply for enhancement of load afresh as their earlier application for enhancement of load has already been cancelled. It is categorically clarified that no information about sanction of additional load on 09.08.2019 was ever given to them neither any information about cancellation of the said enhanced load was given to them.

- xiv. For such a reason they again applied for enhancement of load on 21.12.2023 and deposited Rs. 7,500.00 as registration fee.
- xv. Consequent upon depositing the said amount orders for enhancement of contracted load from 140 KVA to 350 KVA were issued by the respondent vide OM No. 3219 dated 19.12.2023.
- xvi. A complaint was lodged with Forum, Udham Singh Nagar where it was registered as complaint no. 298 of 2023-24.
- xvii. A notice was issued by the Forum to the respondent that enhancement of load was sanctioned on 11.09.2019 and the appellant was asked to deposit estimate amount Rs. 34,590.00 on 05.11.2019 through SMS on Mobile No. 9837451272. The appellant has clarified that they did not receive any notice dated 07.11.2019 for depositing the estimated amount and the referred mobile no. 9837451272 does not pertain to them instead they have regularly been requesting the respondents to show the enhance load and security deposit in the bills.
- xviii. The respondents submitted before the forum that the complainant's application for enhancement of load was cancelled on 04.02.2022 for not depositing estimated amount of Rs. 34,590.00 as asked for on 05.11.2019 which was duly informed to the complainant vide letter dated 22.06.2022 but the appellant has averred that no written information was ever received by them.
The appellant has clarified that if their application was cancelled by the respondents on 04.02.2022 they would have confirmed it by replying to their letters but they did not do so which is a proof that their averments are simply to escape from their responsibility and with malafide intention.
- xix. All the facts of the case well duly put up before the Forum but the Forum did not consider them and passed order under reference.

Grounds of appeal

- a) Forum's order is against law, facts of the case and against the facts available on file and is therefore liable to be dismissed.




- b) The Forum did not see that after sanction of additional load on 09.08.2019 it was not shown in the records and for that reason also Forum's order is liable to be quashed.
- c) The Forum did not see that that the respondents did not reply to complainant's letter dated 20.11.2019, 22.08.2019, 27.08.2019, 18.05.2022 and 16.12.2022 for that reason also the Forum order is liable to be quashed.
- d) The Forum passed order relying upon the wrong and false submissions of the respondent for that reason also the Forum order is liable to be quashed.
- e) It is clarified that after sanction of enhanced load dated 29.12.2023 respondent did not ask the complainant to deposit any estimated amount and the enhanced load was sanctioned after depositing Rs. 7,500.00 for that reason also the Forum order is liable to be quashed.
- f) The Forum did not pay any attention on the carelessness and irresponsible behavior of the officers and officials of the respondent and passed the impugned order which is liable to be quashed for that reason also the Forum order is liable to be quashed.
- g) The Forum passed order without seriously looking into the evidences available on file and passed the impugned order so it is liable to be quashed.
- h) The Forum passed order on 21.05.2024 a copy of which was sent to them vide letter no. 125 dated 24.05.2024 and as per rules the appeal was to be preferred before the Hon'ble Ombudsman within 30 days but the companies director who was looking after the case met with an accident so this appeal could not be preferred within the time limit. Application for delay condonation has been file with this appeal so the delay may kindly be condoned.

Prayer

- A. The appeal be admitted and impugned order dated 21.05.2024 be quashed. The panel demand charges for excess load charged in the bills till December 2023 after sanction of 210 KVA additional load on 09.08.2019 be got were doubt and the said excess demand levied be ordered to be refunded along with interest.
- B. Cost of the appeal be ordered to be given to the appellant from the respondent. The petitioner has substantiated his averments with documentary evidences as averred in the appeal as Annexures to the appeal.



3. The Forum after hearing counter arguments from parties and perusal of records observed that the complainant submitted an application for enhancement of contracted load from 140 KVA to 350 KVA in the office of the opposite party, which was registered on online portal at Sr. No. 451060719012 on dated 27.06.2019. The Forum observed that since the matter related to enhancement of load pertains to the year 2019 so UERC (Release of New HT and EHT connections, Enhancement and Reduction of Loads) Regulations, 2008 which was in force at that time is applicable in this case and sub regulation 4 (6), 7 and 11 of the aforesaid regulation are attracted in the case. Above sub regulations have been reproduced in Forum's order. The Forum also observed that the complainant deposited Rs. 5,000.00 on 03.07.2019 as required under relevant regulation, where after inspection of the complainant's premises was done by SDO on 10.07.2019 and sanction for enhancement of load to 350 KVA was sanctioned on 11.09.2019. An estimate amounting to Rs. 35,590.00 was sanctioned by the department on 05.11.2019 for enhancement of load and the complainant was asked to deposit the said amount of estimate on 07.11.2019 on online portal at his registered mobile number 9837451272, wherein he was asked to deposit estimated amount by 07.12.2019, but the said amount was not deposited by him till 04.02.2022. Hence his application was rejected. During hearing the complainant denied having received any demand notice for depositing the estimated amount. The department submitted a copy of the demand notice dated 07.11.2019, which was sent on online and objected the complainant's submission that he did not receive any demand notice. The online system under which demand notice was sent was perused in which it is mentioned that **"Please pay initial charges Rs. 34,590.00 by 07.12.2019 of registration no. 451060719012 to avoid rejection of our HT connection request. Please ignore, if already paid."** Hence the Forum was of the opinion that complainant's averment that he did not receive any demand notice for depositing estimated amount is wrong and false.
4. Forum also mentioned that as per documents available on file it is clear that demand notice for depositing estimated amount was duly sent to the complainant and on non depositing the estimated amount by 04.02.2022 the application was rejected. In view of the Forum's observation it is established as the formalities for enhancement of load were not completed so for drawing demand in excess of the existing contracted load



of 140 KVA, the demand charges for excess load are payable and hence the complaint is not liable to be allowed and accordingly the Forum dismissed the complaint.

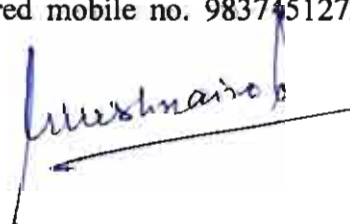
5. Further the Forum was apprised by the department that the complainant again applied for enhancement of load on 16.12.2023 and after completion of formalities the load was enhanced on 27.01.2024.
6. The respondent Executive Engineer has submitted a written submission vide his letter no. 2567 dated 01.08.2024 along with notarized affidavit. Point wise reply has been submitted as follows:-

i. Regarding point no. i) and iii)

Connection no. JS0K00002339 for 140 KVA contracted load was released in favour of M/s Radha Govind Seeds and Allied Products Pvt. Ltd. Kudiowala on 21.08.2012. As per consumer Rs. 1,32,000.00 was deposited on 31.05.2013 vide receipt no. D128152/50 and further Rs. 2,10,000.00 were deposited vide receipt no. D143791/25 dated 01.06.2019 towards additional security. As mandated under sub regulation 4 (1) (1) sub regulation 09 of UERC regulation, 2020. The consumer applying for enhancement of load has to deposit additional security as required. Further as mandated under sub regulation 3 (4) (3) sub regulation 07, he is also required to deposit estimated amount within one month from the date of sanction of load. The consumer had applied for enhancement of load from 140 KVA to 350 KVA in the month of June 2019. As per the bill for the month of May 2019 the consumer had to pay Rs. 3,54,098.00 towards additional security

ii. Regarding point no. iv) to vi)

In response to consumer's application for enhancement of load the application was registered at no. 451060719012 on 27.06.2019 . Registration fee of Rs. 5000.00 was deposited by him on 03.07.2019 vide receipt no. 3498903071907070002, where after additional load was sanctioned vide OM no. 2065 dated 09.08.2019. As required under UERC regulation after sanction of load an estimate for initial work charges was prepared for Rs. 34,590.00 and demand notice on RAPDRP portal was sent to him on 07.11.2019. As also intimated by SMS on his registered mobile no. 9837451272. At the time of



hearing before the Forum the consumer admitted that the aforesaid mobile no. belongs to him. Notice sent on RAPDRP was also confirmed.

iii. Regarding point no. vii) to ix)

It is submitted that after sanction of load the consumer had to deposit estimated amount Rs. 34,590.00 where after only the sanction of additional load is finalized and the same is shown in the bill. The additional security amounting to Rs. 1,32,000.00 and 2,10,000.00 deposited by him was duly added in the additional security deposit. Excess demand charges above the contracted load are to be levied at twice the rate and after a period at 4 times the rate are being added in the bill as per UERC regulation.

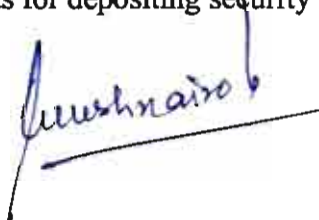
iv. Regarding point no. x) to xix)

On his visit to undersigned office he was requested to deposit initial work charge amount, but on nonpayment of the desired amount registration no. 401060719012 was cancelled/rejected on 04.02.2022. He was also informed about cancellation/rejection of his application vide letter no. 1619 dated 20.06.2024 and the additional security deposited by him had duly been added in his connection. He was also requested that he may apply afresh for enhancement of his contracted load, so that further necessary action may be taken by respondent's office. In view of the above factual position the consumer's averment that his letters were not replied and additional security was not added in the bills is false. Further it is submitted that he again applied for enhancement of load on 16.12.2023, his application was registered on the same day i.e. 16.12.2023 and load was finally enhanced on 27.01.2024.

The respondent has substantiated his submissions with documentary evidences as referred in his written statement and copies of which have been enclosed with the written statement.

7. The petitioner has submitted a rejoinder dated 26.09.2024 along with a notarized affidavit. Point wise replies to the written statement has been submitted as follows:-

- i. Para i) of written statement is not admitted as written. The amount was deposited by the petitioner as per rules. No information or letter was received from the respondents for depositing security amount. It is wrong to



say that the respondent asked the petitioner to deposit a sum of Rs. 3,54,098.00 towards security deposit.

ii. It is wrong to say that the respondents have sent some sms on 07.01.2019 on some mobile number.

a. It is submitted that the petitioner requested the respondents vide letter dated 20.11.2019 that they asked for enhancement of load in the month of August and security was duly deposited, so it was requested that the enhanced load be exhibited in the bill.

b. The said letter was got received in the office of respondent and acknowledgement is enclosed herewith as annexure 7.

c. No action was however taken by the respondent in response to the aforesaid letter.

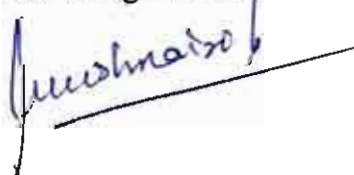
d. After that letters dated 27.06.2020, 22.08.2020, 11.10.2021, 18.05.2022 and 16.12.2022 were written to the respondent which were not recognized by them. Photocopies were enclosed as annexure 8 to 12 of the appeal.

iii. Averments under para 3 are wrong. The appellant has been writing to the department continuously but respondents have given no reply which indicates their carelessness and also carelessness in their work culture also a lack in service for which the erring personals are liable to be punished.

iv. Averments against para 4 are wrong. The department never asked the appellant to pay initial work charges inspite that the appellant has continuously been writing to the department. The enhancement of load was applied in the year 2019 and Rs. 5000.00 were deposited on 03.07.2019. The application for enhancement load was rejected after about 03 years on 04.02.2022 which indicates towards malafide intention of the department towards the appellant. No intimation about rejection of application was ever given to the appellant which is an evidence towards officials carelessness and also lack in service.

All the above facts shows that the respondents have caused loss to the appellant. Additional amount has been charged from the appellant forcefully for which they are liable to be punished.

It is prayed that the appeal be admitted impugned order dated 21.05.2024 be set aside. The excess demand charges levied from the appellant till month



of December 2023 in spite of sanction of 210 KVA additional load on 09.08.2019 be ordered to be refunded after getting it were doubt along with 18% per annum interest and further cost of appeal be also be ordered to be given to the appellant from the respondent. Further any relief as deemed fit by Hon'ble Ombudsman may also be granted.

8. Hearing in the case was fixed for 11.12.2024 which was adjourned for 08.01.2025 on the request of the respondent which was again adjourned for 22.01.2025 on petitioner's request. Hearing was held on scheduled dated 22.01.2025. Both parties were present and argued their respective case. Respondent was directed to submit certain documents by 29.01.2025. Arguments concluded order was reserved. The respondent submitted the following documents on 06.02.2025 which have been taken on record:-

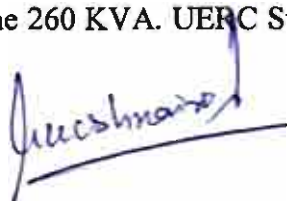
- a. Copy of sealing certificate 10/205 dated 27.01.2024
- b. A copy of bill dated 05.06.2019 for the month of 05, 2019 (from 30.04.2019 to 31.05.2019)
- c. A copy of consumer billing history from the month of 06, 2013 to 12, 2024
- d. An unsigned statement of details of excess load penalty of Radha Govind connection no. 23329 from the month of May, 2019 to December 2024. Subsequently a signed copy of the said statement has also been submitted by the respondent.

9. Arguments from both parties were heard. Documents available on file have been perused. Relevant UERC Regulations, 2008 for HT/LT connections as well as UERC Supply Code Regulation, 2020 have also been gone through. It is borne out that a 140 KVA connection under industrial category was released in favour of the appellant on 21.08.2012 which connection number JS0K000023329. A sum of Rs. 1,32,000.00 was deposited by the appellant on 31.05.2013 and further Rs. 2,10,000.00 were also deposited on 01.06.2019 as security deposit. The petitioner applied for enhancement of contracted load from 140 KVA to 350 KVA in the month of June 2019. The application was registered on 27.06.2019 with registration no. 451060719012. Registration fee Rs. 5000 was deposited on 03.07.2019 vide receipt no. 3498903071907070002 where after the additional load was sanctioned vide OM no. 2065 dated 09.08.2019 enhancing the existing load of 140 KVA to 350 KVA by



sanctioning 210 KVA additional load under the terms and conditions as stipulated in the said OM which includes that the load shall be released in accordance with UERC HT/EHT regulation 2008 as stipulated under condition no. 21 of the aforesaid OM. It is therefore clear that the sanction of additional load shall be governed by relevant UERC release of new HT and EHT connections, enhancement and reduction of load, 2008 which has also been mentioned by the Forum in its order dated 21.05.2024 passed in consumer's complaint no. 298 of 2023-24. It is also evident from bill for the month of 05, 2019 that a sum of Rs. 3,54,098.00 was required to be deposited by the petitioner towards additional security. It is also clear that security amounting to Rs. 1,32,000.00 deposited on 31.05.2013 and 2,10,000.00 deposited on 01.06.2019 were the security deposited against the existing 140 KVA contracted load and not the additional security required for enhanced load as the required securities were deposited prior to registration of application for enhancement of load being 27.06.2019 and registration fee of Rs. 5,000.00 was deposited on 03.07.2019. Subsequent to sanction of additional load vide OM dated 09.08.2019 a demand note for depositing Rs. 34,590.00 towards the cost of estimate was sent to the petitioner. Although the petitioner has averred that no intimation for depositing the estimated amount was ever received by them but as mentioned in Forum order and as also in other documents submitted by respondent, petitioner's claim that they did not receive any intimation for depositing estimated amount does not prove to be a fact and on the other hand it is established that the intimation was given to the petitioner for depositing estimated amount which admittedly the petitioner did not pay till 04.02.2022 and therefore registration of application for enhancement of load was rejected on 04.02.2022.

10. It is therefore clear that enhancement of load could not materialize due to non deposition of estimated amount by the petitioner and therefore the registration was rightly rejected by the respondents on 04.02.2022 such being the case, the contracted load of the petitioner remained 140KVA till December 2023.
11. Where after in pursuance of consumer's fresh application dated 16.12.2023 for enhancement of load from 140 KVA to 260 KVA vide respondent's OM no. 3219 dated 29.12.2023 and after completion of formalities the enhanced contracted load of 260 KVA was materialized on 27.01.2024 i.e. to say that w.e.f. 27.01.2024 the petitioner's contracted load became 260 KVA. UERC Supply Code Regulation dated



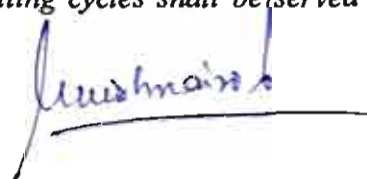
29.10.2020. notified on 28.11.2020 is applicable in this case of enhancement of load, however there is no dispute regarding this case.

In view of facts of the case it is established that contracted load w.e.f. the date of release of connection i.e. 21.08.2012 till December 2023 remained as 140 KVA and from January 2024 and onwards the contracted load had become 260 KVA any excess demand drawn by the consumer over and above its contracted load of 140 KVA till December 2023 was liable to be billed on panel rates as provided in appropriate tariffs read with relevant UERC Regulations, which have been in force during the period from May 2019 to November 2024 during which penal demand for excess load has been charged in the monthly bills.

12. The excess demand charges as per statement submitted by respondent have been levied in monthly bills from May 2019 to December 2024 except the bills for the months of August 2019, September 2019, February 2020, March 2020, April 2020, April 2023 and from the month January 2024 to September 2024 and for the month of December 2024, during which months the maximum recorded demand was not exceeded the contracted load. In all the months where excess demand has exceeded the respondent has charged such excess demand at twice the tariff rate, however in the bills for the month of November 2023 and December 2023, the excess demand has been charged at 4 times the tariff rate. While there is no provision in the UERC supply code regulations, 2007, which was in force till October 2020, for charging penal demand charges on excess demand, where after the supply code regulation 2020, notified on 28.11.2020 came into force. The following provisions for charging excess demand exists, which are reproduced below:

"5.2.3 (1) In case of consumers where electronic meters with Maximum Demand Indicator (MDI) have been installed and the Maximum Demand recorded in the month exceeds the contracted load/demand, charges for such excess load/demand shall be as fixed by the Commission in its Tariff Order from time to time. Such excess load penalty shall be levied only for the month in which Maximum Demand exceeds Contracted load".

"5.2.3 (2) Where Maximum demand of consumer (other than domestic consumer) during three consecutive billing cycles exceeds the contracted load, a notice along with the third bill of the said billing cycles shall be served to the consumer by the



distribution Licensee informing him either to restrict his load within the contracted load or apply for additional load. In case the consumer does not restrict its load or does not apply for additional load, and the consumer continues to exceed the contracted load/demand for subsequent billing cycle, the charges for such excess load/demand shall be twice the charges for excess load/demand violation as per Clause (1) above."

13. All the tariff orders issued by UERC and are applicable during the period, during which penal demand charges have been levied provides under the chapter Annexures as reproduced below:

"12. Excess Load/Demand Penalty (Not applicable to domestic, snow bound and PTW categories)

In case of consumers where electronic meters with MDI have been installed, if the maximum demand recorded in any month exceeds the contracted load/demand, charges for such excess load/demand shall be levied equal to twice the normal rate of fixed/demand charges as applicable. Such excess load penalty shall be levied only for the month in which maximum demands exceeds contracted load. However, no excess load penalty would be applicable on consumers having pre-paid connections."

14. A perusal of above provisions in Supply Code Regulation, 2020 and tariff provisions suggests that excess demand in any billing cycle over and above the contracted load has to be charged at twice the normal rate for demand charges as provided in appropriate rate schedule and the consumer is liable to pay as per provision in the appropriate rate schedules.

It is appropriate to mention here that the licensee is not entitled to charge anything exceeding the tariff as per section 62 (6) of Electricity Act, 2003 and such excess amount if any is liable to be refunded to consumer from whom such excess amount has been charged beyond the provisions of the tariff. The rate of interest of Bank rate is duly provided under sub clause 2 (2) of UERC HT regulation, 2008 as well as under sub regulation 1.2 (1) (k) of UERC Supply Code regulation, 2020. The above statutory provision as well as bank rates are reproduced below:

"(6) 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

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person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

"(2) "Bank Rate" means the Rate as notified by Reserve Bank of India u/s 49 of the RBI Act, 1934."

"(k) "Bank Rate" means the prevailing rate notified by the Reserve Bank of India as on 1st April of the year."

In view of above regulatory as well as statutory provisions the respondents are liable to refund the differential amount charged at 4 times the tariff rate and the amount chargeable at twice the tariff rate in the month of November 2023 and December 2023 along with interest on Bank Rates.

15. In view of above clarifications and explanations the petition is liable to be partly allowed with the direction to refund of excess amount charged in contravention to tariff provisions for the month of November 2023 and December 2023, alongwith interest on Bank Rates as defined in above mentioned UERC sub regulations.

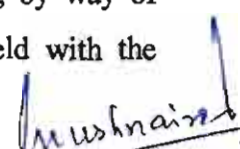
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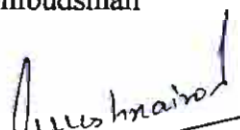
The petition is partly allowed, with the directions to the respondents to refund the differential amount charged in excess of the tariff provisions in the month of November 2023 and December 2023 alongwith interest at Bank Rates, by way of adjustment in the future bill. Consequently, Forum order stands upheld with the aforesaid modification.

Dated: 18.02.2025

Order signed dated and pronounced today.

Dated: 18.02.2025


(D. P. Gairola) 18.02.2025
Ombudsman


(D. P. Gairola) 18.02.2025
Ombudsman