

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Dy. Inspector General (Administration)
I.T.B.P. Academy,
Mussoorie, Distt. Dehradun
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (North),
Uttarakhand Power Corporation Ltd.
18, EC Road, Dehradun, Uttarakhand

Representation No. 41/2021

Order

Dated: 18.02.2022

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 25.11.2021 in their complaint no. 47/2021, before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (North), UPCL, Dehradun (hereinafter referred to as respondent) Dy. Inspector General (Administration), ITBP Academy, Mussoorie, Dehradun (Petitioner) filed this representation for waiver of surcharge, mentioned in September 2020 bill, as also their prayer in rejoinder for quashing the assessment raised in the impugned bill of 09/2020.

2. The petitioner, ITBP Academy, Mussoorie has submitted a petition dated 11.12.2021 followed by a subsequent letter dated 27.12.2021. The petitioner has stated that they have a connection at 11 KV, bills in respect of the said connection are being regularly paid, an inflated bill amounting to Rs. 14,74,107.00 was issued for the month of September 2020 was received from the respondent for payment. On examination it was found that the bill is for an excessive amount and does not appear to be logical. The Executive Engineer concerned was informed about this inflated bill vide their letter dated 17.10.2020, 22.10.2020, 13.11.2020 and 09.01.2020 and he was requested to clarify certain points. After a number of requests the Executive Engineer informed vide his letter dated 28.11.2020 that the meter installed at their premises was checked

from 02.09.2020 to 21.09.2020 and as per report of this checking the existing meter was found running slow by 52.49% and he asked to pay the bill along with LPS. The aforesaid letter was got delivered by a representative of the department with a delay on 14.01.2021. In response to aforesaid letter dated 28.11.2020 of the department they informed to them vide letter dated 23.01.2021 that all bills have been regularly paid, slow running of meter is a fault or mistake on the part of the department and not of ITBP so, the imposed penalty Rs. 14,74,107.00 be set aside and correct bill be issued.

3. No reply was received from the department and the penalty amount is being shown in all the subsequent bills along with LPS. Further, the department was requested for satisfactory action in this matter vide their letter dated 18.06.2021 and 22.06.2021 so that pending bill may be adjusted. In addition to the aforesaid letters the concerned officers of the department were contacted personally as well as on telephone by ITBP officers. In spite of so much persuasion, no proper action was taken by the respondent, neither penalty amount was deleted from the bill. Regarding imposition of LPS the respondent vide their letter dated 28.06.2021 informed that due to nonpayment of the bills, LPS on the balance amount is imposed by online system and deletion of the same is not possible.
4. As per directions from Director General, ITBP, the respondent Executive Engineer was informed vide their letter dated 22.07.2021 that as per Article 287 of Constitution of India, no surcharge or any other charge can be levied from the Government of India department in respect of their electricity connections. In spite of that the penalty imposed by the respondents has not been deleted from the bill. However the respondent, informed vide their letter dated 10.08.2021 that Article 287 of the Constitution of India is related to electricity duty and not to surcharge/LPS.
5. Further Secretary, UERC, Dehradun was contacted through letter dated 27.10.2021 with the request that LPS/surcharge under question may be got deleted. The Secretary, UERC has forwarded the matter to CGRF, Dehradun where the case was heard on 08.11.2021. After perusal of the case the Forum issued verbal interim order for depositing the amount Rs. 14,74,107.00 of the bill for September 2020 and informed that matter regarding surcharge/LPS shall be decided later. In accordance with Forum's aforesaid verbal interim order bill amount Rs. 14,74,107.00 of the bill for September 2020 was deposited with the department on 16.11.2021. The Forum vide

their letter dated 25.11.2021 informed that no relief regarding surcharge/LPS can be granted and they dismissed the complaint with the liberty that on being dissatisfied with this order an appeal can be preferred before Ombudsman. With these averments the petitioner has prayed that LPS/surcharge imposed on the bill of September 2020 till date be deleted because the delay has occurred due to the department and further the petitioner consumer is also a Government department and imposition of LPS/surcharge may become a point of audit objection in future. They have substantiated their submissions by adducing copies of various letters referred in the petition, which are available with the petition.

6. The Forum decided the petitioner's complaint no. 47/2021 before them vide their order dated 25.11.2021. After perusal of the records the Forum observed that as per report of the opposite party the existing meter was found running slow by 52.49% as per check meter study from 27.12.2019 to 21.09.2020 for which a sum of Rs. 12,57,679.40 was worked as the cost of less recorded consumption of 213166 units. The ITBP authorities were accordingly informed. Although the Forum has specifically mentioned in their observation in the order that “परिवादी द्वारा सुनवाई के दौरान प्रस्तुत पत्र के माध्यम से भी संयोजन सं० 00837 विद्युत खपत मीटर माह सितम्बर – 2020 से लम्बित चल रहे बिल के भुगतान पर लगाई गई पेनल्टी व एल०पी०एस०/सरचार्ज को हटाते हुए शब्द राशि के बिल की माँग की गई है।” But the Forum relying upon the submissions of the opposite party concluded that the additional amount of Rs. 12,57,679.40 demanded by the opposite party for less recording of 213166 units during the period from 27.12.2019 to 21.09.2020 on account of slow running of meter @ 52.49% as per check meter study is consistent with the consumption. Imposition of surcharge on the aforesaid amount due to its nonpayment is also in accordance with the rules as such under these circumstances no relief can be granted and the complaint is liable for dismissal and they therefore dismissed the complaint, with the liberty to prefer an appeal before Ombudsman within 30 days on not being satisfied with their order.
7. The respondent Executive Engineer has submitted his written statement vide letter no. 2837 dated 06.01.2021. He has stated that the petition is regarding connection no. 700K000000837 in the name of Commandant, ITBP, Astral Estate, Mussoorie. An appeal has been preferred by ITBP before your good self vide their letter dated

11.12.2021. The ITBP vide their letter dated 09.01.2020 has asked for the basis for the assessed amount included in the bill for slow running of meter @ 52.49%. The respondent has stated that as the bill pertains to the month of September 2020 so ITBP's letter dated 09.01.2020 asking for the basis of assessment is not possible so facts given by ITBP needs to be re-examined. (A perusal of the letter no. 1058 adduced by the petitioner with their petition is of dated 09.01.2021 and not of dated 09.01.2020 as mentioned by the respondent as well as by the petitioner in their petition dated 11.12.2021, this is an inadvertent mistake.) He has further stated that the ITBP was apprised about the full facts of the case vide his letter dated 28.11.2020, 28.06.2021 and 10.08.2021. In spite of that the ITBP did not make payment of the bill under dispute. Further Dy. Commandant, ITBP who happened to visit his office was also apprised about the facts of the case. The check meter was finalized on 21.09.2020 when the main meter was found slow and entry was made in the bill for the same month. The commandant ITBP has confirmed vide his letter dated 22.10.2020 that he had visited respondent's office on 19.10.2020 regarding the disputed bill. A complaint in the matter was lodged by the petitioner before the Forum, which was dismissed on the grounds that the complaint is related with LPS. The petitioner has not challenged the assessment on 52.49% slow running of meter but regarding levy of LPS due to delayed payment as such the dispute raised by the petitioner is not logical. A confusing state in the dates of letters has arisen by ITBP, he has therefore requested that the appeal be dismissed, not being logical.

8. The petitioner has submitted a detailed rejoinder dated 19.01.2022. At the outset they have mentioned that there is ambiguity in the dates of Executive Engineer's letter no. 105 dated 09.01.2020 (written statement) in place of 09.01.2021 the date has been written as 09.01.2020. It is clarified that it is a clerical mistake. The correct date of issue of this letter is 09.01.2021 duly been received by the respondent on 11.01.2021. Further the date of letter no. 2837 of Executive Engineer mentioned as 06.01.2021 is ambiguous as this is a written statement on appeal no. 41/2021 dated 11.12.2021 (a perusal of the letter reveals that the Executive Engineer's dated signatures are of 06.01.2022 which confirms that the correct date of the aforesaid letter no. 2837 is 06.01.2022). Further the petitioner has submitted point wise reply (rejoinder) and the prayers made therein are as follows:

- “1. That at the outset it is submitted that the respondent have not submitted any point wise reply to the various contentions raised in the appeal. That it is pertinent to mention that no WS was even submitted by the respondent at the Ld. Forum as no such WS was provided to the appellant. That respondent was never made to answer any of the submissions made by the appellant during the hearing or in the appeal.*
- 2. That there was total denial of the principles of natural justice by Ld. Forum, in as much as, justice should not only be done but shown to have been done, which entails show cause notice, reply, opportunity of hearing and a speaking order, dealing with rival submission.*
- 3. That the **Ld. Forum** in the hearing held dated **08.11.2021** directed the appellant verbally to deposit the amount of **Rs 14,74,107/-** and further the technical member assured to take up the matter for **LPS/ Surcharge** in subsequent hearings. That in good faith, giving due respect to the directions issued by the **Ld. Forum** and in order to **avoid any disconnection** of electricity supply the appellant deposited an amount of **Rs 14, 74,107/-** on **16.11.2021** under protest.*
- 4. That subsequently the Ld. Forum has been pleased to dismiss the petition No. **47/2021** and the Ld. Forum clandestinely and in collusion with the respondent during the course of hearing, made the appellant to deposit an amount of **Rs14, 74,107/-**-(impugned amount for the bill September 2020) on false assurances, as the direction of the Ld. Forum to deposit the amount under dispute does not find any mention in the impugned order dated **25.11.2021**. Further the various questions of facts and laws raised by the appellant were never addressed and not made part of the judgment.*
- 5. That the **Ld. Forum** have diverted the question of facts and laws that need to be answered so as to have proper and just adjudication of dispute and differences at hand in order to favour the respondent. That the Ld. Forum have stated in order dated **25.11.2021**that the petition no. **47/2021** was filed for the removal of the **LPS/surcharge** from the bill dated **September 2020** whereas the complaint was filed not only to quash the disputed amount but also the LPS/ surcharge resulting thereof. That the appellant in his complaint dated **27.10.2021** have categorically mentioned that the consumption for the month of **Sept. 2020** was higher with*

*respect to earlier bills with a specific request to direct the respondent to **quash LPS/ surcharge and revise the bill for the month Sept-2020**. That the appellant was not only contesting the disputed amount but was also contesting the LPS/Surcharges.*

- 6. That the respondent with mala fide intent of raising arbitrary assessment added the alleged assessed unit in the electricity bill for the month of **September 2020** under the unit consumed table without mentioning the breakup and the reasons attributable to such units. That the unit shown to be consumed for the period **31.08.2020 to 30.09.2020** is not the actual unit consumed for the period and the appellant has categorically mentioned in his complaint at Ld. Forum that the respondent may be directed to issue the bill on the basis of actual consumption for the month.*
- 7. That the respondent have not submitted point wise reply against the appeal and also to the various contentions of the appeal and thus the reply as submitted by the respondent cannot be termed to be **WS** in accordance to rules and procedures of Hon'ble Ombudsman. That further the submissions made by the respondent vide letter **2837** dated **06.01.2021** is denied in totality as the appellant has challenged both the slow running of meter to the tune of **52.49%** and also the alleged assessment including the LPS/ surcharges levelled.*
- 8. That in civil appeal No. **716 of 1985** in the matter between "**M.P.E.B Vs SMT. Basantibai**" whereby meter was not recording, only two phases as one of the phase got burnt, **Hon'ble Supreme Court** vide judgment dated **10.11.1987** at page No. 7 stated "**In our view, the view taken about the scope of section 26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy***

consumed within a period not exceeding six months. The appellant No. 1 is not competent pending the determination of this dispute by the Electrical Inspector to issue the impugned notice threatening disconnection of supply of electricity for non-payment of supplementary bill prepared and sent by it. The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy”.

The decision of the Hon’ble Supreme Court has been annexed at ANNEXURE-1. The Section 26(6) of Electricity Act 1910 read as under:

“Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of Such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during Such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity”

Clause 3.1.3 (7) of UERC Supply Code 2007 states:

“If the consumer or his representative disputes or refuses to sign the test report, the defective meter shall not be replaced and the matter shall be decided either upon the application of either party by an Electrical Inspector or any authorized third party, who shall test the correctness of the meter and give results within one month.”

That as the same clause 26(6) have been incorporated in the UERC supply code, 2007 and also in view of Section 185 (Repeal and saving) of Electricity Act 2003, the said judgment is applicable and it is confirmed that the respondent cannot raise any supplementary bill in case of meter not working correctly pending decision of Electrical Inspector.

9. *That the appellant is hereby submitting the following supplementary points which is a sum total of the various letters of the appellant written to the respondent for redressal of his grievances for which no cogent explanation has been furnished*

and which letters also find mention in the letter No. 2837 dated 06.01.2021 of the respondent.

a) That it is denied that the meter is running slow to the tune of 52.49% and it is categorically submitted that the slowness if any has not been established in accordance with the procedure established by **UERC Supply Code Regulations, 2007** in as much as:

(1) No advance notice of the test/check meter study was served to the appellant.

(2) No test report for the test/check meter installed at the premises was served before initiation of the test.

(3) No duly authenticated test results were provided before raising the alleged assessment.

Whereas clause 3.1.3 (3) of **Hon'ble UERC Electricity Supply Code, Regulation, 2007** mandates "The Licensee shall, within 30 days of receiving the complaint, carry out testing of the meter as per the procedure specified herein and shall furnish duly authenticated test results to the consumer. The consumer shall be informed of proposed date and time of testing at least 2 days in advance."

b) That the copy of sealing certificates were never provided to the appellant and neither the readings as entered in the sealing certificates of the purported check meter study was shared and cross verified by the competent person of the appellant.

c) That the test results were not admitted and it is submitted that no opportunity was given to the complainant to get the meter tested by the Electrical Inspector. That the sealing certificates as filled by the respondent during the alleged check meter study nowhere mentions that the main meter is running slow to the tune of 52.49% or any test results were provided showing the meter was running slow. Further the sealing certificate dated **21.09.2020** categorically stated that meter was burnt hence no assessment can be raised and is legally tenable as against the defective meter whereby the respondent is authorised to raise the assessment limited to six months. Hence there was no occasion for the appellant to dispute the test results or that the meter was not working correctly at the time of check meter finalisation. That if the

opportunity would have been provided to the appellant he would have established by himself or through the **Electrical Inspector** that the meter was working correctly. Hence the act of the respondent was not only against principles of natural justice and fair play but also against the established regulations.

That as per clause 3.1.3 (7) of UERC Supply Code 2007 which mandates “If the consumer or his representative disputes or refuses to sign the test report, the defective meter shall not be replaced and the matter shall be decided either upon the application of either party by an Electrical Inspector or any authorized third party, who shall test the correctness of the meter and give results within one month.”

- d) That the testing lab of the respondent is not accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL) also the respondent is not accredited by the NABL for carrying out any kind of site testing whatsoever.

That as per Central Electricity Authority (Installation & Operation of Meters) Regulations dated 17.03.2006 framed u/s 55(1), r/w Section 73(e) and Section 177(2) of the Electricity Act 2003, in respect to Clause 17(2), which mandates that the meter testing reports must be issued by NABL Accredited Testing Laboratories.

That as per clause 3.1.1(1) of UERC Supply Code, 2007 “All meters shall conform to requirements as laid down in the Central Electricity Authority (Installation & Operation of Meters) Regulations, 2006 issued under Section 55 of the Act”.

That further for carrying out any testing at site, not limiting to check meter study or any other test being carried out to check the metering system, the respondent shall have proper accreditation from NABL for carrying out site test, in addition to as required for permanent testing facility.

- e) That no reliance on the test results can be placed if such tests has not been carried out in a **NABL accredited lab** more so because of the settled law as returned by the Hon'ble Bombay High Court judgment in the matter of **Nestle India Ltd. vs. FSSAI** (Writ Petition (L) No. 1688 of 2015) dated 13.08.2015.

The copy of the relevant pages of the judgment has been placed at ANNEXURE-2. Hence the assessment is liable to be quashed.

- f) *That the sealing certificate dated 21.09.2020 has explicitly mentioned as under:*

“Aaj dinak 21.09.2020 ko ukt test meter final kar diya gaya. 11 KV P.T mai Y Phase ka pole burnt hone ke karan 11 KV PT ko replace kar diya gaya wa sanyojan ko sucharu kar diya gaya”

That it is not stated in the sealing certificate whether the meter was running slow or fast. However the only abnormality found was the pole of Y phase potential transformer was burnt. It is worth mentioning that the pole is the integral part of the potential transformer (P.T).

That as per clause 3.3.1.4 (Metering) of UERC Supply Code 2007- “It shall be the responsibility of Licensee to maintain the meter and keep it in working order at all times.”

That no regulation of the UERC Supply code 2007 provides for assessment in case of burnt meter. Hence the assessment is liable to be quashed.

- g) *That as per the definition of “METER” as provided in UERC Supply Code 2007 and CEA (Installation and Operation of meter) Regulation, 2006, any other equipment apart from meter necessary for recording of energy is part of meter itself.*

“Meter” means a device suitable for recording consumption of electrical energy supplied or any other parameter during any specified period and shall include, wherever applicable, other associated equipment such as CT, PT etc. necessary for such recording.

It shall also include any seal or sealing arrangement provided by the Licensee for preventing unauthorised use of electricity”

That all the interconnections made inside the meter for recording of electrical energy thus constitutes and is part of the meter itself. That as per the sealing report dated 21.09.2020 the pole of Y phase potential transformer found burnt. That this establishes that the meter was found burnt as the pole of Y phase P.T is the inherent part of the meter.

- h) *That the respondent did not get the burnt meter tested which is mandatory and a harmonious construction of the clauses will interpret that any assessment or liability can only be fastened on the consumer if the burnt meter is duly tested in the lab of the licensee and the reasons of the burnt can be attributable to the consumer.*

That as per clause 3.1.5 (2) of UERC Supply Code 2007 “The Licensee shall get the burnt meter removed from site/consumer’s premises and test the same. If it is established, based on test results, that meter got burnt due to technical reasons e.g. voltage fluctuation, transients etc. attributable to system constraints, the Licensee shall bear the cost of meter.”

- i) *That the burnt meter remained at site from 27.12.2019 as per the test report. That the licensee cannot raise the bill beyond two billing cycles if the burnt meter remain at site. That the bills subsequent to 27.12.2019 for the connection No. 837 are inconsistent with the UERC Supply Code 2007 and liable to be quashed.*

That clause 3.2 (Billing during the period defective/ stuck/ stopped/ burnt meter remained at site or Stolen meter) of UERC Supply Code 2007 stipulates “The consumer shall be billed on the basis of the average consumption of the past three billing cycles immediately preceding the date of the meter being found or being reported defective/ stuck/ stopped/burnt/stolen. These Charges shall be leviable for a maximum period of three months only during which time the licensee is expected to have replaced the defective meter”.

- j) *That the consumer is entitled for the compensation as per SCHEDULE III- Guaranteed Standards of Performance and Compensation to Consumers in Case of Default of Hon’ble UERC Standard of performance regulation, 2007, as the burnt meter was not replaced within 3 days which is the default time and continued to be in existence till 21.09.2020. That the total duration for which the burnt meter remain at site is 269 days. That the total value of compensation with the prescribed rate of Rs 50 per day comes out to be Rs13,450/-.*
- k) *That the seals present in the meters at the time of check meter installation were not found when the check meter was finalised. That the all the seals*

present are inherent part of the meter as per definition of meter stated above.

That the position of seals is as under:

	02.09.2020	21.09.2020	02.09.2020	21.09.2020
LOCATION	<u>MAIN METER</u>		<u>CHECK METER</u>	
Meter Body	Details not entered	As it is	Q0029836	
Meter T.P			UG025636	
Meter Box			UGO25637	UG025673
CT/PT/ Chamber				UG025671 & UG025672
Continuity Paper Seal No.				ETDA011854 & ET DA011853
Seal Status	No abnormality mentioned			

That replacement/removal of seals in between the check meter study would tantamount to change of meter and would defeat the purpose of check meter study. That the respondent have to maintain the integrity of complete metering system till the check meter study is completed as each component of the metering system have bearing on the recording of the correct consumption of electricity.

That the complete exercise is not more than a trouble shooting exercise and without adhering to the specific procedures of the **UERC Supply Code 2007**, the said exercise cannot be termed as a check meter study. Thus any assessment raised, based on such trouble shooting is not legally tenable and is liable to be quashed.

PRAYER

That the appellant is hereby submitting the supplementary facts and in the premises aforesaid, it is most humbly and respectfully prayed that this Hon'ble Ombudsman may graciously be pleased to:-

- a) Call for records of the case for perusal;
- b) Quash and set aside the assessment vide impugned bill for the month of 09/20, being the same illegal, arbitrary, perverse, malafide and unjust.

- c) *Direct the respondent to quash the electricity bills subsequent to 27.12.2019 till defect is rectified being not in accordance with the UERC Supply Code regulations.*
- d) *Direct respondent to provide compensation to the tune of **Rs13,450/-** as per **Standard of Performance Regulation, 2007.***
- e) *Issue necessary directions to the UPCL / respondent not to disconnect the electricity supply of the complainant's Unit on his being made regular consumption charges and not to take any other coercive action till the final decision of the present grievance petition.*
- f) *Pass any other order or direction, which this Hon'ble Forum may deem fit and proper, on the facts and circumstances and in the interest of justice."*

9. Hearing in the case was held on scheduled date 04.02.2022. Both parties appeared. Commandant, ITBP on behalf of the petitioner and Executive Engineer himself on behalf of the respondent company argued their cases. While the petitioner argued their case with the force of relevant regulations and case laws from Hon'ble High Court and Hon'ble Supreme Court and also submitted a detailed written argument had tried to establish that the respondents have violated relevant regulations as well as their action for conducting check meter study and demanding additional sum as per the results of check meter study and imposition of LPS is not justified and maintainable being in violation of the relevant regulations and have therefore prayed that the reliefs as made in their rejoinder be granted, on the other hand the respondent's arguments were tenuous and they even not uttered a single word or comment on petitioner's rejoinder.

10. The contents of the petitioner's written arguments are as follows:

“(1) That the appellant craves leave of the Appellate Court, to decide the following substantial questions of fact and law; apart from framing and dealing with any other substantial questions of fact and law, which may be considered by the Appellate Court as valid; to decide the disputed issues, in accordance with the principles of natural justice and fair play:-

- (i) Whether the UPCL Test Laboratories (including for carrying out site testing), are duly accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL), as mandated by*

*the Central Electricity Authority dated 17.03.2006 concerning the Central Electricity Authority (Installation & Operation of Meters) Regulations 2006 u/s 55(1), r/w Section 73(e) and Section 177(2) of the Electricity Act 2003, in respect to Clause 17(2), which mandates that the meter testing reports must be issued by NABL Accredited Testing Laboratories; whereas Clause 18(2) mandates “The testing for consumers meters above 650 volts should cover the entire metering system including CT’s, VT’s. Testing may be carried out through NABL Mobile Laboratory, using secondary injection kit, measuring unit and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturer works”? Whether the test report generated by UPCL, which does not qualify to be categorized as an accredited testing laboratory, is reliable more so because of the settled law as returned by the Hon’ble Bombay High Court judgment in the matter of **Nestle India Ltd. vs. FSSAI (Writ Petition (L) No. 1688 of 2015)** dated 13.08.2015 ?*

*(ii) Whether the mandatory condition imposed under **Clause 3.1.3 sub-clause 4**, that the meter testing report, should be furnished in the prescribed format in **Annexure V**; and whether the calculations returned by the answering respondent with meter sealing certificate (although the same was not provided in the instant case), is sustainable in law; whereas the test result has to amplify, that ‘consumer meter recorded% Less / more consumption’ and on the basis of such test report, the answering respondent had to conclude ‘need replacement/ results are within limits’? Where in absence of such prescribed certificates, mere submission of meter sealing certificate (without any such prescribed calculations and result), would suffice the mandate of the substantive requirements enshrined under **Clause 3.1.3 of the UERC notification dated 17.04.2007** ?*

(iii) Whether, on facts, grounds and binding statutory law/ regulations, could UPCL unilaterally and without prior notice, as mandated under Clause 3.1.3(3) of the UERC Supply Code vide notification dated 17.04.2007, install a check meter and test the same, without informing the petitioner about the proposed date and time of testing at least two days in advance ? Whether without adhering to the mandated procedure, could UPCL open the sealing of the meter and thereafter issue a sealing certificate/ conduct test reports/ conduct tamper reports, whereas the binding mandate of Indian Electricity Act, was not religiously followed and after opening the sealing/

installing the test meter, a signature of the employee of the appellant was mechanically obtained, which is against the principles of natural justice and fair play; notwithstanding the fact, that the appellant is not even sure, how many times more would UPCL have tested/ opened the seal of the electric meter, as there are many irregularities in the seal number engraved in the seal?

- (iv) *Whether any assessment can be raised by the answering respondent without procedurally complying to the **clause 3.1.3 (Testing of meters) of UERC Supply Code, 2007** more so because of the settled law **WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand** which is having the binding effect in the instant dispute at hand? The copy of judgment is attached at **Annexure-1**.*
- (2) *That the dispute at hand is a case of **burnt meter** which requires to be dealt as per **clause 3.1.5 (Burnt Meter) and clause 3.2 (Billing during the period defective/stuck/stopped/burnt meter of the UERC Supply Code Regulations,2007**. The answering respondent not only defaulted procedurally with regards to check meter study but also failed to appreciate the relevant applicable clauses of supply code. The respondent should not be given advantage of his act and omission. The **Hon'ble Supreme Court in civil appeal 3615 of 1996** in the matter between **"Bombay Electric Supply & Transport Undertaking Vs Laffans (India) Pvt. Ltd. &Anr."** in the judgment dated 21.04.2005 have categorically stated at page no. 7 **"The appellant cannot be permitted to take advantage of its own act and omission"***
- (3) *That the regulation nowhere provides to raise an assessment in case of burnt meter. Even if the same is required then the competent authority for the same is Electrical Inspector for which reliance may be placed on the civil appeal No. **716 of 1985** in the matter between **"M.P.E.B Vs SMT. Basantibai"** of the **Hon'ble Supreme Court**.*
- (4) *That the integrity of meter was not maintained during the check meter study as the installed seals were replaced in between the check meter study without the knowledge of appellant whereas the seal are the integral part of the meter and any replacement or installation of seals have to be properly recorded in the sealing certificate duly signed by both the properties. That this noncompliance to the regulation would render the entire check meter study null and void and any assessment made is arbitrary, not having foundation on the UERC Supply Code 2007 and is liable to be dismissed.*

- (5) *That as per clause 3.1.3 (1) of UERC Supply Code, 2007 the entire metering system including CT, PT need to be tested along with energy meter. The respondent never tested that the energy meter to establish that it is working as per specification. Thus any of the MRI reports of the energy meter cannot be relied upon for any adjudication.*
- (6) *That the Ld. Forum got the principal amount under dispute deposited by the appellant on false assurance that the amount will be adjusted subsequently, however no such reference was made in the order of LD. Forum. It is pertinent to mention that appellant had opposed any deposits pending the resolution of dispute however on the words of the Ld. Forum the principal amount was deposited. That the entire act of the Ld. Forum is against the principles of natural justice.*
- (7) *That as per clause 14 of UERC (Release of new HT and EHT Connections, Enhancement and Reduction of loads) Regulation, 2008-Meter Reading “The readings of the meter referred to in clause 12 above shall be taken at regular intervals by distribution licensee through MRI and the readings so taken shall be conclusive and binding on both the consumer and the distribution licensee as to the amount of maximum demand and electrical energy supplied to the consumer, except in case of tampering of such meters whereby distribution licensee shall have the right to proceed as deemed fit ”. That in view of this clause the readings entered and the bills raised is binding on both the parties.*
- (8) *That the answering respondent have not complied to any of the regulation and have not followed principles of natural justice in as much as check meter study is concerned or the assessment raised thereof. That the various case laws submitted clearly mandates that no assessment can be raised without having procedural and other compliances of the UERC Supply Code, 2007. Thus the check meter study and the results obtained is having no sanctity and hence no sanctity can be attributed to the assessment raised and therefore the entire assessment is liable to be dismissed.*
- (9) *It is therefore most humbly prayed, that the Hon’ble Ombudsman (Electricity), would be pleased to take on record the Written Argument of the appellant and allow the appellant to argue the matter both on the averments made in the appeal memo as well as countered to the Counter (Written Statement) of the answering respondent in his Rejoinder Application, as well as the appellant would crave leave of this Hon’ble*

Court to allow furnishing of any evidence/ documents/ judgments, to substantiate the pleadings of the appellant, for which act of kindness the appellant shall as in duty bound, ever pray.”

11. Documents available on file including Forum’s case file of complaint no. 47/2021, which was summoned as per petitioner’s request have been perused. Various regulations and case laws referred by the petitioner in their rejoinder and written arguments have also been perused and consulted. Arguments from both parties were heard. It is borne out that a 200 KW (236 KVA) connection no. 700K000000837 exists in the name of Commandant, ITBP Astley Estate, Mussoorie. An inflated bill for the period 31.08.2020 to 30.09.2020 amounting to Rs. 14,74,107.00 for total units 240154 was received by the petitioner. This is the disputed bill. The petitioner has submitted that all bills except the disputed bill have duly been paid regularly and no bill was outstanding. A number of letters were written to the respondent Executive Engineer by the petitioner for clarification about the inflated bill. The last letter written to respondent by them was of dated 13.11.2020. The respondent informed the petitioner vide their letter dated 28.11.2020 that the bill has been issued for slow running of meter @ 52.49%. Having not been convinced with respondent’s reply they approached Secretary, UERC vide their letter 23099 dated 27.10.2021 about the disputed bill and their grievance and they mentioned that all bills except the disputed bill for the month of September 2020 issued online have duly been paid within the prescribed due dates. Further they have stated that bill amounting to Rs. 23,98,892.00 has been received for the month of September 2021 which includes the disputed bill for September 2020 and LPS imposed on the same bill. The current dues for the month of September 2021 are only 3,00,528.00 which had duly been paid and they have requested the Secretary, UERC that bill for the month of September 2020 be ordered to be issued on actual metered consumption and LPS imposed be also waived off. The actual contents of their prayer in the aforesaid letter dated 27.10.2021 are reproduced below:

“अतः आपसे विनम्र निवेदन है कि उपरोक्त कनेक्शन पर अभी तक जोड़े गये सरचार्ज/एल.पी. एस. को हटाने की कृपा करें एवं माह सितम्बर-2020 के सामान्य बिल (शुद्ध खपत बिल) इस कार्यालय को प्रेषित करने हेतु संबंधित को निर्देशित करने की कृपा करें।”

They have requested that the concerned authority may be directed to issue the revised bill accordingly. The UERC has forwarded the aforesaid letter to Forum, Dehradun where this letter was registered as complaint no. 47/2021 and the Forum vide their order dated 25.11.2021 has dismissed this complaint in view of their observations as mentioned in its order. The petitioner being aggrieved with Forum's order has preferred the instant appeal.

12. It has been noted that none of the relevant UERC regulations as mentioned by the petitioner in their rejoinder as well as in written arguments have been complied with by the respondents. The respondent during hearing categorically admitted that no prior notice for installation of check meter and its finalization was given to the petitioner. The sealing certificates dated 02.09.2020 for installation of check meter and of dated 21.09.2020 for its finalization as available in case file, have not been got signed by the petitioner, neither a copy thereof was given to them. In the sealing certificate dated 21.09.2020 vide which check meter study was finalized no results of check meter study has been mentioned, which was mandatory for them so that the petitioner could have get to know the results of the check meter study and about its consequences and thus they have been deprived of the opportunity which for they are entitled to challenge the results and may get the meter tested/checked by a third party i.e. the Electrical Inspector, which is the competent authority in such a case. The sealing certificate dated 21.09.2020 only mentions that “आज दिनांक 21.09.2020 को उक्त Test meter final कर दिया गया 11 KV PT में Y phase का pole burnt होने के कारण 11 KV PT को replace कर दिया गया व संयोजन को सूचारु कर दिया गया” This suggests that the existing meter was kept installed at the premises of the petitioner after replacement of PT.
13. A perusal of the disputed bill shows units consumed as 240154. This bill does not show any assessed units. The metered consumption in NH slot is shown as 227038 units while last reading in this slot is shown as 46898 current reading 49210, difference is 2312 and after multiplying by MF 6 the consumption comes out 13872 units, while the consumption in this slot has been shown as 227038. Thus excess units (227038 – 13872 = 213166) has been billed. There is no mention how these excess units have been billed. However, the respondent Executive Engineer informed to the petitioner vide his letter 2287 dated 28.11.2020 that a check meter was installed at

their premises on 02.09.2020 vide sealing certificate no. 146/033 and the same was finalized on 21.09.2020 vide sealing certificate no. 59/16 and as per test division's report main meter was found slow by 52.49% on the basis of which assessment for slow running of meter by 52.49% has been made in the bill for September 2020. The calculation sheet duly approved by the respondent Executive Engineer available on record shows that differential 213166 units in the disputed bill for September 2020 are the assessed units from 27.12.2019 to 21.09.2020 for slow running of meter @ 52.49%. It has been noted that the respondents have not complied with any of the relevant UERC regulations of UERC (The Electricity Supply Code) Regulations, 2007 such as sub regulation 3.1.3 (7), 3.1.5 (2), 3.2. Further their test results are not reliable as their meters have not been tested in NABL accredited laboratories and admittedly their labs have not been accredited by NABL as is mandatory under CEA Regulation 2006 as well as UERC (The Electricity Supply Code) Regulations, 2007.

14. Further the petitioner has also referred clause 14 of UERC (Release of New HT and EHT connections, Enhancement and Reduction of Loads) Regulations, 2008 regarding meter reading which provides that the readings shall be taken by the Distribution Licensee through MRI at regular intervals and the readings so taken shall be conclusive and binding on both the consumer and the Licensee as to the amount of Maximum demand and electrical energy supplied to the consumer, except in case of tampering of such meters whereby distribution licensee shall have the right to proceed as deemed fit. In view of the said regulation readings entered and the bills raised is binding on both the parties i.e. to say that bills issued on MRI readings cannot be overhauled subsequently except in case of theft, which is not a case here as the respondents have not charged the petitioner for tampering with the meter and by virtue of this sub regulation the bills issued on MRI basis are final and binding on both parties and are not subject to any revision.
15. The Hon'ble High Court, Nainital in its judgment dated 10.06.2021 in Writ petition no. 1069/2021 Executive Engineer, EDD, Urban, Roorkee vs Shahjahapuram Society, Ramchandra Mission, Haridwar Roorkee, a case similar to that of the petitioner being of the view that since a very assessment itself was not foundational as per the regulation of 2007, this court is not willing to exercise its supervisory jurisdiction under Article 227 of the Constitution of India and dismissed the petition as the writ

petition lacks merits. The Hon'ble High Court, Bombay in Writ petition no. 1688/2015 dismissed the petition vide their judgment dated 13.08.2015 on the grounds that a) principles of natural justice have not been followed, b) the laboratories have not accredited therefore results cannot be relied upon c) mandatory procedure as per regulations have not been followed d) the impugned orders are held to be arbitrary and violative of Article 14, 19 (1) (g) of the Constitution of India.

16. The petitioner has also submitted a case law of Hon'ble Supreme Court of India in Civil appeal no. 716 of 1985 in the matter between M.P.E.B. vs Smt. Basanti Bai a case similar to that of the petitioner which was decided by the Hon'ble Supreme Court vide its order dated 10.11.1987 vide which the appeal was dismissed. The abstract of the judgment is reproduced below:

“The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy. For the reasons, aforesaid we affirm the order of High Court and dismiss the appeal without costs.”

17. In view of the fact that the respondents have not followed the relevant UERC regulations as referred to by the petitioner in their rejoinder and written arguments, CEA regulations 2006 as well as UERC regulations, 2007 regarding accreditation of labs by NABL and in view of the judgments of Hon'ble High Courts of Bombay and Nainital and Hon'ble Supreme Court of India as are available on file the entire process and procedure adopted by the respondents in conducting so called check meter study and raising an assessment on the basis of such study through bill of September 2020 for additional units of 213166 on account of slow running of meter by 52.49% for a period from 27.12.2019 to 21.09.2020 for a sum of Rs. 12,57,679.40 included in the bill for September 2020 for a total sum of Rs. 14,74,107.00 admittedly paid by the petitioner on 16.11.2021, according to them as per verbal assurance by the Forum that the principal amount of assessment should be deposited to avoid disconnection and the matter shall be looked after later but they dismiss the complaint vide their order dated 25.11.2021 and since not deciding the case in their favour by the Forum the total outstanding dues including LPS has arrived at a figure of Rs. 23,98,892.00 as in the bill for September 2021.

18. As discussed above the entire process and procedure adopted by the respondents is found violative of the procedural law and there has been procedural flaw and the petitioners have been deprived of their right to challenge the check results as the same were not provided to them neither sealing certificates were filled in their presence and were not given to them, the opportunity for getting the meter tested by a competent authority i.e. Electrical Inspector was not provided to them, the assessment so raised itself is held to be procedurally illegal and in violation of the relevant regulations. The check meter study is therefore held null and void and so is the assessment raised on the basis of such study. The respondents are directed to withdraw the principal amount of such assessment and LPS imposed thereon. Any sum deposited by the petitioner against such assessment admittedly on 14.11.2021 be refunded by way of adjustment in the coming bill (s). Petition is allowed. Forum order is set aside.

Dated: 18.02.2022

(Subhash Kumar)
Ombudsman