

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Smt. Iqbal Lori
Prop. M/s A to Z Scrap,
Nagar Palika Parishad,
Mahuwakhedaganj, 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. 31/2024

Award

Dated: 07.02.2025

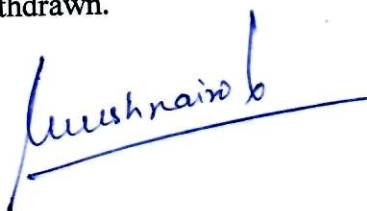
Present appeal/ representation has been preferred by the appellant against the order of Consumer Grievance Redressal Forum, Udham Singh Nagar Zone, (hereinafter referred to as Forum) dated 04.07.2024 in complaint no. 42/2024-25 by which Ld. Forum has dismissed the complaint of appellant Shri Iqbal Lori Prop. M/s A to Z Scrap, Nagar Palika Parishad, Mahuwakhedaganj, Kashipur, Distt. Udham Singh Nagar (petitioner) against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Kashipur, Distt. Udham Singh Nagar, Uttarakhand (hereinafter referred to as respondent).

2. The present representation dated 02.08.2024, has been preferred by the petitioner wherein he has alleged a number of allegations on the respondents such as a false FIR under section 126 of Electricity Act, 2003 has been lodged against him and assessment has been raised on the rates applicable to HT category while his connection comes under LT category. He has a 65 KW connection with no. 370K000098877. A checking team headed by AE (Vigilance) and AE (Meter) came at his premises on 09.02.2024. He was told by the team that meter box, meter and cable are being sealed for checking in test lab. No checking report was given to him at site and connection was disconnected. On approaching to department he was informed that theft of electricity was found at his premises and a case for the same is being

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lodged. A 100 KVA transformer is installed at his premises from where his 65 KW connection is being fed, but in the checking report a total of 403 KW load had been found connected at site. He has also alleged that there are variations in the times of checking and sealing the meter and meter cubicle. Sub regulation 7.1.3 (3) of Supply Code, 2020 has not been complied with in filling up the checking report.

3. A copy of checking report was also not given to him under RTI also dated 30.04.2024 till 24.05.2024. He has also referred case law of Hon'ble Supreme Court Civil Appeal no. 8859/2011 to support his case. RC for the assessed amount was also issued on 20.05.2024. On filing an appeal against the RC before Hon'ble High Court a copy of the checking report, provisional assessment, final assessment, notice under section 3 and RC was received from the department on 24.05.2024.
4. He has challenged that there are a number of mistakes in calculation of assessment as mentioned under para 30 to 34 of his representation. He has also alleged that the meter on his connection of 65 KW was installed by JE (Meter), while in accordance with Director (Operation), UPCL's order no. 4431 dated 27.09.2019 the JE is not authorized to install meter at a connection of 65 KW. Under the said order the AE (Meter) and SDO Distribution are jointly responsible for installation of meter at a connection of 50 KW to 500 KW. He has also referred Hon'ble Ombudsman's order dated 29.09.2023 of Shri Ashish Kumar Arora, M/s Global Multispecialty Hospital, Bazpur Road, Kashipur in support of his averments. He has also referred Hon'ble Ombudsman's order dated 26.02.2020 in representation no. 03/2020 which according to him supports his case.
5. Since the Ombudsman is authorized to scrutinize the cases under section 126 and therefore this representation is being preferred.
6. Since the assessing officer has not complied with the provisions under section 126 of Electricity Act, 2003 and has raised the impugned assessment, the Hon'ble Ombudsman is empowered to get such case examined. In view of his averments he has requested that the provisions under section 126 of the Act, have not been followed and a wrong checking report has been prepared, the case of theft for which FIR has been lodged and RC of the assessed amount has also been issued, the case of theft and the RC may kindly be ordered to be withdrawn.



7. After perusal of records and hearing arguments from both parties, the Forum found that the case comes under section 126 of Electricity Act, 2003. As per provisions under sub clause 3.1.(4) of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of Grievance of the Consumers) Regulations, 2019 cases under section 126, 127, 135, 140 and 161 of Electricity Act, 2003 are out of Forum's jurisdiction, the fact of the case is that assessment under section 126 of Electricity Act, 2003 has been raised and therefore in view of the aforesaid regulation, the Forum has no jurisdiction to hear and decide such a case as such the complaint is liable to be dismissed and the Forum accordingly dismissed the complaint vide its order dated 04.07.2024.
8. The respondent Executive Engineer has submitted a written statement vide letter no. 4503 dated 06.09.2024 along with notarized affidavit under oath, wherein he has submitted as follows:
- i. A connection for 65 KW load under RTS 5 LT tariff was released to Shri Mohd. Iqbal Village Mahuwakheda in the name of M/s A to Z Scrap on 17.08.2022.
 - ii. A vigilance team of the department carried out a checking at consumer's connection no. 370K000098877 on 09.02.2024 by a team headed by AE (Vigilance) and SDO Distribution. The team found that meter was tampered and theft of electricity was being done through the tampered meter. Checking report was filled in bearing no. 33497.
 - iii. The consumer was found unauthorizedly using electricity, which is a case of theft, a cognizable offence under section 135 of Electricity Act, 2003.
 - iv. Assessment was raised in accordance with relevant UERC regulations 2020.
 - v. A provisional assessment bill for Rs. 1,26,36,108.00 was sent to the consumer on 12.02.2024.
 - vi. No objection or representation against the said provisional assessment was received from the consumer till 27.02.2024, therefore a revised final assessment bill for Rs. 1,20,50,246.00 was issued vide letter no. 1539 dated 27.02.2024.
 - vii. As the revised assessment was not paid by the consumer, demand notice under section 3 was issued vide letter no. 1776 dated 12.03.2024.

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- viii. As the assessed amount was not paid by the consumer within a month after issue of section 3 notice RC under section 5 was issued vide letter no. 2252 dated 12.04.2024 for recovery of dues as arrears of land revenue.
- ix. All necessary formalities for raising assessment in case of theft of electricity has been duly completed as per provisions under section 126. It is further submitted that the consumer was at liberty to prefer an appeal under section 127 of the Act before the Appellate Authority DM, Udham Singh Nagar.
- x. The consumer Shri Iqbal Lori also preferred a Writ no. 1354/2024 in this case which has been decided by the Hon'ble High Court vide judgment dated 24.05.2024. Wherein the writ petition was disposed off by permitting the petitioner to approach the Appellate Authority. Further the Hon'ble Court ordered that for a period of 10 days recovery proceedings initiated against petitioner shall be kept in abeyance.

Further the respondent has submitted that in the cases of theft of electricity under section 135 of the Act, FIR is lodged by the department and assessment is raised under section 126, which has duly been accomplished in the instant case.

- xi. The respondent has further submitted that an appeal bearing no. 42/2024-25 was preferred by the consumer in the case before the Forum and the Forum vide its order dated 04.07.2024 dismissed the complaint saying that such cases are out of Forum's jurisdiction.

Additional submissions

- xii. It is also submitted that another writ no. 1811/2024 was preferred by the consumer before the Hon'ble High Court, in which the Hon'ble High Court passed order dated 08.07.2024, which reads as **"Since section 127 (2) Electricity Act, 2003 provides the condition of 50% pre deposit of the assessed amount and such pre deposit has to be by way of cash or by way of Bank Draft therefore the prayer made by the petitioner to permit him to furnish bank guarantee to 50% cannot be accepted."** Accordingly the writ petition failed and is dismissed.
- xiii. A complaint was also lodged by the consumer before Hon'ble Minority Commission, Dehradun which was dismissed by the Hon'ble Commission vide its order no. 689 dated 14.08.2024.

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- xiv. The consumer preferred a writ petition no. 2194/2024 before the Hon'ble High Court against the aforesaid order of Hon'ble Minority Commission, which is still pending before the Hon'ble High Court after issue a notice dated 28.08.2024.
- xv. It is also submitted that the case of Shri Ashish Kumar Arora before Hon'ble Ombudsman was related with the issue of multiplying factor and was not a case of theft of electricity under section 135 of the Act.
- xvi. It is also submitted before the Hon'ble Ombudsman that the petitioner preferred 2 nos. writ petition before the Hon'ble High Court in connection with this case in which writs the Hon'ble High Court ordered the petitioner to file an appeal before DM, Udham Singh Nagar who is the Appellate Authority under section 127 of Electricity Act, 2003, but the petitioner in violation of Hon'ble High Court's order, has preferred appeal before other Commissions.

From the above it is clear that the petitioner has preferred the instant appeal before Hon'ble Ombudsman rather than filing an appeal before the Appellate Authority as ordered by Hon'ble High Court and therefore this appeal is liable to be dismissed.

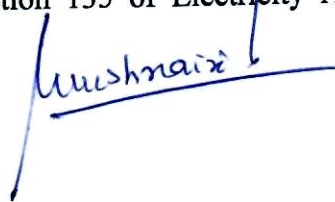
The respondent has duly substantiated his submissions with documentary evidences as enclosed with this written statement as annexures no. 1 to 23.

- 9. The petitioner has submitted a rejoinder dated 20.09.2024 contents of which are mostly repetitions of his averments in the petition. He has tried to say that its not a case of theft of electricity. Various documents including replies to his RTI questions by the officers of respondents, have been submitted by him. He has approached several authorities including Energy Secretary, Higher officers of UPCL and others. Copy of inspection report dated 09.02.2024 and FIR dated 11.02.2024 lodged by respondents has also been submitted. Further he has approached to the Hon'ble High Court of Uttarakhand in a number of Writ Petitions. In the writ petition no. 3314/2023 the Hon'ble High Court disposed off the writ petition vide order dated 07.03.2024, with the permission to approach the appellate authority. Again the writ petition no. 1354/2024 was disposed by the Hon'ble High Court by permitting the petitioner to approach the appellate authority, vide order dated 24.05.2024. Again Writ petition 1811/2024 was filed before the Hon'ble High Court wherein it was submitted before the Court that the Appellate Authority was insisting upon to deposit 50% of the

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assessed amount in cash or through bank draft and requested the Hon'ble Court to permit to deposit 50% of the assessed amount through bank grantee. The Hon'ble High Court mentioned that since 50% of the assessed amount is a pre condition and had to be deposited by way of cash or by bank draft, the petitioner's prayer to deposit the amount as bank guarantee cannot be accepted. The Hon'ble High Court also mentioned in its order dated 07.03.2024 passed in WPMS no. 3314 of 2023, wherein the said writ petition was disposed vide order dated 07.03.2024 by permitting the petitioner to approach the Appellate Authority challenging the recovery citation and accordingly the Hon'ble Court ordered that the petition fails and is disposed off vide order dated 08.07.2024. Yet another writ petition no. 2194/2024 was filed before the Hon'ble High Court by UPCL against Uttarakhand Minorities Commission which case was listed for 25.10.2024. A copy of Hon'ble High Court's order dated 25.10.2024 has been collected from website. The Hon'ble High Court has fixed next date of hearing as 17.02.2025, so this writ is still pending before the Hon'ble High Court.

10. Hearing in the case was fixed for 11.12.2024, which was subsequently shifted to 20.12.2024 on the request of the respondent, hearing was held on scheduled date 20.12.2024, both parties appeared and argued their respective case, some documents were submitted by the petitioner and the respondent, which have been taken on record. Arguments concluded and judgment was reserved.
11. After hearing arguments from both parties and perusal of documents available on file and perusal of relevant sections 135, 127 and 126 of Electricity Act, 2003 which have also been gone through. It is borne out that a checking at the premises of the petitioner was carried out on 09.02.2024 consisting a team of AE (Vigilance), AE (Meter), SDO (Distribution), JE (Meter) and JE (Distribution) and also one SMG staff, wherein it was detected as a case of theft of electricity and FIR was also lodged with Police Station on 11.02.2024. Provisional assessment of Rs. 1,26,36,108.00 was raised which was subsequently finalized as Rs. 1,20,50,246.00. As the assessed amount was not deposited, notice under section 3 of Dues Recovery Act was issued vide letter no. 1776 dated 12.03.2024 and since still amount was not paid RC under section 5 was issued on 12.04.2024 for recovery of dues as arrears of land revenue. Based on documentary evidences it is established to be a confirm case of theft of electricity, which is a cognizable offence under section 135 of Electricity Act, 2003 and is



therefore out of Ombudsman's jurisdiction in terms of sub regulation 2.1. (f) (2) of UERC (Appointment and Functioning of Ombudsman) Regulations, 2004. Further it is also borne out that the petitioner has failed to comply with Hon'ble High Court's orders as he did not deposit the 50% of the assessed amount as mandated under section 127 (2) of Electricity Act, 2003. Ombudsman's order dated 29.09.2023 passed in case no. 24/2023 and order dated 26.02.2023 passed in case no. 03/2023 referred by the petitioner in his representation does not support his case as the referred cases were regarding application of wrong MF and application of wrong tariff respectively, such being the case, the Ombudsman cannot decide the case on merits.

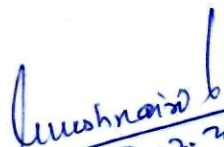
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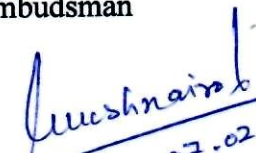
In view of above facts of the case the petition is disposed off without passing any order on merits. The Forum is not empowered to entertain and decide the case of theft of electricity under section 135 of Electricity Act, 2003 as per sub regulation 3.1.1 (4) of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of Grievances of Consumers) Regulation, 2019. As such the Forum order stands amended as per this order. No order of costs.

Dated: 07.02.2025

Order signed dated and pronounced today.

Dated: 07.02.2025


(D. P. Gairola)
Ombudsman
07.02.2025


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Ombudsman
07.02.2025