

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Manthan Maheshwari
M/s DPS Polymers
Plot no. 68, Shiv Ganga
Industrial Estate, Bhagwanpur,
Roorkee, Distt. Haridwar,
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Bhagwanpur, Roorkee,
Distt. Haridwar, Uttarakhand

Representation No. 06/2022

Order

Dated: 27.06.2022

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone, (hereinafter referred to as Forum) order dated 13.01.2022 in their complaint no. 134/2021 before the said Forum against UPCL through Executive Engineer, Electricity Distribution Division, Bhagwanpur, Roorkee (hereinafter referred to as respondent) M/s DPS Polymers, Plot No. 68, Shiv Ganga Industrial Estate, Bhagwanpur through its partner Shri Manthan Maheshwari has preferred this appeal for redressal of his grievance.

2. **Limitations:** The petitioner Shri Manthan Maheshwari, Partner M/s DPS Polymer, Bhagwanpur, Distt. Haridwar has preferred the petition dated 02.02.2022, followed by a detailed petition dated 07.03.2022. the petitioner has also included his grievances related to Forum order dated 23.09.2021 in his complaint no. 80/2021 before the said Forum which according to him could not be challenged due to non awareness of the office of the ombudsman and procedure and appropriate Forum for challenge, the delay in filing the appeal with respect to the said order is totally inadvertent and is liable to be condoned.

Prayer:

The petitioner has requested that Forum order dated 13.01.2022 be set aside and respondent be directed to resolve the grievance and correct the illegal and unlawful demand raised vide letter dated 21.09.2021 which was thereafter modified vide letter dated 21.01.2022 in pursuance to Forum's order, as per law and the opposite party be restrained from realizing the sum of Rs. 7,72,293.52 shown as amount due for the month from 09.09.2020 to 13.09.2021 or an amount of Rs. 7,62,182.00 shown as due from 14.09.2020 to 13.09.2021 (for any other amount on the same pretext) raised due to incorrect and wrong billing on account of slowness of meter together with late payment surcharge and from disconnecting the supply in default of the same or for any such other demand for the said period, further the petitioner has requested that respondent be directed to accept payments of current bills till the disposal of the appeal without insisting upon deposit of the disputed amount. The petitioner has further requested that Forum order dated 23.09.2021 in complaint no. 80/2021 be set aside and the correctness of the demand raised for the month of April 2021 be checked considering the industry did not function due to covid lockdown and said duration be removed from consideration in the assessment.

Facts of the case:

- i) He is a consumer of UPCL having contracted load 225 KVA and connection no. 9503. The connection was initially released in the year 2010.
- ii) He is a manufacturer of thermacol sheets, polybags etc. The average consumption has mostly been uniform and does not depend upon variation in production. This can be seen from consumption pattern and the bills raised by the respondent, copies of which has been filed with the petition.
- iii) From bare perusal of the consumption pattern for past months it is apparent that the pattern is uniform and was also uniform earlier than September 2020. On 10.05.2021 it was noticed that display of the meter installed at their premises was not working properly and therefore they informed the respondent the same day through a letter and requesting them to take necessary action.

- iv) They received a bill for the month of May 2021 for Rs. 3,78,109.27 even though during that time the factory was closed due to covid restrictions, there was no possibility of such a huge bill amount, it is pertinent to mention that they informed the respondent in the month of may 2021 that the meter was not showing display but respondent did not make any efforts to change the meter and the factory was closed due to covid guidelines. They were surprised to receive exorbitant bill for the period when the factory was closed. Representations against such bill were made on 21.06.2021 and 12.07.2021. Having found no solution from the respondent they were forced to file a complaint before the Forum, which was registered as case no. 80 of 2021. The Forum vide its order dated 23.09.2021 merely modified the demand to Rs. 2,33,496.28 without any basis, not even looking at fact that the factory was closed. The respondents got the said amount deposited from them on the pretext of threat of disconnection. They were not aware about the establishment of Hon'ble Ombudsman and of his right to file a representation against non redressal of grievance by Forum and therefore was devoid of the opportunity to challenge the wrong and illegal order of the Forum. Having been advised that request can be made to Hon'ble Ombudsman against the aforesaid order so the petitioner is also challenging the said order although primary grievance which is subject matter of the appeal arose after passing the said order
- v) The petitioner has submitted that perhaps respondent did not take this challenge by the petitioner of their bill well and thereafter the respondent again served a letter no. 3000 dated 21.09.2021 making contrary statements informing the petitioner that due to certain non correction of ledger the MF was incorrect at same time also informing that the meter installed at premises was slow to the extent of 17.29% and thereby demand of Rs. 7,72,294.00 was raised which was to be paid within 15 days. The petitioner has stated that the case is primarily on the basis of slow meter as held by the respondent.
- vi) The petitioner has stated that no relevant documents, MRI or information of change of meter of other equipments have been provided to them by the

respondent. According to him respondent's conduct has been very unfair and they are not willing to disclose any relevant information being non technical person the petitioner does not understand the technicalities involved in the matter but is certainly aware about his usage and output and can therefore say with certainty that the demand raised by the respondent is totally unfair and unjust. The consumption pattern will clearly establish that it is totally incorrect to say that the meter was running slow for the past 1 year.

- vii) A check meter was installed by the respondent on 16.08.2021 (A perusal of sealing certificate shows the correct date as 06.08.2021, without any information to them for showing that the check meter installed was accurate and correct. The respondent finalized the same by recording certain parameters and got copy of the sealing certificate signed by an employee of the petitioner who did not even understand as to what was written in the sealing certificate. Moreover that employee has no choice to make any comments or express his own views, he just had to sign the document as directed and it was finalized on 13.09.2021 and again the documents were got signed in the similar fashion. It is pertinent to mention that at the time of installing the check meter the officials of the respondent made remark on the sealing certificate dated 06.08.2021 which is reproduced under: **"Check meter installed due to 2 nos. of CTs found 20/5 instead of 15/5 in YMPL testing."** And the endorsement in sealing dated 13.09.2021 vide which check meter was finalized reads as under: **"Old meter found 17.80% slow in KWh and 17.29% slow in KVAh due to R&B phase CT was 20/5"**

It is pertinent to mention that a sealing certificate dated 09.09.2020 the MF is shown to be 3 and Line CT ratio has been shown as 15/5, which is correct, the CT and PT to be removed had a ratio of 20/5 but the respondent are making contradictory statements and even justifying the same by demonstrating the difference by installation of check meter.

- viii) Being aggrieved with unlawful demand of the respondent complaint no. 134 of 2020-21 was filed before Forum. The Forum did not hold any hearing in the matter, the petitioner went to attend the first hearing but

respondent did not appear for hearing and thereafter Forum passed order on 13.01.2022. A copy of the reply of the respondent filed before Forum was not provided to the petitioner. Although it appears that a reply was filed by respondent on 04.12.2021.

- ix) The Forum vide their order dated 13.01.2022 disposed off the case by accepting the complaint partly and directing the respondent to make the assessment from 14.09.2020 to 13.09.2021 in place of 09.09.2020 to 13.09.2020.
- x) Being aggrieved with Forum order the present appeal is being filed on the following grounds with a request to grant liberty to raise, plead and argue any other ground which is legally available or which the appellant becomes aware in due course of time on availability of the requisite information.

Grounds of challenge:

- xi) Forum's order is out rightly erroneous and on face of it is incorrect most cryptic, and without application of mind. The Forum has failed to provide justice to the petitioner and acted biased in favour of the respondent
- xii) The Forum has without application of mind has applied regulation dated 28.11.2020 without being deliberating as to how the said regulation can be applicable when the instance and assessment has been directing to be made for the period before promulgation of the said regulation, the new regulation was not applicable even as per the statements themselves.
- xiii) The respondent acted against the regulation and also against justice. The grievance of the petitioner was against unjust and wrongful basis for raising illegal demand, the Forum should not only have asked for all the relevant documents but should have also directed the respondent to provide the same to the petitioner, so that he could effectively represent his case. Even the earlier order passed was biased, which could not be challenged that time as the petitioner was not aware about establishment of Ombudsman, nor the Forum informed the petitioner that appeal against their order can be preferred before Hon'ble Ombudsman and the amount of assessment was deposited under the threat of disconnection. Although

always subject to legal remedy against the same. The delay in seeking remedy is totally inadvertent and unintentional. The amount of bill for the month of May 2021 was accepted and paid and now again this assessment, make the whole payment to be looked into by the Hon'ble Ombudsman.

- xiv) The petitioner thereafter also noticed that the consumption during the same time when the covid restrictions were effecting in the year 2020 was far less but in the year 2021 the respondent got an opportunity to raise illegal demand in the garb of the fact that the meter display was not working, The respondent has MRI available with them and could have ascertained that the factory during that time did not work and was closed but still knowingly made assessment on the basis of past 3 months. It is interesting to know that the average of the bills even for the past 3 months of the account as derived by the respondent.
- xv) Check meter was installed on 06.08.2021 by the department from the sealing certificate it appears that there was some mention of YMPL testing but the petitioner is not aware of any such testing as no documents pertaining to such a testing were made available to the petitioner.
- xvi) The calculation sheets given with the assessment shows that the maximum demand in the month of May has been shown to be far less than the sanctioned load, yet excess demand charges have been raised.
- xvii) From Forum's order it is seen that respondent filed their written statement making vague allegations which are totally against rules and regulations copy of the said written statement and documents filed in support was not provided to petitioner so no opportunity to file rejoinder against the same would be available. That the same amounts to denial of fair opportunity of hearing and arbitrary act of the Ld. Forum and displace biased in favour of respondent.
- xviii) The petitioner is aggrieved by Forum's order as such orders are not legally maintainable and are against rules and regulations of Hon'ble UERC and mandate of Electricity Act, 2003.
- xix) That act of respondent is arbitrary and unlawful, without any reason and basis and is just based on conjecture, surmises and presumption. The respondent has no authority and jurisdiction to make such conclusion, act

of the respondent are against provisions of electricity act, 2003 and UERC Supply Code, Regulations, as also other rules and regulations applicable.

- xx) No opportunity was provided to the petitioner to rebut which is strictly against law and principles of natural justice.
- xxi) No effective hearing opportunity was awarded to the petitioner to sustain its complaint or rebut the reply filed by the respondent, as such is against principles of natural justice and hence also is liable to be set aside.
- xxii) The Ld. Forum as well as the respondent corporation has accepted the contentions of the applicant and yet had failed to provide effective and legal relief to the petitioner.
- xxiii) The respondent and the Ld. Forum have acted totally arbitrarily, dehors the electricity act, 2003 and the relevant regulations of UERC.
- xxiv) The respondent has falsely represented facts before the Forum and the Forum has been biased in assessing the facts.
- xxv) The petitioner cannot be penalized for the complacency, inefficiency and incompetency of the respondent, they cannot be permitted to act on their whims and fancies and the respondent has no authority to act against the law and the prescribed procedure and to jump to fanciful conclusions without any basis and reason.
- xxvi) Respondent are not willing to admit their mistake and complaints of the petitioner are all falling to deaf years.
- xxvii) The Ld. Forum has failed to appreciate the evidence on record and applicability of the relevant law.
- xxviii) The Forum failed to appreciate that no demand/assessment on the basis of the incorrect reading can be made unless the correct consumption is established by the respondent.
- xxix) The respondent has failed to show any reason for raising the assessment, they are at one instance stating about wrong MF and at the same time are talking about slowness of the meter. The petitioner has been regularly paying its electricity bills and the less recording of consumption is an unjustified and arbitrary act, even otherwise the same is due to mistake of the respondent, if any, the respondent cannot be permitted to take benefit of their own mistake.

- xxx) The respondent has failed to show the MRI record of the meter and has also failed to establish the consumption on the basis of correct time slot.
- xxxi) The Forum has failed to appreciate the correct legal and factual position in the present case.
- xxxii) The Forum wrongly relied on the contention of the respondent. It has taken into consideration extraneous factors which are not relevant against the specific provisions of the regulations.
- xxxiii) Forum passed the order totally without application of mind to the facts and provision of the relevant rules and regulations. The Hon'ble Ombudsman can by mere looking at the order can see that the Forum has not given any finding or reasons for passing the order. The whole order just mentions about the contents of the pleadings filed by the parties and thereafter just partly allowing the complaint without assigning any reasons or costs. The order is not liable to stand, it is humbly submitted that such an order can never be considered an order in first place.
- xxxiv) The Forum has failed to see that contention of the petitioner were not denied by the respondent.
- xxxv) The Forum failed to discharge its legal duty to pass just decision.
- xxxvi) The Forum failed to see that raising such demand is totally illegal, void and without authority and against law.
- xxxvii) Forum's order is against law and based on misapplication and conception of law and is liable to be set aside.
- xxxviii) Forum's order is totally based on conjecture and surmises.
- xxxix) Forum's order is not sustainable in the eyes of law and is liable to be set aside.
- xl) Forum failed to see the bad effect both financially and functionality of the petitioner of the illegal action of respondent.
- xli) Petitioner is filing the relevant documents as annexure with the supporting affidavit with the appeal.
- xlii) If Forum's order is allowed to stand, it will cause great injustice and hardship to the petitioner, whole proceedings and the alleged assessment of additional units are totally de hors of the electricity act and totally illegal. The respondent cannot disconnect petitioner's connection for

forcing the petitioner to deposit the said amount, the applicant is only bound to pay for the consumption recorded by the correct meter and for the bills raised based on correct reading and other parameters.

- xliii) In the light of aforesaid facts it is in the interest of justice that respondent be restrained from realizing any amount on the basis of incorrect bills raised and from disconnecting the supply and the order of the Ld. Forum needs to be set aside.
- xliv) It is further in the interest of justice that the respondent be directed to resolve the grievance of the petitioner and correct the illegal and unlawful demand raised vide letter dated 21.09.2021 and thereafter modified vide letter dated 21.01.2022 in pursuance of Forum's order and the opposite party be restrained from realizing Rs. 7,72,293.52 shown as amount due for the month from 09.09.2020 to 13.09.2021 or an amount of Rs. 7,62,182.00 shown as due from 14.09.2020 to 13.09.2021 (or any other amount on the same pretext). Further correctness and propriety of assessment of Rs. 3,78,109.27 for the month of 04/2021 due to IDF bill as amended to Rs. 2,33,498.28 vide Forum's order dated 23.09.2021 in complaint no. 80/2021 be seen and corrected considering the non production in the month due to covid lockdown.
- xlvi) The respondent has been raising wrong bill and Ld. Forum was bound to scrutinize the facts and judiciously determine the correct amount and given direction to the respondent for complying with the same, the Forum has failed to discharge its statutory duties and in a very mechanical way just noting the contentions of the party have given vague directions and has not applied a judicial mind, thereby making the petitioner again and again running from cost to core. The petitioner has requested that the Hon'ble Ombudsman may kindly see his grievances and to redress the same and in general without limiting itself to the reliefs claimed only. It is requested to grant any other or further relief which Hon'ble Ombudsman deems appropriate and just in the present facts and circumstances.

Declaration:

- xlvi) The petitioner declares that no other appeal/proceedings with respect to the present matter is pending before any Court, tribunal or authority including Forums.

The petitioner respectfully prays for the following reliefs:

- a. Forum's order dated 23.09.2021 and 13.01.2022 in complaint no. 80/2021 and 134/2021 respectively and the correctness and propriety of the, assessment, adjustment done by the respondent and order of the Forum be kindly seen and if found against the provision of the act and regulation the same be kindly set aside and respondent be directed to correct the bill/assessment raised on the petitioner as per law without imposing any late payment surcharge.
- b. The respondent be restrained from enforcing in any manner or the realization of amount of the bills/assessment under consideration and subject matter of the complaints filed before the Forum and from disconnecting the supply of electricity of the petitioner in pursuance of the same.
- c. Delay if any in challenging adjustment/assessment made by the respondent and the legality and propriety of the order dated 23.09.2021, passed by Forum in complaint no. 80 of 2021 be kindly condoned.
- d. Any other or further relief viz the petitioner is entitled to and also viz the Hon'ble Ombudsman deems appropriate be kindly granted.
- e. Full cost of the complaint and compensation for the harassment and monetary loss to the petitioner.

3. **Forum order dated 23.09.2021 in petitioner's complaint no. 80/2021**

After perusal of records and hearing both parties the Forum found that the complainant informed the respondent's division office on 10.05.2021 about defect in the meter. The meter was replaced by the department on 10.06.2021. As per MRI report energy was recorded in the meter till 22.04.2021, the opposite party submitted in their written statement that Y phase was not appearing in the meter from 03.04.2021, but inspite of the aforesaid error coming to notice the department did not install a check meter. The Forum noted that had the check meter been installed timely the percentage error in metering could have been known and necessary assessment as per sub clause 5.1.3 (10) (b) of UERC (Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020 could have been raised but the

department themselves having not installed the check meter lost the opportunity for raising an assessment under aforesaid regulation, so the department is not entitled to raise assessment for the period 03.04.2021 to 22.04.2021 on the basis of previous average consumption, so the Forum was of the view that setting aside the assessment raised by the department from 03.04.2021 to 22.04.2021 shall be justified.

The Forum has further noted that the department has been grossly careless in dealing with this matter due to which the department has suffered financial loss, so the Forum has directed that the corporation should investigate into this matter as to who are the erring staff and officers due to the mistakes committed by them the department has suffered loss and the department is at liberty to recover the amount lost from such erring officers and staff. The Forum has further opined that it would be justified to raise assessment on the petitioner for the period from 22.04.2021 to 10.06.2021, the date of replacement of meter on the basis of average consumption of previous 3 billing cycles. The Forum in view of other observations have allowed the complaint with the direction to the department for setting aside the assessment raised by the department from 03.04.2021 to 22.04.2021 and raise assessment from 22.04.2021 to 10.06.2021 as aforesaid and issue the revised bill accordingly. The Forum has further directed to submit the compliance report of the order within 30 days and has accordingly disposed off the complaint.

4. **Forum order dated 13.01.2022 in petitioner's complaint no. 134/2021 before the Forum.**

After perusal of the records and hearing arguments from both parties the Forum observed that having reported error in meter by the outside hired agency M/s YMPL the department installed a check meter on 06.08.2021 at the premises of the petitioner which was finalized on 13.09.2021, as per check meter report the petitioner's old meter was found running slow by 17.08% in KWAh and 17.29% in KVAh with reference to the check meter. UERC regulation 28.11.2020 provides for raising assessment on account of meter found running slow for a period of 12 months so the Forum was of the view that the department is entitled to raise assessment only for 1 year i.e. from 14.09.2020 to 10.09.2021. Assessment raised for the period 09.09.2020 to 13.09.2020 is liable to be set aside so the Forum concluded that the petitioner's complaint is liable to be allowed partly. Having observed as above the Forum ordered

that the complaint is partly accepted, the respondent (UPCL) is directed to correct the assessment from 14.09.2020 to 13.09.2021 instead of 09.09.2020 to 13.09.2020 (the correct date should be 13.09.2021) and has further directed the respondent to submit the compliance report within 30 days.

5. The respondent Executive Engineer has submitted his written statement dated 16.04.2022 wherein he has submitted as follows:

- i) Having found abnormality by the outsourced agency M/s YMPL a check meter (no. L&T-15580490) was installed on the existing main meter (Secure –X1295580) by the meter test lab in the presence of consumer vide sealing certificate no. 27/32 dated 06.08.2021 the same was finalized vide sealing certificate no. 28/34 dated 13.09.2021 in the presence of the consumer. As per this check meter study the existing main meter was found recording less consumption by 17.080% in KWAh and 17.29% in KVAh with reference to the check meter
- ii) It is brought to the notice that a fault had occurred in 11 KV metering cubicle at the premises of the consumer in the month of September 2020 and on 09.09.2020 while attending the breakdown (fault) it was found that 2 CTs and 1 PT have got damaged. 2 New CTs (R&B phase) and PT were installed in place of the damaged CTs and PT. The ratio of new installed CTs (R&B phase) was 20/5 and the ratio of the old CT (Y phase) had remained 15/5 therefore CTs of 2 different ratios were got installed in the panel so the MF of the 2 new installed CT (R&B phase) as per ratio comes to 4 and the old CT (Y phase) which was already in existence since beginning the MF comes out 3 but in the bill ledger of the consumer the MF continued to be 3 and due to this mistake the bills of lesser consumption were being issued.
- iii) On the basis of check meter final report and the report of AE (Meter) Bhagwanpur's vide letter 139 dated 18.09.2021 having remarks (दिनांक 09.09.2020 को उपभोक्ता के परिसर पर ब्रेकडाउन हुआ था जिस पर दो सी0टी0 व पी0टी0 अवर अभियन्ता द्वारा बदली गई थी।) and a supplementary bill for Rs. 7,75,294.00 was prepared for the period 09.09.2020 to 13.09.2021 for the

leftover consumption @ 17.29% and the same was sent to the petitioner vide his office letter no. 3000 dated 21.09.2021.

- iv) The petitioner filed a complaint no. 134/2021 before Forum against the said assessment in which the Hon'ble Forum passed order dated 13.01.2022 as

“परिवादी द्वारा प्रस्तुत परिवाद अंशतः स्वीकार किया जाता है। विपक्षी को आदेशित किया जाता है कि कवह परिवादी का धीमा मीटर चलने के सापेक्ष राजस्व निर्धारण को दिनांक 09.09.2020 से दिनांक 13.09.2021 तक के स्थान पर दिनांक 14.09.2020 से दिनांक 13.09.2021 तक संशोधित करें। विपक्षी अनुपालन आख्या निर्णय तिथि के 30 दिन के भीतर मंच के समक्ष पेश करें। पत्रावली दाखिल दफ्तर हो। इस निर्णय से संतुष्ट नहीं होने पर परिवादी प्रतिष्ठान आदेश प्राप्ति के 30 दिन के भीतर औम्बड्समैन, 80, वसंत विहार, फेज-1, देहरादून के समक्ष अपील कर सकता है।”

- v) In compliance to Forum's order dated 13.01.2022 the bill was accordingly revised from 14.09.2020 to 13.09.2021 for a sum of Rs. 7,62,182.00 and sent to the consumer vide his letter no. 324 dated 21.01.2022.
- vi) The petitioner did not make payment of Rs. 7,62,182.00 against the revised assessment but preferred an appeal no. 06/2022 before Ombudsman against Forum's order dated 13.01.2022.
- vii) During hearing in the aforesaid appeal no. 06/2022 on 29.03.2022 the Hon'ble Ombudsman has directed the petitioner to deposit Rs. 2.5 lakh out of the assessment amount by 31.03.2022 but the petitioner did not pay the aforesaid amount, but paid a sum of Rs. 4,00,000.00 vide receipt no. 9586031032203080013 dated 31.03.2022 against the bill amount of the bill for the month of 02/2022.
- viii) At present a sum of Rs. 11,35,238.00 is outstanding against the consumer up to the month of 03/2022 which is completely correct as per rule, so he has requested that the consumer be directed to deposit the aforesaid amount.

The respondent has substantiated his submission with copies of the following documentary evidences which are enclosed with written statement

- a) Sealing certificates for installation and finalization of check meter.
- b) Sealing certificate no. 13/03 dated 09.09.2022
- c) AE meter letter no. 139 dated 18.09.2021.

- d) Assessment letter no. 3000 dated 21.09.2021.
- e) Letter no. 173 dated 01.12.2021 of Forum
- f) Division office letter no. 3735 dated 04.02.2021.
- g) Copy of Forum's order dated 13.01.2022
- h) Division office letter no. 324 dated 21.01.2022
- i) Division office letter no. 495 dated 04.02.2022
- j) Copy of the receipt of the payment made by the consumer on 31.03.2022
- k) Consumer's bill and details of the ledger

6. The petitioner has submitted his rejoinder dated 11.05.2022 along with an affidavit under oath. In the rejoinder the petitioner has submitted point wise replies on respondent's written statement dated 16.04.2022, which are as follows:

- i) para i) of written statement as stated is wrong and denied. The petitioner is not aware of any testing done by YMPL. No information of any checking or testing of meter was given, neither any checking report was provided to them. An assessment of Rs. 7,72,294.00 was raised on them vide letter dated 21.09.2021. Reason thereof was mentioned as diverse CT and PT ratio of R&B phase from Y phase, but no mention of the alleged YMPL testing was made in the said letter. They were never informed about any abnormality or fault observed in the so called checking. The petitioner is not aware about the correctness and accuracy of the alleged check meter installed or whether the check meter was installed as per the methodology prescribed for installation of check meter.
- ii) With respect to para ii) of written statement it is submitted that if any such incident happened then it is totally fault of the respondent for which petitioner cannot be penalized. It is not understandable as to how the CT and PT of different ratio were installed when respondent was aware about the existing CT and PT ratio of the system and why this discrepancy was not observed while replacing the CT and PT. Without admitting the correctness of respondent's statement, it is submitted that the sealing report dated 09.09.2020 does not confirm the statement of the respondent. In fact it is contradictory to the record as can be seen from the said sealing report, herein it is mentioned that the line CT ratio has been recorded as 15/5 Amp, which

clearly suggests that CT ratio was 15/5 only. Further the CT ratio of old meter in sealing certificate dated 06.08.2021 has been mentioned as 15/5 so the respondent has failed to prove its contentions for want of evidence.

- iii) Contentions made in para iii) had already been replied in para ii) above.
- iv) In reply to para iv) the petitioner has submitted that they have already stated in the petition that the respondent did not take the challenge of their bill and they filed a complaint and thereafter the respondent again served a letter no. 3000 dated 21.09.2021 to them wherein contrary statements have been made wherein they have informed that due to certain non correction of ledger the MF was incorrect and at the same time also informing that the meter installed at the premises was slow to the extent of 17.29% and raised a demand of Rs. 7,72,294.00 for payment within 15 days. The petitioner has mentioned that their case is primarily on the basis of slow meter, it is pertinent to mention that even the Forum has considered the assessment on the basis of slow meter as apparent from their finding reproduced and not on any wrong MF but still wrongly applied the new regulations and considered the time period of 12 months instead of 6 months as provided in the regulation applicable during the duration for which the assessment was made. The cause of action arose and the assessment has been raised from 09.09.2020 when the regulation supply code 2007 was applicable.
- v) Contents of para v) of written statement as far pertaining to record needs no reply, however it is submitted that the Forum did not analyze the controversy correctly in light of the prevailing rules and regulations and order passed by the Forum is legally not sustainable.
- vi) Para vi) of written statement needs no reply, however it is submitted that order passed by the Forum was not legally sustainable and was not as per law, the assessment raised by the respondent was also not according to rules and regulations therefore same was not legally enforceable and respondent were not entitled to recover the said amount from the petitioner.
- vii) Contents of para vii) of written statement as represented is not correct, the respondent rather than mentioning the amount due for the month of February

2022 is only informing that an amount of Rs. 4,00,000.00 was deposited on 31.03.2022. It is humbly submitted that the respondent never thereafter asked or requested the petitioner to deposit any amount as per the direction of Hon'ble Ombudsman vide order dated 29.03.2022 (correct date as per date sheet is 28.03.2022), which itself belies the contentions of the respondent. The petitioner is anytime willing to make payment in compliance if the respondent demands the same stating the deficiency.

- viii) Contentions of para viii) of written statement as stated is not admitted. The respondent has to justify the demand raised as per rules and regulations, the burden of proving any demand raised by the respondent is upon the respondent only, they cannot discharge the burden by merely stating that the assessment is correct or that any fixed amount is due, but have to establish the same, the respondent has miserably failed to discharge its statutory duty.
- ix) The written statement is liable to be rejected and the appeal is liable to be allowed with costs, the contentions made by the petitioner in appeal are correct and the same are being reiterated.
- x) No submissions have been made by the respondent with regard to the contentions of the petitioner of having received a bill for the month of May 2021 for the amount of Rs. 3,78,109.27 even though during this time the factory of the petitioner was closed due to covid restrictions and against which complaint case no. 80/2021 in which the Forum vide its order dated 23.09.2021 merely modified the demand to Rs. 2,33,496.28 without any basis not even looking at fact that the factory was closed, therefore the said relief/request of the petitioner is liable to be allowed.
- xi) The respondent has been raising wrong bill and the Forum was bound to scrutinize the facts and judiciously determine the correct amount and to give direction to the respondent for complying with the same. The Forum has failed to discharge its statutory duty and has in a very mechanical way just noting the contentions of the party have given vague directions and has not applied a judicial mind, thereby making the petitioner again and again running from post to pole. The petitioner respectfully seeks the kind attention

of Hon'ble Ombudsman to its grievance and request to redress the same and in general without limiting itself to the reliefs claimed only, it is requested to grant any other or further relief which Hon'ble Ombudsman deems appropriate and just in the present facts and circumstances.

xii) The order dated 23.09.2021 and 13.01.2022 passed by the Forum in complaint no. 80/2021 and 134/2021 respectively are liable to be set aside and the respondent needs to be directed to correct the bill/assessment raised on the petitioner as per law without imposing any late payment surcharge.

7. Hearing in the case was held on prefixed date 23.05.2022. Both parties appeared for hearing. The petitioner himself and Executive Engineer and AE (Meter) appeared on behalf of the respondent. Apart from oral arguments the petitioner submitted a written argument, while the respondent submitted copies of sealing certificates dated 08.06.10, 03.12.2014, 10.06.2021, 13.07.2021. Both these documents were taken in record most of the points of the petitioner's written arguments are repetition or reiteration of his contentions made in the petition and rejoinder, except some detailed clarifications and backgrounds regarding their case against Forum order dated 23.09.2021 in complaint no. 80/2021 and order dated 13.01.2022 in complaint no. 134/2021, have been given in this written argument. Further details of lockdown in the year 2021 due to covid-19 epidemic as obtained from Wikipedia website has also been given which shows that lockdown were imposed by various states including Uttarakhand from April 05 to June 15, 2021.

8. As regards his appeal against Forum order dated 23.09.2021 in complaint no. 80/2021 the petitioner has given snapshots of the restrictions imposed by the governments of various states including the Government of Uttarakhand whereby complete lockdowns were imposed in view of covid-19 epidemic, which shows that normal working in the industries was also effected as the factories and industries could not run due to complete lockdown, especially in the month of May 2021 and in view of his submissions in the written arguments the petitioner has again requested that Forum's order dated 23.09.2021 and 13.01.2022 passed in their complaint no. 80/2021 and 134/2021 respectively are liable to be set aside and the respondent needs to be directed to correct the bill/assessment raised on the petitioner as per law without imposing any late payment surcharge.

9. The instant appeal has been filed by Shri Manthan Maheshwari, partner of DPS Polymer, Bhagwanpur, a consumer of UPCL with connection no. BHK000009503 with contracted load 225 KVA under industrial category. The connection was released initially on 08.06.2010.
10. After perusal of all the records and documents as submitted by both parties which are available on file and after hearing arguments from both parties it has been noted that the instant appeal preferred by the petitioner deals with 2 different orders passed by the Forum, first is order dated 23.09.2021 passed in petitioner's complaint no. 80/2021 and the second is order dated 13.01.2022 passed in petitioner's complaint no. 134/2021. The Forum's order dated 23.09.2021 in complaint no. 80/2021 as stated by the petitioner, could not be challenged before Ombudsman by the petitioner as they were not aware about the existence of office of Ombudsman where appeal can be preferred against Forum order and secondly the petitioner has stated that the Forum had also not advised or directed them in their order dated 23.09.2021 that if they are not satisfied with or are aggrieved with Forum's aforesaid order they may prefer an appeal before Ombudsman within a period of 30 days. A perusal of Forum's order dated 23.09.2021 in complaint no. 80/2021 shows that no advice was given by the Forum to the petitioner to prefer an appeal before the Ombudsman within stipulated period of 30 days if they are dissatisfied with their order. The petitioner's plea for not preferring appeal in time appears to be genuine and the delay in filing this appeal against the aforesaid order, in the instant appeal is established to be inadvertent and for the bonafidly reasons and therefore this portion of the instant petition has been admitted for proceeding and hearing to decide the matter on merits in the interest of justice.
11. Apart from a number of reliefs prayed for by the petitioner in the instant petition, the petitioner has prayed for restraining the respondents from disconnection of the supply of his industrial unit and from taking any conceive action for realization of the impugned assessment amount and meanwhile directing the respondent to accept payment of the current bills only till the case is decided by the Ombudsman. Interim stay was accordingly granted vide order dated 08.03.2022 till next date of hearing which was fixed for 15.03.2022, however as both parties were absent on the aforesaid date of hearing, the next date for disposal of the stay application was fixed on

28.03.2022. Hearing on disposal of stay application was held on 28.03.2022 when both parties were present and argued their case, the stay was extended till next date of hearing on payment of Rs. 2.5 lakhs by the petitioner by 31.03.2022, so petitioner's request for granting stay stands acceded to.

12. As the instant petition has been preferred against 2 different orders of the Forum dated 23.09.2021 in complaint no. 80/2021 and order dated 13.01.2022 in complaint no. 134/2021, it would be desirable if both the cases are discussed one by one. First I shall discuss the case against Forum order dated 13.01.2022 in complaint no. 134/2021.
13. **Case against Forum order dated 13.01.2022 in complaint no. 134/2021.** The respondent installed a check meter no. 15580490 (LnT) vide sealing certificate no. 32/27 dated 06.08.2021 at the premises to check the veracity of existing meter no. 1295580 (Secure), which has been working as consumer's main meter with effect from its date of installation on 10.06.2021 vide sealing certificate no. 42/26, when it was installed in place of the old existing meter no. 13266308. While CT ratio of both the meters the check meter and the existing meter were mentioned as 15/5 Amp. In the sealing certificate dated 06.08.2021, but in the remark column it had been written that "Check meter installed due to 2 nos. CT of ratio 20/5 instead of 15/5 in YMPL testing". However no YMPL testing report is available on file as no such record has been adduced by the respondent. The check meter was finalized vide sealing certificate no. 34/28 dated 13.09.2021. CT ratio of both the meters i.e. existing and check meter has been mentioned as 15/5 Amp. in this sealing certificate also. In the remark column it has been mentioned that **"Old meter found 17.08% slow in KWAh and 17.29% slow in KVAh. Due to R&B phase CT ratio was 20/5 Amp."** This remark that R&B phase CT ratio was 20/5 is in contradiction to the CT ratios of both meters mentioned as 15/5 Amp in both the sealing certificates dated 06.08.2021 and 13.09.2021 and is without any evidence. In both the aforesaid sealing certificates also there is no documentary evidence to establish the correctness of this remark. The respondent on the basis of this check meter study prepared a supplementary bill for Rs. 7,72,294.00 for the period 09.09.2020 to 13.09.2021 and sent the same to the petitioner vide letter no. 3000 dated 21.09.2021. The aforesaid supplementary bill was subsequently revised to Rs. 7,62,182.00 for the period from 14.09.2020 to 13.09.2021 in compliance to Forum's order dated 13.01.2022 and sent to the petitioner vide

respondent's letter no. 324 dated 21.01.2022. These are the disputed bill for petitioner's complaint no. 134/2021 before the Forum.

14. A perusal of records shows that the respondent's have not complied with relevant UERC regulations in the entire process of conducting check meter study and raising supplementary bill on the basis of the results of such a study. Check meter study was conducted from 06.08.2021 to 13.09.2021 and the impugned bill was sent to the petitioner vide letter no. 3000 dated 21.09.2021. Thus UERC (Electricity Supply Code, Release of New Connection and Related Matters) Regulations, 2020 dated 29.10.2020 effective from 28.11.2020 (the date of gazette notification) is applicable in the instant case. With regard to testing and checking of meters of the consumers the following sub regulations are applicable which are reproduced hereunder.

i) Sub regulation 5.1.3 of UERC Supply Code Regulations, 2020

(1) The meter test labs of the Licensee shall be NABL accredited or it shall utilize the services of other accredited testing labs till its labs get NABL accredited.

(2) All the meter test labs shall have CCTV surveillance system.

(5) The Licensee shall, within 30 days of receiving the compliant, carry out testing of the meter as per the procedure specified in these regulations 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.

Provided that where the Licensee is installing a test/check meter along with the meter under test for verification of energy consumption, in such cases the Licensee shall be required to provide a copy of the valid test report of such test/check meter to the consumer before initiating the test.

A perusal and examination of the records available on file clearly establishes that the aforesaid regulations 5.1.3 (5) has not been complied with in the check meter study as there is no evidence that advance notice for installation of check meter was given to the petitioner as also a copy of the valid test report of check meter was given to the petitioner before initiating the testing.

As regards provisions of sub regulation 5.1.3 (1) and (2) admittedly no test lab of UPCL has yet been accredited by NABL and hence this sub regulation has obviously not been complied with.

- ii) Sub regulation no. 5.1.3 (10) (b) provides for raising supplementary bill, if the meter is found running slow as per check meter study, which is reproduced below:

(b) Slow beyond permissible limits, as specified by Bureau of Indian Standards (BIS), and the consumer does not dispute the accuracy of the test, the Licensee shall replace/rectify the defective meter within 15 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 12 months or less depending on period of installation of meter or previous testing date prior to date of test and up to the date on which defective meter is replaced/rectified.

The above regulation clearly stipulates that difference based on percentage slowness as per check meter study shall be charged for a maximum period of not more than 12 months or less depending on the period of installation of meter or previous testing date prior to date of test and up to the date on which the defective meter is replaced or rectified. In the instant case the meter number 1295580 on which the check meter study was conducted was installed at petitioner's connection on 10.06.2021 vide sealing certificate no. 42/26 and had been there till 13.09.2021 when the check meter was finalized and the said meter was declared running slow by 17.08% in KVAh and 17.29% slow in KVAh, but in contravention to this regulation the respondent raised the supplementary bill amounting to Rs. 7,72,294.00 vide letter no. 3000 dated 21.09.2021 for the period 09.09.2020 to 13.09.2021. While the meter no. 1295580 on which check meter study was conducted was installed on 10.06.2021 vide sealing certificate no. 42/26 and it was not in existence at petitioner's premises as the main meter prior to 10.06.2021. The respondent have therefore committed a gross mistake in issuing supplementary bill right from 09.09.2020 to 13.09.2021 which includes the period from 09.09.2020 to 10.06.2021, when the said meter (1295580) was not in existence as main

meter at consumer's premises, but another meter no. 13266308 was in existence as main meter at consumer's premises as evident from sealing certificate no. 42/26 dated 10.06.2021 and which was removed on 10.06.2021 vide the same sealing certificate. Further the Forum has also erred in directing the respondent vide their order dated 13.01.2022 in complaint no. 134/2021 to issue the revised bill for the period from 14.09.2020 to 13.09.2021 and the respondent in compliance of Forum's aforesaid order dated 13.01.2022 but in contravention to aforesaid sub regulation has issued revised bill for a sum of Rs. 7,62,182.00 for the period 14.09.2020 to 13.09.2021 vide their letter no. 324 dated 21.01.2022. Being in contravention to the relevant aforesaid regulation the bill issued by the respondent is not sustainable.

15. A perusal of sealing certificates dated 06.08.2021 and 13.09.2021 for installation and finalization of check meter respectively shows KVAh readings of check meter on 06.08.2021 and 13.09.2021 as 276787 and 299164 respectively and KWAh readings as 258145 and 278989 respectively. This clearly shows that the meter which was installed as a check meter was not a new meter, but it had been used somewhere up to reading mentioned in sealing certificate dated 06.08.2021 and used here as a check meter after removal from somewhere. However the respondents have submitted no evidence and/or sealing certificate to show as where from and how and under which circumstances this meter was removed and why it was used as a check meter in this case. Also no valid test results of this meter were adduced here before Ombudsman neither the same were given to the petitioner before initiating the testing/installation of check meter. This is again in gross violation of proviso to above referred sub regulation 5.1.3 (5) for the reasons explained above. The meter installed as check meter in this case cannot be accepted as a valid check meter as there is no evidence of its accuracy, which must have been established by the respondent by submitting its test results which they did not submit, such being the status of the check meter, the check meter study conducted by the respondent is proved to be a futile exercise only and results obtained from such a study cannot be accepted and cannot be used for declaring the existing meter running slow by the percentage mentioned in sealing certificate dated 13.09.2021 for finalization of check meter and no assessment on the basis of such study and results thereof can be used for raising any supplementary bill to the consumer.

16. In view of the above facts of the case and blatant violations of the relevant regulations by the respondents the entire process of check meter study and raising supplementary bill for the period 09.09.2020 to 13.09.2021 which includes the period from 09.09.2020 to 10.06.2021 (prior to the period of the existing meter) was not foundationed as per UERC regulations of 2020 therefore the entire process of check meter study and raising supplementary bill based on such study is held as null and void being violative of relevant regulations. The assessment amounting to Rs. 7,72,294.00 for the period 09.09.2020 to 13.09.2021 raised vide letter no. 3000 dated 21.09.2021 which was subsequently revised to Rs. 7,62,182.00 for the period 14.09.2020 to 13.09.2021 in compliance to Forum's order dated 13.01.2022 in complaint no. 134/2021 is set aside and quashed. The Forum's aforesaid order is also set aside. The respondents are directed to withdraw the aforesaid bill and LPS if levied on the amount of the impugned bill and refund any amount if deposited by the petitioner against the aforesaid impugned bill by way of adjustment in the regular monthly bill(s) to be issued after the date of issue of this order and correct the consumer's billing and ledger accounts accordingly. Compliance of this order be ensured within 15 days from the date of order.
17. **Case against Forum order dated 23.09.2021 in compliant no. 80/2021.**

This case relates to petitioner's complaint no. 80/2021 before the Forum against bill for the month of April and May 2021, raised on the basis of average of past consumption recorded in three billing cycles as the meter during this period was not working and was IDF. The petitioner has contested on the basis that their factory did not work during this period due to corona lockdown and therefore the bill raised on the basis of previous 3 months average consumption is not justified and needs to be withdrawn. The petitioner has pleaded their case in their petition as well as in rejoinder and also in the written argument submitted at the time of hearing, but the respondents have not given any reply against the contentions of the petitioner in this case either in their written statement or otherwise not even at the time of arguments also, when they had an opportunity to make their submission against the petitioner's contentions for some reason not evident they chose not to do it. Although they contested the case before the Forum and they have pleaded that the bills for the month

of April 2021 and May 2021 have rightly been issued in accordance with relevant UERC Regulations, 2020 on the basis of average of previous 3 billing cycle.

18. In the matter as observed by the Forum in their order dated 23.09.2021 the petitioner had informed the respondents on 10.05.2021 regarding defect in their meter where after the department replaced the meter on 10.06.2021 without checking. The Forum observed that as per MRI report submitted to them (the Forum) the meter had recorded consumption up to 22.04.2021. Earlier the respondent reported to the Forum that Y phase was not appearing in the meter since 03.04.2021. The Forum mentioned that even after getting to know about the irregularity, the department did not install a check meter as was necessary as per rule and the Forum further mentioned that had the department installed the check meter timely the percentage error in the meter could have been determined and assessment as per sub clause 5.1.3 (10) (b) of UERC Supply Code, 2020 could have been raised. But by not installing a check meter the opportunity of raising assessment under the aforesaid regulation was deprived to the department by its own mistake, so the department is not entitled to raise assessment on the basis of past average consumption from 03.04.2021 to 22.04.2021. Hence the Forum was of the view that it is justified to set aside the assessment for the period from 03.04.2021 to 22.04.2021 and was of the view that the department is entitled to raise assessment on the basis of previous 3 billing cycles from 22.04.2021 to 10.06.2021 only.
19. The Forum accordingly ordered to set aside and quash the assessment from 03.04.2021 to 22.04.2021 and directed the opposite party to raise an assessment from 22.04.2021 to 10.06.2021 only. Therefore the assessment amounting to Rs. 3,78,109.27 raised earlier by the department was revised to Rs. 2,33,496.28 in compliance to Forum's order dated 23.09.2021 in complaint no. 80/2021. The petitioner however is not satisfied with Forum's order and has challenged it and even the revised bill on the grounds that during the period April 2021 and May 2021 their factory did not run due to corona lockdown as imposed by the government and which is evident from petitioner's averment that the respondent could not establish any consumption in the month of May 2021 rather no availability of the MRI beyond 22.04.2021 only, suggests that the factory did not run in that period. In support of their contention they have submitted the details of lockdowns imposed by various

governments including Uttarakhand as obtained from Wikipedia website, which suggests that there were lockdown from 05.04.2021 to 15.06.2021 and therefore their contention that their factory did not run is a possibility of which presumption can be drawn and a judicial notice can be taken of the fact that complete lock down was in operation as per State Government orders and in such situation it does not seem possible that petitioner would have been able to run its factory, the presumption is not rebuttable and therefore onus was on the respondent to place evidence against the same (It is worth mentioning that a Court may presume existence of certain facts, as per section 114 of Indian Evidence Act, 1872 as would under such a situation). However the respondents have failed to do so therefore this office has no other option but to accept the contention of the petitioner that he did not run his factory in the month of May 2021. In light of this observation the assessment for the month of 05/2021 cannot be sustained and their request that the bills for the month of April 2021 and May 2021 and as modified under Forum order which were raised on the average of past 3 month's consumption should be withdrawn as there were abnormal conditions obtaining during the period of these assessment bills while conditions in the period of previous 3 billing cycles were normal.

20. As mentioned in Forum's order, after receipt of complaint on 10.05.2021 about defect in the meter from the petitioner, the respondent did not check the meter within 30 days of the complaint as mandated under sub clause 5.1.4 (1) of aforesaid UERC regulation, 2020 and changed the meter on 10.06.2021 without checking the defective meter. Further as observed by the Forum, they did not install the check meter when sufficient time was available to them, since 03.04.2021 when they noted that Y phase was appearing in the meter. and veracity of the existing meter could have been ascertained. The respondents have therefore not complied with the relevant regulations and simply raised the bills on the basis of past 3 month's average consumption. The consumer billing history submitted by the respondent also confirms that bill for the month of April and May 2021 have been issued on assessed 55312 units for each of these 2 bills on the average of the metered consumption in the month of 01/2021, 02/2021 and 03/2021, which comes to 55312 units per month, copies of the disputed bills have been collected from the petitioner as well as the respondent as the same were not available on file, which also confirms that bills for the month of

April 2021 and May 2021 have been issued for assessed units of 55312 for each of these 2 months.

21. While non submission of any reply on the averments of petitioner in this matter suggests that the respondents have nothing to say and therefore, that means that they admit the contentions of the petitioner, and further observation of the Forum that the action of the respondents in dealing with this case shows gross carelessness by the respondent's concerned officers/officials due to which the corporation has suffered financial loss and have recommended that the corporation management should get the matter investigated and identify the officers/officials responsible for causing the loss to the corporation and they are at liberty to recover such loss from the erring staff. I am also convinced with Forum's view and also recommend to take action as directed by the Forum.
22. Forum's order for raising the assessment bill only from 22.04.2021 to 10.06.2021 instead of 03.04.2021 to 10.06.2021 appears reasonable and justified in view of the facts of the case and revision of bill to Rs. 2,33,496.28 from Rs. 3,78,109.27 by the respondent in compliance of Forum's order although appears to be logical and reasonable, however the petitioner's request that since their factory did not run in the month of May 2021 due to corona lockdown which is established as discussed in above paras and also in view of respondent's failure to replace the meter timely appears to be genuine and needs to be considered. A perusal of details of corona lockdown submitted by the petitioner with written argument as obtained from Wikipedia website, it is seen that month of May 2021 was worst affected from corona lockdown and petitioner's submission that their factory did not run during the period of lockdown specially in the month of May 2021 has substance. It would therefore be in the interest of justice if some relief for the month of May 2021 is granted. I therefore think it reasonable if bill for the month of May 2021 raised on the average consumption during past 3 billing cycles is revised and issued only for demand charges as applicable to this category of consumer under the applicable rate schedule of the appropriate tariff order issued by UERC for the year 2021-22. It is therefore directed that while out of the total period of assessment from 22.04.2021 to 10.06.2021 as ordered by the Forum and accordingly revised to Rs. 2,33,496.28 be further revised for charging demand charges only in the bill for the month of May

2021 instead of the bill issued for assessed units of 53312 assessment from 22.04.2021 to 30.04.2021 and that from 01.06.2021 to 10.06.2021 need not be disturbed. Forum order is upheld with this modification and this part of the petition against Forum order dated 23.09.2021 in complaint no. 80/2021 stands partly allowed.

Dated: 27.06.2022

(Subhash Kumar)
Ombudsman