

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Anil Kumar Garg
Viceroy Grand,
Sevlakalan Khurd,
Dehradun, Uttarakhand

Vs

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

Representation No. 43/2022

Order

Dated: 20.02.2023

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 18.11.2022 in his complaint no. 89/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (South), Uttarakhand Power Corporation Ltd., Dehradun (hereinafter referred to as respondent) Shri Anil Kumar Garg, Viceroy Grand, Dehradun has preferred this appeal for reliefs as mentioned under prayer in the appeal.

2. The petitioner has made following averments in his appeal:

- i) The appeal is preferred against Forum's order dated 18.11.2022 in his complaint no. 89/2022 before the said Forum wherein the said complaint was dismissed out rightly without appreciating and considering the documents placed on records judiciously.
- ii) The complaint no. 89/2022 was instituted before the Forum against arbitrary, illegal, unjustified and unwarranted demand of Rs. 3,37,967.00 raised by the respondent through electricity bill dated 06.08.2022 for the month of July 2022.



- iii) The petitioner has a connection no. SD0K000123896 for 150 KVA contracted load against which he has been regularly paying the consumption charges as per demands being raised by the respondent through monthly bills and there has been no default on his part since release of the connection.
- iv) The factual matrix leading to filing the present petition are detailed in the petition as below:
- a) The petitioner is a commercial unit engaged in the banquet business located at Sevlakalan Khurd, Dehradun.
 - b) In the bill dated 06.08.2022 for the month of 07/2022 additional amount Rs. 3,37,967.00 was found added apart from regular monthly consumption bill.
 - c) Office of the respondent was immediately contacted to enquire about the aforesaid additional amount, no document or explanation was given by the respondent and refused to revise the bill and sent the subsequent months bills without removing the arbitrary amount.
 - d) The respondent did not do anything regarding his grievance, therefore he was forced to make a complaint before the Forum. However, his complaint no. 89/2022 was dismissed by the Forum vide order dated 18.11.2022.
- v) There was total denial of the principles of natural justice by the Forum. No opportunity to give a reply and hearing was given by the Forum.
- vi) No written statement of respondent was provided to petitioner and further the respondent was never made to answer any of the contentions of the petitioner and that without pursuing the facts and going into substantial question of facts and applicable law, the Forum dismissed the complaint.
- vi) The dispute raised by him in his appeal is based on electricity Act, 2003, the Indian Electricity Rules, 1956 and the CEA notification dated 17.03.2006 as also UERC regulations vide notification dated 29.10.2020 and it is brought on record that the judicial discipline entails that the powers of the distribution licensee i.e. UPCL are not unbridled but are circumscribed which mutatis mutandis are enshrined in the Indian Electricity Act, Rules and UERC regulations and the Electricity Supply Code respectively.

vii) The appeal is being preferred being aggrieved with Forum's impugned order dated 18.11.2022 in complaint no. 89/2022 on the following other grounds:

- A) Because the additional amount was added arbitrarily and secretly without any details or breakup, which is against principles of natural justice and fair business practices.
- B) Because the impugned amount raised by UPCL has been issued by in a most illegal, obscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner in clear violation of the settled proposition of law resulting in manifest injustice and causing serious prejudice to him and hence the same deserves to be quashed and set aside.
- C) Because action of UPCL is in clear violation of principles of natural justice, equity and good conscience as no notice or opportunity of being heard was given to him before raising the demand through impugned bill.
- D) Because it is well settled proposition of law that a person cannot be penalized or asked to pay undue amount by the state without the same actually having been fallen due as is not permissible in law.
- E) Because no tampering of the metering system was done by him and no allegation regarding the same has been leveled by the respondents.
- F) Because the petitioner never admitted and had denied that the metering system was not running slow by 38.84% and that the alleged check meter study was not more than a troubleshooting exercise on respondent's part and cannot be turned to be a check meter study as UERC Supply Code regulations, 2020 have not been followed in such a study.
- G) Because the Ld. Forum did not consider the following written and oral submissions made by him and dismissed the complaint.
 - a. That
 - i. No advance notice of the test/check meter study was served to him.
 - ii. No test report for the test/check meter installed at the premises was served before initiation of the test.
 - iii. No duly authenticated test results were provided.



“Contents of sub regulation 5.1.3 (5) of UERC regulation, 2020 reproduced.”

That no document was provided by the respondent regarding compliance of the aforesaid UERC regulations, 2020, without pursuing this categorical fact, the Forum had been pleased to dismiss the complaint, which is totally illegal and against the established law and regulations.

- b. That the site testing as evident from sealing certificate has been carried out by the respondent without knowledge of the petitioner. That the test lab of the respondent is not accredited by NABL, also the respondent is not accredited by NABL for carrying out any site testing.

That as per clause 5.1.3 (1) of UERC Supply Code, 2020 **“The meter test lab of the Licensee shall be NABL accredited or it shall utilize the services of other accredited testing labs till its labs get NABL accredited.”**

That as per CEA regulation dated 17.03.2006 it is mandatory that the meter testing reports must be issued by NABL accredited testing labs.

- c. That no reliance on the test results can be placed if such tests have not been carried out in NABL accredited lab. More so because the settled law as written by Hon'ble High Court of Bombay in the case of Nestle India Ltd. vs FSSAI (WP (L) No. 1688 of 2015 dated 13.08.2015.
- d. That the test results were not admitted and it is submitted that no opportunity was given to him to get the meter tested by Electrical Inspector or CGRF. That the principles of natural justice and fair play were even not followed as no opportunity of hearing was provided to him before raising the impugned bill.

“Contents of sub clause of 5.1.3 (12) of UERC Supply Code, 2020 reproduced.”

- e. That the sealing certificate dated 07.10.2021 has explicitly mentioned that phase wire was found broken and nowhere it mentioned that the meter was running slow on account of that. It is.

pertinent to mention that the sealing certificate as provided to him at the time of hearing at Forum, was not signed either by him or his authorized represented. Thus any finding against him is not admitted and denied in totality.

- f. That the seals present in the meters at the time of check meter installation were not found when the check meter was finalized. That without awareness to the specific procedures of UERC Supply Code, 2020, the said exercise could not be termed as check meter study, thus any assessment raised based on such troubleshooting is not legally tenable and is liable to be quashed.
 - g. UPCL's, threat for disconnection without any fault is totally illegal arbitrary/unwarranted and without jurisdiction and hence immediate interference by Hon'ble Ombudsman is warranted.
 - h. That disconnection of supply to his unit shall be a direct casualty to his business and staff residing in the premises.
 - i. That it is well settled proposition of law that a person cannot be penalized or asked to pay undue amount by the state without the same actually having been fallen due and is not permissible in law.
 - j. The meter was correctly and the petitioner has never used the assessed unit that an error of 38.84% is denied in totality.
- ix) That as per settled law (WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand.) where the Hon'ble High Court has clarified that if clause 3.1.3 (Testing of meter) of UERC Supply Code, 2007 is not complied. No assessment/supplementary bill can be raised and if any such assessment/supplementary bill is raised, it will be arbitrary and illegal. In the said judgment it is categorically stated that clause 3.1.3 (7) has to be fulfilled before raising any assessment/supplementary bill. The said clause 3.1.3 has been replaced by clause 5.1.3 of UERC Supply Code, 2020.
- x) Under the above circumstances the instant petition has been preferred before the Hon'ble Ombudsman for necessary relief and redressal with a humble and respectful submission that the impugned assessment is liable to be quashed and set aside by the Hon'ble Ombudsman.



Prayers:

- a) Call for records of the case for perusal.
- b) Quash and set aside the additional amount of Rs. 3,37,967.00 vide impugned bill dated 06.08.2022 for the month of 07/22, being the same illegal, arbitrary, perverse, mala fide and unjust.
- c) Quash and set aside order no. 89/2022 dated 18.11.2022 of Ld. Forum Dehradun.
- d) Issue necessary directions to the UPCL/respondent not to disconnect the electricity supply of the petitioner'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.
- e) Pass any other order or direction, which the Hon'ble Forum may deem fit and proper, on the facts and circumstances and in the interest of justice.

Documentary evidences in support of his averments/submissions wherever referred in the appeal, has been adduced by the petitioner with this petition.

3. Forum in its order have mentioned that after hearing arguments from both parties and perusal of the records available on file, the Forum arrived at a conclusion that the assessment for slow running of the meter @ 38.84% as per check meter study conducted by the respondents is logical and justified in accordance with UERC regulation, 2020 (sub regulation 5.1.3 (10) (b)) and under this circumstances they were of the view that the complaint was liable to be dismissed and they accordingly dismissed the complaint vide their order dated 18.11.2022 in complaint no. 89/2022.
4. The Respondent, Executive Engineer has submitted a written statement vide his letter dated 29.12.2022 wherein he has submitted as follows:
 - i) A check meter no. 1295536 (NABL certificate as per UERC Regulations, 2020 point no. 5.1.3 (1) of M/s Secure Test lab enclosed) was installed with main meter no. 0780336 on 24.09.2021 by test division in accordance with sub regulation 5.1.3 (5) of UERC Regulations, 2020, while finalizing the

check meter on 07.10.2021 the main meter was found slow by 38.84% (copy of sealing certificates enclosed).

- ii) A sum of Rs. 3,37,967.00 as the amount of supplementary bill was added in the bill due to main meter found slow by 38.84%. The amount of supplementary bill was calculated for a period of one year in accordance with sub regulation 5.1.3 (10) (b) of UERC Regulations, 2020.
- iii) As per complete perusal of MRI it came to notice that voltage on R & B phases was less w.e.f. 28.11.2019, details are shown in the table below:

Phase	Voltage	Actual	Less
R	1605.92	6231	-4625.08
Y	6231.43	6231	0
B	4644.45	6231	-1586.55

He has explained that voltage on R and B phase was lesser than that on Y phase resulting into lesser energy recording by the meter then the actual consumption. A check meter was installed for calculating the actual consumption and as per this check meter study the installed meter was found running slow by 38.84%. Further he has submitted that due to lesser voltage on R&B phase the meter recorded 38.84% less energy from 28.11.2019 to 07.10.2021. As per MRI report it is clear that meter recorded lesser energy by 38.84% from 28.11.2019 to 07.10.2021 but supplementary bill has been raised only for a period of 1 year, in accordance with regulation 2020. Further he has requested that the Hon'ble Ombudsman may kindly think about charging 100% of the lesser energy recorded in the meter as per provisions under Electricity Act, 2003 because based on check meter and documentary evidences calculation of lesser energy recorded by the meter can also be done by comparing the voltage in the correct phase. He has submitted documentary evidences with the written statement such as meter test certificate, a copy of AE meter letter dated 23.12.2021, calculation sheet for working out the assessment, copy of letter no. 201 dated 25.10.2021 of AE (Meter), copy of sealing certificates dated 07.10.2021 and 24.09.2021, KCC sealing certificates, vector diagrams, IP data etc.



5. The petitioner has submitted a rejoinder dated 09.01.2023 in reply to respondent's written statement dated 29.12.2022 wherein he has submitted as follows:

- i) The points raised under this para have already been covered in his petition so these points are not being discussed here.
- ii) At the outset the contents of written statement filed by the respondent are specifically and categorically denied being devoid of merits, baseless and no cogent explanation with respect to the contentions of the petitioner, hence denied except to the extent which are specifically and categorically admitted herein in the forthcoming paragraphs.
- iii) Contents of para 1 is admitted to the extent that the officers of the respondent visited the premises, however the purpose and intent of their visit was never intimated to him. That other averments made by respondent is denied in totality and at the cost of repetition, he wants to bring the various concealments of facts and figures as done by the respondent for Hon'ble Ombudsman's perusal.
 - a) The respondent claimed that the NABL certificate of M/s Secure lab was as per UERC regulations, 2020 clause 5.3.1 whereas the submitted document is just a test report which does not establish that the test for the meter no. 1295536 had been carried out in a NABL accredited lab. Further the petitioner has stated that the said test report appears to have been provided by M/s Secure meters for acceptance of meters in line with the contract placed for procurement of meters, as such it cannot be held that the respondent had utilized services of other NABL accredited lab as per clause 5.1.3 (1) of UERC regulations, 2020. As such the respondent never complied with clause 5.1.3 (1) as claimed and as such the assessment is liable to be quashed.
 - b) The respondent's claim that check meter was installed as per clause 5.1.3 (5) of UERC regulation, but in fact the respondents have violated the relevant regulation to raise an illegal assessment. In fact the aforesaid clause stipulates that "If licensee is installing a check meter they shall provide a copy of valid test report of check meter before initiation of test" which is binding upon them. However no test report was provided

before initiation of alleged check meter study. The document in the name of test report was submitted by respondent at Forum, which is a computer generated test certificate dated 05.02.2020. Further with reference of periodicity of testing of meter which is one year as per clause 5.1.3 (3) so this test certificate has its validity up to 05.02.2021 only. Hence, it is clear that the test report which although was not provided before initiation of test cannot be held to be a valid test report as per clause 5.1.3 (5) of UERC regulation, 2020, so the assessment is liable to be dismissed.

- c) It is denied that on 07.10.2021 while finalizing the check meter the meter was found running slow by 38.84%. No sealing certificate was signed by the petitioner on 07.10.2021 and copy of sealing certificate as submitted by respondent before Forum nowhere mentions that the meter was running slow.
- iv) Contents of para 2 are denied in totality and it is denied that the installed meter was running slow by 38.84% so the assessment is illegal and is never due on the petitioner and is liable to be quashed.
- v) Contents of para 3 are denied in totality. It is stated that:
 - a) The Hon'ble Ombudsman in various orders in representation no. 34/2018, 41/2021, 14/2022 have fortified the view that the MRI report is indicative only and indicates abnormality and malfunctioning that might be there in the metering system, however it never establishes the meter is running slow or fast on account of such finding of MRI. The slowness/fastness if any, have to be established by testing meter through a check meter study in accordance with the procedure as established in clause 5.1.3 of UERC regulation, 2020.
 - b) The table as presented is denied. Respondent have averred that voltage in R&B phases are less compared to Y phase whereas this is not the factual and actual position as per sealing certificate dated 07.10.2021 the only abnormality was found that the PT wire of R phase was broken and was replaced, subsequently all phase voltage was found OK. That it is not technically possible that the voltage of B phase gets corrected by itself

by replacement of R phase PT wire. Further if the PT wire of R phase was broken then how the voltage of 1605.92 volts was available as submitted by respondent. If the wire has actually been broken the meter should have read 0 volts. Thus it makes it evidently clear that the entire check meter study and findings are fabricated to raise the arbitrary assessment.

- c) It is denied in totality that the meter was running slow by 38.84% for the period as alleged. That the monthly bills for the consumers are to be prepared on the basis of MRI readings as per UERC regulation and the Licensee prepares monthly bills on the basis of MRI. If the meter was running slow on account of such abnormality as is alleged the respondent would have installed check meter on the very first instance of finding such defect. Furthermore if the meter was running slow the respondent would have noticed the same during the periodic testing of the meter which is stipulated to be one year as per clause 5.1.3 of UERC regulation, 2020.
- d) It is denied that the alleged less recording of energy can be calculated using check meter study and documents. That it is submitted that the meter in vogue and used by the respondent are smart meter and is having functionality of recording the energy correctly in case of various abnormal conditions. Thus the alleged assessment is liable to be dismissed.

- vi That the line CT ratio was not available as can be seen from sealing certificate dated 24.09.2021, since there is no entry of line CT ratio in the respective column. Further seal no. has not been noted and maintained all through the check meter study so it is also likely that the CT would have been changed when the check meter study was under process, thus MF of 2 of main meter as used for calculation for alleged assessment has no meaning. It is pertinent to mention that the seals are integral and inherent part of metering system as per definition of meter as provided in regulation, 2020. Thus when integrity of metering system was not ensured during the check meter study,



no reliance can be placed on the test results, hence assessment is illegal and deserves to be quashed.

- vii) The respondents 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 assessment raised thereof. Various case laws submitted clearly mandates that no assessment can be raised without having procedural and other compliances of UERC regulation, 2020. Thus the purported check meter study and the results obtained is having no sanctity and is merely a troubleshooting exercise and thus no sanctity can be attributed to the assessment raised, so it is liable to be dismissed and quashed.
- viii) It is therefore most humbly prayed that the Hon'ble Ombudsman would be pleased to take on record the rejoinder and allow the petitioner to argue the matter both on the averments made in the appeal as well as countered to the written statement of the respondent in this rejoinder. Further the Hon'ble Ombudsman would kindly allow the petitioner to furnish any evidence/documents/judgment to substantiate the pleadings for which act of kindness the petitioner shall be duty bound.

The rejoinder has been submitted with an affidavit under oath and a photocopy of a receipt in respect of depositing Rs. 1,68,983.00.

- 6. Hearing in the case was fixed for 23.01.2023 which was subsequently postponed to 09.02.2023 on the request of the petitioner dated 20.01.2023. Hearing was therefore held on 09.02.2023. Respondent Executive Engineer himself appeared for arguments and Shri Jasbir Singh Bagga, authorized representative of the petitioner appeared on behalf of the petitioner. Both parties argued their respective cases. The petitioner's representative submitted a written argument dated 08.02.2023 along with following case laws:

- i) Case law of Hon'ble High Court of Uttarakhand in Writ petition no. 1069 of 2021 decided by order dated 10.06.2021.
- ii) Case law of Hon'ble Bombay High Court in Writ petition no. 1688 of 2015 decided by order dated 13.08.2015.



- iii) Case law of Hon'ble Supreme Court of India case no. 3615 of 1996 date of judgment 21.04.2005.

The petitioner also submitted policy for use of NABL symbol dated 13.12.2019 also submitted in reference to his written arguments dated 09.02.2023. All these documents have been taken on record. In the written argument the petitioner has averred and submitted the same pleadings to justify his case.

7. The respondent Executive Engineer apart from verbal arguments has also submitted a letter without any dispatch no. and dispatch date. Almost all the averments and submissions as made in his written statement have been repeated in this letter apart from that the date of release of connection has been mentioned as 27.11.2019 under para 3 of this letter and low voltage on R&B phase have been mentioned from 28.11.2019 as was mentioned in written statement also (i.e. w.e.f. the very next day of release of connection). Further under para 5 of this letter the respondent has admitted that "उपभोक्ता को प्रत्येक माह एम0आर0आई0 के माध्यम से ही विद्युत बिल प्रेषित किये जाते हैं।"
8. Arguments from both parties were heard, documents available on file have been perused. Relevant UERC regulations, 2020, CEA regulations, 2006, Indian Electricity Rules, 1956, statutory provisions in Electricity Act, 2003 and Tariff provisions as applicable in the instant case have been consulted. The case laws submitted by the petitioner has also been gone through.
9. In brief the petitioner's case is that the entire exercise of check meter study conducted by the respondents is merely a troubleshooting exercise and cannot be treated as a genuine check meter study for non compliance and violation relevant regulations, statutory provisions as referred in his petition, rejoinder and written argument. The claim that the case laws of Hon'ble Supreme Court and Hon'ble High Court of Bombay and Uttarakhand also directs that no assessment or supplementary bill can be raised on the basis of a study not conducted in accordance with the regulations and legal provisions and the petitioner has therefore claimed that the check meter study conducted by respondents, its results declaring the main meter running slow by 38.84% and supplementary demand amounting to Rs. 3,37,967.00 raised through an entry in the bill dated 06.08.2022 for the month of 07/2022, as well as Forum's order dated 18.11.2022 in their complaint no. 89/2022 before them dismissing their


complaint are liable to be quashed and set aside for not being consistent with the relevant regulations and statutory provisions as well as case laws and thus are arbitrary, illegal, unjustified and unwarranted and the petitioner has thus requested that the demand raised by the respondents as well as Forum's order may be quashed and set aside.

10. On the other hand the respondents case is that as a perusal of MRI report revealed low voltage on R&B phases, therefore a check meter study was conducted by installing a check meter on 24.09.2021 and finalizing it on 07.10.2021. In this study the main meter installed at the premises of the petitioner was found running slow by 38.84% and although the voltage on R&B phases appearing low in the MRI report w.e.f. 28.11.2019 and continued so till 07.10.2021, the date when check meter was finalized. The supplementary demand amounting to Rs. 3,37,967.00 was raised through bill dated 06.08.2022 for the month of 07/2022 only for a period of 12 months in accordance with UERC regulations, 2020. As such the demand raised is genuine. They have claimed that the check meter study and assessment on the basis of check meter results have been done as per provisions in UERC regulations, 2020. The respondent has also claimed that monthly bills are being issued on the basis of MRI and therefore the respondent's have claimed that actions have been taken in accordance with regulations and the demand raised is genuine and is payable by the petitioner.
11. A perusal of records shows that relevant UERC regulations as referred by the petitioner have not been complied with in conducting the check meter study as there is no evidence available on file that advance notice was given to the petitioner for installing check meter, test results of the meter to be installed as check meter from an accredited lab were not given to the petitioner before initiating the check meter study. The respondents however have tried to justify that the check meter was duly tested by M/s Secure meters in their NABL accredited lab. A photocopy of the test certificate has been adduced with written statement. It nowhere shows that the test certificate is from NABL accredited lab. The petitioner has also submitted NABL policy documents where it is clearly provided that a test certificate issued from NABL accredited lab shall compulsorily have NABL logo/symbol, which is not appearing on the test certificate submitted by respondent. The test certificate dates back 05.02.2020 and has been issued with reference to purchase order no. 1070 dated 24.12.2019

placed by UPCL to Secure Meters Ltd. for supply of meters and it appears that this test certificate is issued by M/s Secure Meters as a purchase order contractual obligation, moreover this certificate too was also not given to the petitioner before initiating check meter study and thus this does not fulfill the requirement of the Regulation. As reported by the respondents the connection was released on 27.11.2019 and low voltage on R&B phase was appearing from the very next day i.e. 28.11.2019 of release of connection, it appears very strange.

12. It is observed that since the respondents have not complied with the relevant regulations and other legal provisions in conducting the check meter study and as veracity of the meter which was installed as check meter was not established as NABL accredited test certificate of the said meter was not given as it is not available on file. The result of the check meter study declaring existing meter 38.84% slow cannot be relied upon and as the entire exercise of conducting check meter study and raising supplementary demand amounting to Rs. 3,37,967.00 is devoid of law being violative of the relevant regulations. On the other hand the petitioner's case has force of regulations and the case laws submitted by them also supports their case. The petition therefore succeeds and is allowed. Forum order is set aside. The disputed demand of Rs. 3,37,967.00 raised by the respondent is also quashed and set aside. 50% of this demand admittedly deposited by the petitioner is ordered to be refunded to the petitioner by respondents by way of adjustment in future bill (s). Stay stands vacated as it is no more required because the petition has been decided in favour of the petitioner.
13. MD, UPCL is advised to issue necessary directions to all the field officers to follow the UERC relevant regulations and other statutory provisions in the Act, in conducting check meter study and raising any supplementary demand on the basis of such study, if as a result of such study it is required, as a number of cases have come before me as petitions from aggrieved consumers in past where relevant regulations and other provisions in the Act, as applicable in such cases have not been complied with by the field officers.

Dated: 20.02.2023


(Subhash Kumar)
Ombudsman