

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Mahendra Pratap Rawat
222/1 Vasant Vihar, Dehradun,
Uttarakhand

Vs

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

Representation No. 17/2023

Order

Dated: 30.05.2023

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 21.03.2023 in his complaint no. 145/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (South), Uttarakhand Power Corporation Ltd. 18, EC Road, Dehradun, Uttarakhand (hereinafter referred to as respondent) Shri Mahendra Pratap Rawat, 222/1, Vasant Vihar Dehradun has preferred the instant petition for quashing Forum's order and adjustment of the amount on monthly basis and refunding excess amount.

2. The petitioner, Shri Mahendra Pratap Rawat has averred as follows in his instant petition dated 11.04.2023

- i) The Forum dismissed his complaint no. 145/2022 vide order dated 21.03.2023 out rightly without appreciating and considering the documents placed on records judiciously.
- ii) The complaint was instituted before the Forum against the respondent for raising arbitrary, illegal, unjustified and unwarranted demand on various occasions through monthly electricity bills which in no way could be related to his premises.

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- iii) The abnormal bills were delivered to the petitioner and he was made to deposit the payment on the pretext that the bills will be adjusted subsequently, when the respondent failed to adjust the bill amount they were requested to test the meter, which was eventually done by installing a check meter on 13.12.2022 which was finalized on 26.12.2022.
- iv) It is admitted that as per check meter study the installed meter was found running fast by 847%, but the respondent was still reluctant to adjust the exorbitant amount of the electricity bill paid by him.
- v) The factual matrix leading to filing the present grievance petition has been given as under:
- a) The petitioner is a domestic consumer residing at 222/1 Vasant Vihar, Dehradun.
 - b) In check meter study the installed meter was found running 847% fast but the respondent took no action to adjust and revise the bill.
 - c) As the respondent did not do anything regarding grievance, complaint no. 145/2022 was filed before the Forum, which was dismissed vide order dated 21.03.2023 by the Forum without scrutinizing the calculation and without giving fair chance to the petitioner to submit his points on the alleged calculation sheet.
- vi) There was total denial of the principles of natural justice by the Forum.
- vii) The dispute which has been raised by him in this appeal is based on Electricity Act, 2003, Indian Electricity Rules, 1956, CEA notification dated 17.03.2006 and UERC regulations dated 29.10.2020. It is submitted that powers of distribution licensee are not unbridled but are circumscribed which mutandis are enshrined in the Electricity Act, Rules and UERC regulations.
- viii) The instant petition has been preferred being aggrieved against Forum order dated 21.03.2023 in his complaint no. 145/2022 on the following grounds:
- a) Because as per settled proposition of law 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.

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- b) Because no tampering with the metering was done by the petitioner and no such allegations have been leveled by the respondent.
 - c) Because the calculations as written by the respondent before the Forum was wrong and hence denied in totality. The respondent had calculated the amount on the basis of average of the previous 3 readings for the month of October 2021, November 2021 and December 2021 and applied that average for the period 08.12.2021 to 12.12.2022. It is pertinent to mention that the respondent had not taken into consideration the factor of 847% in their calculation, which was discovered in check meter study and regarding which there is no dispute.
 - d) Because as per clause 5.1.3 (10 a) of UERC Supply Code, 2020. The licensee has to adjust the excess amount realized from the consumer based on percentage error as discovered in check meter study. (has referred UERC order in petition no. 35/2021 of Shri Vivek Aarwal, Astle hall, Dehradun wherein the Commission has explicitly stated that the revision in bills can only be done on the basis of percentage error as discovered during testing and not on the basis of average billing for any previous 3 months. Copy of UERC judgment has been adduced as annexure 5)
 - e) Because the Forum did not consider the factual position of the fast meter (details of the readings obtained in the check meter and installed meter during check meter study and results thereof.)
- ix) That under the above circumstances the present petition has been preferred before the Hon'ble Ombudsman for necessary relief and redressal. He has requested that the impugned assessment is liable to be quashed and set aside.

Prayer

In the premises aforesaid the petitioner has made the following prayers

- a) Quash and set aside Forum order dated 21.03.2023 passed in complaint no. 145/2022
- b) Direct the respondent to adjust the amount on monthly basis as per consumption and refund the excess.
- c) Pass any other order or direction as deemed fit in the interest of justice.

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3. After hearing both parties and perusal of records available on the file. The Forum relying upon opposite party report dated 26.12.2022 was of the view that bills for the period from 08.12.2021 to 18.01.2023 have been corrected through CCBR, which was in accordance with UERC notification dated 29.0f.2020 i.e. UERC (Electricity Supply Code, Release of new connections and Related Matters) Regulations, 2020 chapter 5 metering and billing 5.1.3 (10) a and therefore the Forum was of the view that as the complaint has duly been resolved by the opposite party, there is no justification for further proceeding with the case and therefore the complaint is liable to be disposed off.

The Forum accordingly ordered that the case is disposed off as the opposite party has already resolved the complaint.

4. The respondent Executive Engineer has submitted his written statement vide his letter no. 381 dated 24.04.2023 as follows:

- i) No comments are required with regards to Forum's order dated 21.03.2023.
- ii) Bills were issued on the basis of meter readings obtaining in the meter. A check meter (no 8895778) was installed on petitioner's premises on his request on 13.12.2022 which was finalized on 26.12.2022.
- iii) Based on check meter report and in compliance with UERC relevant regulations bills for approximately 1 year (08.12.2021 to 26.12.2022 were revised on average consumption of 359 units per month obtaining from 07.09.2021 to 07.12.2021 were revised by the SDO. The new meter no. 8895778 installed at consumer's premises on 26.12.2022 recorded a consumption of 2221 units from 26.12.2022 to 11.04.2023 (106 days) i.e. a consumption of 20.95 units per day and 659 units per month, while the bills of the petitioner were revised on 359 units per month consumption.
- iv) Reply included under para iii) above.
- v) Reply included under para iii) above.
- vi) No facts are required to be given.
- vii) Correction of the bills have been done in accordance with UERC rules.

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viii) The bills have been revised on average monthly consumption of 359 units as obtained in previous months as per UERC regulations, while the average monthly consumption at present is 629 units.

5. The petitioner has submitted a rejoinder dated 04.05.2023 with an affidavit under oath in reply to the respondent's written statement dated 24.04.2023, wherein he has submitted as follows:

- i) At the outset contents of the written statement are specifically and categorically denied being devoid of merits, baseless and no cogent explanation has been furnished with respect to his contentions made in the appeal except to the extent which are specifically and categorically admitted herein in the forthcoming paragraphs.
- ii) Contents of para i) need no reply.
- iii) Contents of para ii) is admitted to the extent that the check meter was installed and finalized and the bills were issued on the basis of meter readings which were on higher side with respect to the actual consumption which lead to check meter study conducted at his premises, wherein main meter was found running 847% fast.
- iv) Contents of para iii) not admitted and denied in totality, it is denied that relevant regulations of UERC had been followed for raising assessment. The assessment had to be carried out as per percentage fastness discovered during check meter study and the adjustment was to be made for a period preceding 12 months. Admitted the meter was found running fast by 847% in the check meter study. The respondent as against using % error of 847% for calculation of assessment have revised their own formula based on average which is illegal, arbitrary and cannot be upheld, thus the assessment raised is liable to be quashed.
- v) Contents of para iv) need no reply.
- vi) Contents of para v) need no reply.
- vii) Contents of para vi) need no reply as the respondent has admitted all the averments made by him.

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- viii) Contents of para vii) need no reply.
- ix) Contents of para viii) are wrong, false and hence denied in totality. It is nobody's case that the average monthly consumption of the petitioner is 629 units. The respondent has devised their theory of average and the concept of current monthly average consumption for justifying their illegal assessment and such theory of respondent to raise assessment do not find any mention in UERC regulations, 2020, Electricity Act, 2003 or any other place. The Hon'ble UERC has also rejected this theory of averages in petition no. 35/2021 and copy of the judgment had already been submitted along with appeal.
- x) It is therefore 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 memo as well as countered to the written statement of the respondent.
6. Records available on file have been perused and arguments from both parties were heard on scheduled date 17.05.2023. The petitioner himself appeared for arguments and respondent was represented by SDO, AE (Meter) AE(R) and JE (Meter). Both parties argued their respective case. Relevant UERC regulations have also been consulted. Arguments were concluded. 30.05.2023 was fixed for pronouncement of order.
7. It is borne out that the petitioner has a 10 KW domestic connection at his premises. The contracted load was subsequently reduced to 5 KW. He was getting abnormally high metered consumption bills, which in his view were not commensurate with his consumption. Having found no solution from the respondents he requested for installation of a check meter and the check meter was installed on 13.12.2022 which was finalized on 26.12.2022. As a result of this check meter study the petitioner's installed meter was found running fast by 847%. There is no dispute about this test result and it is admitted by both the parties.
8. The dispute is on the adjustment allowed by the respondent. The respondent's have adjusted bills for about last one year for the period 08.12.2021 to 26.12.2022 on the basis of average recorded consumption in the bills for last 3 billing cycles from 07.09.2021 to 07.12.2021 on an average consumption of 359 units per month. This

adjustment was not acceptable by the petitioner as according to him it was not consistent with the relevant UERC regulations, 2020. Sub regulation 5.1.3 (10) (a) applicable in a case where the existing meter was found running fast as a result of check meter study. Although the respondents claimed that they have allowed adjustment in accordance with relevant UERC regulations applicable in the case where meter was found running fast as a check meter study. Not being satisfied with the adjustment allowed by the respondent, the petitioner filed a complaint no. 145/2022 before the Forum. The Forum disposed off the complaint vide its order dated 21.03.2023. As in their view the adjustment allowed by the respondents was in accordance with sub regulation 5.1.3 (10) (a) of UERC (Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020.

9. In fact the adjustment as allowed by the respondents is applicable in case of defective meter and not in case of a meter found running fast as per check meter study. In the instant case the meter was not IDF. The IDF meter is defined under sub regulation 5.1.4 (1) of the aforesaid UER Regulation 2020, according to which a meter is categorized as a defective meter where the meter is not displaying/not recording/stuck. In the instant case it was none of the status of the meter but this meter was running and that too at a very high speed determined as 847% fast as per check meter study, so the adjustment allowed by the respondents cannot be appreciated as there is no dispute about veracity of the existing meter found 847% fast so this adjustment is held as null and void and is set aside.
10. The Forum's conclusion that the respondents have allowed adjustment from 08.12.2021 to 18.01.2023 through CCBR on the basis of check meter report which is correct and consistent with sub regulation 5.1.3 (10) (a), is a wrong interpretation as the respondent has allowed adjustment on the basis of average consumption of previous 3 months and not on the basis of check meter results, which declared the existing meter running fast by 847% and thus the complaint of the petitioner has duly been redressed by the respondent themselves and so there is no justification to proceed with the case any further and thus the Forum disposed off the complaint. As explained above the Forum has erred in arriving at a conclusion and thus its order dated 21.03.2023 in complaint no. 145/2022 is not sustainable and is therefore set aside.



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11. The petitioner in support of his contentions has adduced a copy of Hon'ble UERC's judgment dated 09.12.2021 in petition 35/2021 of Shri Vivek Agarwal vs MD, UPCL and Executive Engineer, EDD (Central) Dehradun. This case is very much similar with the case of the petitioner and the Hon'ble UERC vide their aforesaid order has upheld Ombudsman's order in that case and directed the respondents to constitute a 2 member committee comprising of SE (Commercial) and SE (R-APDRP) to revise the bills of the petitioner for the period 11.07.2018 to 07.12.2019 in accordance with the Ombudsman order dated 24.11.2020 passed in petition no. 22/2020 of Shri Vivek Agarwal within 15 days of this order (UERC order dated 09.12.2021).
12. Since the consumer's installed meter was admittedly found running fast by 847% and there is no dispute about this check meter result so adjustment as per provisions under sub regulation 5.1.3 (10) (a) of above referred UERC regulations, 2020 has to be allowed and further this view is supported by Hon'ble UERC's above referred order dated 09.12.2021 in petition no. 35/2021. The respondents are therefore directed to withdraw their earlier adjustment and allow adjustment in accordance with the aforesaid regulation within 15 days from the date of this order. The petition is allowed.

Dated: 30.05.2023


(Subhash Kumar)
Ombudsman

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