

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Hoshiyar Singh Thapli
Partner
Hotel Abhinandan,
Picture Palace, Mussoorie,
Distt. Dehradun, Uttarakhand

Vs

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

Representation No. 04/2022

Order

Dated: 31.03.2022

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) order dated 30.06.2021 in his complaint no. 51/2020, before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (North), Dehradun (hereinafter referred to as respondent) Shri Hoshiyar Singh Thapli, Partner, Hotel Abhinandan, Picture Palace, Mussoorie, Distt. Dehradun has preferred this petition for setting aside the assessment bill, raised by the respondent in compliance to Forum's aforesaid impugned order.

2. The petitioner has averred that a 40 KW connection no. 700K00000951 exists in the name of Jayshree Enterprises Pvt. Ltd. for their hotel Abhinandan, situated at Picture Palace, Mussoorie. All bills as received up to the month of 08/2020 have regularly been paid by them. They received bill for the month of 09/2020 amounting to Rs. 9,54,431.00. On enquiry from respondent's office they came to know that a check meter was installed at their premises wherein the installed meter was found running slow and on the basis of which assessment has been raised from the month of 12/2019. The petitioner has submitted that the check meter report is completely wrong, the meter in fact was found running fast instead of slow and this fact was agreed to by the respondent no. 2 i.e. Forum. Forum's order that bill be revised on the

basis of last 1 year consumption is wrong, in view of the fact that from 23.03.2020 to October 2020 there was complete lockdown in the country due to which the hotel business completely remained closed and hence this order is wrong. This appeal is filed being aggrieved with Forum order that bill for the period of the assessment be issued on the basis of average consumption during last one year before 01.12.2019.

3. Grounds of the appeal

- i. Forums order under reference is against facts and law.
- ii. Member (Judicial) of the Forum having accepted the pleading of the complainant that the check meter report presented by the respondent, is wrong.
- iii. The respondent have claimed main meter running slow by 96.90%.
- iv. The Forum directed the Opposite Party on 04/01/2021 to submit load survey report but the Opposite Party submitted that load survey report was not available as load survey option does not exist in MRI.
The Forum accepted that as per consumer history it appears that the duration of assessment at the rate of 96.90% was not logical.
- v. The Forum further accepted that assessment of 16,236 unit per month from 12/2019 to 05.10.2020 was also not logical.
- vi. The Forum also agreed to the fact that the petitioner never consumed so much energy as assessed either before and after the duration of assessment.
- vii. The Forum also accepted the fact that the Opposite Party have failed to establish technically the consumption during the period of assessment.
- viii. Although the Forum agreed to all the arguments but overlooked the fact that if the petitioner's hotel remained closed from March 2020 to October 2020 due to lockdown, the assessment based on last one year consumption. The Forum had to pass order for assessment only for six months, by allowing exemption for the aforesaid period.
- ix. The Forum overlooked the fact that petitioner's hotel remained closed from 03/2020 to 10/2020 due to lockdown. Order for raising assessment on the average consumption recorded during one year prior to 01/12/2019 is not logical and is wrong.
- x. The bill issued in compliance to Forum's order is excessive and needs to be revised.

- xi. Forum's order is against natural law and is liable to be set aside.
- xii. If Forum's order allowed to sustain it will be harmful for the petition and against law and justice.

In the premises aforesaid the petitioner has requested that Forum order dated 30.06.2021 passed in their complaint no. 51/2020 may be partly set aside.

- 4. The petitioner has submitted an application for condonation of delay and for granting stay **(The petition was accordingly admitted condoning the delay in its submission and Interim Stay was also granted on 02.02.2022 which was subsequently extended on 16.02.2022 till next date of hearing)**

- 5. Forum Order:-

The Forum after perusal of the records placed before them and in view of the facts and circumstances of the case concluded that in the circumstances of the case the assessment raised by the Opposite Party for the meter found running slow at the rate of 96.90% as per check meter study for the period 01.12.2019 to 05.10.2020 is liable to be set aside and a fresh assessment treating the meter IDF be raised for the aforesaid period on the basis of average consumption recorded in one year prior to 01.12.2019 and accordingly passed order to issue the revised bill within a period of one month as per their order without levy of surcharge.

- 6. A written statement has been submitted by respondent Executive Engineer vide a letter no 3130 dated 31.01.2022. At the outset the respondent has submitted that the case relates to connection no. 700K000000951 in the name of M/s Jai Shree Enterprises Pvt. Ltd. (Hotel Abhinandan Picture Palace). A check meter was installed at the premises of the aforesaid consumer in accordance with UERC Supply Code, 2020. An assessment amounting to Rs. 9,33,230.75 was raised through bill for the month of 09/2020 on the meter found running slow by 96.91% as per check meter. The consumer approached CGRF Dehradun against the aforesaid assessment bill. The Forum decided the complaint vide order dated 30.06.2021 and ordered that the assessment raised for slow meter running by 96.91% for the period 01.12.2019 to 05.10.2020 is quashed in totality and directed that a revised bill on the basis of average consumption during one year prior to 01.12.2019 be issued. In compliance to

aforesaid Forum's order revised bill for a sum of Rs. 1,29,914.75 was sent to the consumer.

The appellant has mentioned in the appeal that old meter was running fast instead of slow but without an evidence to establish their claim. The respondent has submitted that had the meter was running fast, then against their average consumption, bills for 105, 0, 30 and 30 units from 05/2020 to 08/2020 could not have been possible so the respondent has held the averment of appellant as false and not correct on the basis of any fact and liable to be disallowed. He has submitted point wise reply as follow:-

- i. The revised assessment bill has been raised on the basis of his average consumption in the past in compliance to Forum order and which has also been provided in UERC Supply Code Regulation 5.1.3.10 (ब) so as such the appellant's averment that the order in question is against law, is baseless and without any logic.
- ii. In reply to point no. 2, 3 4 and 5, referring to table under point no. 5 of Forum order, the respondent has submitted that zero consumption was being recorded on R, Y & B phases of the old meter the same status was approximately maintained at the time of finalization of check meter which make it clear that the consumer's meter was recording approximately zero consumption. MRI further shows that the consumer was drawing load only on one phase on which low voltage was being exhibited, which indicates that the consumer has knowingly transferred the load on that phase. So appellant's submission that the assessment raised for 96.91% slow running is not logical, is completely against fact and is without any basis and has been claimed only with a view to create a confusion.
- iii. In reply to para 6 he has held that there is no basis for submitting that so much consumption was never made by the appellant either before and after the duration of assessment, as no basis for the same has been given. The consumer can control his load after filing the case. Therefore, raising assessment on the basis of the consumption recorded in the period post to the period of assessment, shall neither be logical nor such provision exists in UERC Supply Code Regulation. He has also added that the petitioner's submission, in itself

is contradictory. Because such a submission can be made in view of Covid before and after finalization of check meter.

- iv. In respect of point no. 7, 8, 9 and 10 the respondent has submitted that action has duly been taken in accordance with UERC Regulation 5.1.3.10 (बै).
- v. So the entire case has been dealt with on the basis of MRI and electronic record even then as per check meter the existing meter was found slow by 96.91% and in the revised bill based on average consumption the difference was 86.95%. The revised bill has been issued as per UERC Supply Code. He has therefore submitted that the appeal not being logical is liable to be quashed. And he has requested that keeping in view meter slow by 96.91% as per MRI and revised assessment on average being 86.95% slow, order may judiciously be passed also keeping in view of the earlier assessment.

(In his aforesaid W.S. the respondent has submitted that the check meter was installed and further action in the case has also been taken in accordance with UERC Supply Code 2020. It is clarified that UERC Supply Code Regulation 2020 specifically named as UERC (The Electricity Supply Code, Release of New Connection and Related Matters) Regulation 2020 dated 29.10.2020 was notified in the gazette on 28.11.2020 and hence is applicable from the aforesaid date of notification in the gazette that is 28.11.2020. In the instant case the check meter was installed on 08.09.2020 finalized on 05.10.2020 as per sealing certificates available on file and the assessment bill on the basis of existing meter found slow by 96.91% as per check meter the assessment bill amounting to Rs. 9,33,230.75 for the period 01.12.2019 to 05.10.2020 was raised in the bill for the month 09/2020 as such UERC Regulation 2020 as submitted by him in his W.S. is not applicable in the instant case. However UERC (The Electricity Supply Code) Regulations 2007 which was in force up to a date just before 28.11.2020, is applicable in the instant case and as such neither the principal Regulation 2020 nor its sub-regulation as mention in his W.S. such as Regulation 5.1.3.10 (बै), is also applicable in the instant case however relevant sub-regulations of UERC Supply Code Regulation 2007 may be applicable in the instant case depending upon the facts and merits of the case).

7. The petitioner has submitted a replication (Rejoinder) dated 15.02.2022 in reply to respondent W.S. dated 31.01.2022. The petitioner has denied contents of para 1, 2 3 and 4 of the W.S. being wrong and baseless. He has further submitted that contents of para 1 to 10 of his appeal are true and correct and the same may be read as a part of this affidavit. The prayer made by the respondent under last para of his W.S. is not legally maintainable and liable to be set aside. The respondent has not right to challenge Forum's order dated 30.06.2021 passed in complaint no. 51/2020 through his W.S. dated 31.01.2022.
8. Hearing in the case was held on pre-decided dated 15.03.2022 the petitioner argued his case through advocate while the respondent Executive Engineer pleaded his case himself. The arguments were concluded with mutual consent. Order was reserved and 31.03.2022 is fixed for pronouncement of the order/award. The petitioner was directed to submit documentary evidences, within a few days, but before 31.03.2022, to establish that his hotel was completely forced closed from 22.03.2020 to October 2020, as claimed in his petition, due to lockdown.
9. As directed at the time of hearing the petitioner visited this office on 16.03.2022 and shown the original visitor register which contains a certificate of registration dated 03.01.2020 as well as a certificate dated 03.01.2020 issued by Zonal Tourism Officer Dehradun wherein it has been certified that “प्रमाणित किया जाता है कि होटल अभिनन्द आगंतुक पंजीका में 01 से 309 तक कुल पृष्ठ है एवं यह भी प्रमाणित किया जाता है कि यह पर्यटन विभाग द्वारा 03.01.2020 को पंजीकरण किया गया है”. The visitor register has been stamped on each page with the seal of “कार्यालय क्षेत्रीय पर्यटन अधिकारी उत्तराखण्ड सरकार देहरादून” a perusal of this register shows that the last visitor as entered as serial no. 99 of the register arrived at the hotel on 19.03.2020 and thereafter as per entry at serial no. 100 the first visitor came to the hotel on 05.10.2020 it clearly establishes that no visitor came to the hotel during the intervening period just after 19.03.2020 and before 05.10.2020. A photocopy of the above documentary evidences was sent by the petitioner via email on 23.03.2022 (a photocopy of a visitor's register from serial no. 99 dated 19.03.2020 till serial no. 105 dated 09.10.2020 was also submitted by the petitioner earlier along with his petition) a certificate from Sh. Sanjay Aggarwal, Secretary Mussoorie Hotel's Association has also been sent by the petitioner via email wherein it has been certified that as the Government had imposed complete lockdown

w.e.f 23.03.2020 due to Covid-19 pandemic. The hotels in Mussoorie were completely closed for almost seven-eight months. These documentary evidences clearly establish that there had been no business in the hotel of the petitioner from 23.03.2020 till 05.10.2020 due to complete lockdown.

10. All records available on file have been perused and arguments from both parties were heard. The view taken by the Forum in their order dated 30.06.2021 in complaint no. 51/2020 of the petition before them that in view of the circumstances obtaining due to complete lockdown in view of Covid-19 pandemic and as also a perusal of the consumer history the assessment raised by the respondents for a period December 2019 till 05.10.2020 on account of meter found running slow by 96.91% for 1,62,361.00 units in ten months that is 16,236.1 units per month does not appear logical neither it is justified. Further they observed that the opposite party could not technically establish the assessed consumption during the period aforesaid. Having observed as such the Forum have quashed the assessment raised from 01.12.2019 to 05.10.2020 on the basis of alleged slow running of meter by 96.90% and have ordered that assessment for the aforesaid period be raised on the basis of average consumption recorded during preceding one year from 01.12.2019 and have directed the opposite party to issue a revised bill as per their order within a month from the date of order and without levy of any surcharge. The respondent in their W.S dated 31.01.2022 has admittedly issued a revised bill amounting to Rs. 1,29,914.75 in compliance to Forum's order dated 30.06.2021 in place of bill issued by them for a sum of Rs 9,33,230.75 on the basis of meter found running slow by 96.91% as per check meter study. It is clarified that since the respondents have already complied with Forum order dated 30.06.21 and have accordingly issued revised bill amounting to Rs, 1,29,914.75, they cannot challenge this revised assessment as also the Forum order and cannot also make a submission before Ombudsman to keep in view the earlier assessment raised for meter running slow by 96.91% while passing order in the appeal. The instant petition has been filed being aggrieved with Forum's order and revised assessment Rs. 1,29,914.75 issued in compliance to Forum's order dated 30.06.2021 and has requested that as their hotel remained closed from march 2020 to October 2020 due to lockdown under Covid-19 pandemic the Forum order is not logical and justified and needs to be quashed partially.

In view of the established facts that there was no business conducted in the hotel from 23.03.2020 to 05.10.2020, Forum order needs to be partially modified. It is therefore directed that regular bills issued from 23.03.2020 till 05.10.2020 earlier on recorded consumption need not be revised. However, bills from 01.12.2019 to 23.03.2020 may be revised on the basis of average consumption recorded during one year preceding to 01.12.2019. The respondents are therefore directed that the bill issued for a sum of Rs. 1,29,914.75 in compliance to Forum's order for a period 01.12.2019 to 05.10.2020 be withdrawn and a bill only for a period from 01.12.2019 to 23.03.2020 be issued on the basis of average consumption recorded in one year preceding to 01.12.2019 without levy of any LPS. Forum order stand upheld with above modification. Petition is allowed. Interim Stay granted on 02.02.2022 and extended on 16.02.2022 till next date of hearing, shall stand vacated immediately after expiry of the due date of payment of the revised bill to be issued in compliance of this order.

Dated: 31.03.2022

(Subhash Kumar)
Ombudsman