

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Pestleweed School
Oakhill Estate,
Mussoorie Diversion Road,
Dehradun, Uttarakhand

Vs

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

Representation No. 14/2022

Order

Dated: 27.06.2022

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone, Dehradun (hereinafter referred to as Forum) order dated 24.02.2022 in their complaint no. 64/2021 before the said Forum against UPCL through Executive Engineer, Electricity Distribution Division (North), 18, EC Road, Dehradun (hereinafter referred to as respondent) M/s Pestle Weed School, Oakhill Estate, Mussoorie Diversion Road, Dehradun has preferred this appeal under duly authorized Director, Shri Akash Kashyap on behalf of the aforesaid consumer.

2.

- i) The instant appeal is preferred as the complaint has been dismissed by the Forum without appreciating and considering the documents placed on record judiciously, a copy of the impugned order dated 24.02.2022 has been adduced as Annexure 1.
- ii) Complaint no. 64/2021 was instituted before the Forum against the respondent for raising arbitrary, illegal, unjustified and unwarranted demand for assessed 62087 units raised through electricity bill dated 21.10.2021 for the month 09/2021 for the period 31.08.2021 to 30.09.2021. Impugned bill is attached as Annexure 2.

- iii) The petitioner is a consumer of the respondent with a contracted load of 60 KW with connection no. 610 against which regularly paying the consumption charges as per demand being raised by the respondent through monthly bills and there had been no default on the part of the petitioner since the connection was released.
- iv) Factual matrix leading to filing the petition are detailed below:
 - a) The petitioner is a commercial unit engaged in education business, located at Mussoorie Diversion Road, Dehradun.
 - b) In the bill dated 21.10.2021 for the month of 09/2021 additional 62087 units were found added apart from regular monthly consumption.
 - c) On enquiry they were shown some MRI reports and it was apprised that additional assessed units were based on these MRI reports. On serious objections by the petitioner on the assessment **the respondent agreed to revise the bill.**
 - d) In the subsequent bill dated 12.11.2021 for the month of 10/2021 it was observed that the bill has not been regularized. Further no documents were provided validating the assessed units.
 - e) They immediately contacted the respondent through letter dated 25.11.2021 and explicitly told that they never consumed the assessed units. Having received no reply reminder dated 10.11.2021 was sent to the respondent with a request that copy of sealing certificates be provided.
 - f) They again visited respondent's office where UPCL provided copies of sealing certificates dated 14.09.2021 and 23.09.2021, which are submitted with this petition.
 - g) Since the respondent did not do anything regarding the grievance they approached Forum with a complaint registered as no. 64/2021 which was dismissed vide order dated 24.02.2022.
- v) That there was total denial of the principle of natural justice by Forum.

- vi) No written statement of the respondents was provided to them and further respondent was never made to answer any of the contentions of the petitioner. They specifically and categorically brought all his apprehension with regard to free and fair trial to the notice of Forum with a copy to UERC, wherein they were apprised that Forum has dismissed the complaint without perusing the fact and going into substantial questions of facts and law.
- vii) The dispute raised in this appeal is based on the Electricity Act, 2003, Indian Electricity Rules, 1956 and CEA Regulation dated 17.03.2006 and UERC regulation dated 29.10.2020 and it is being brought on record that the judicial discipline entails, that the powers of the distribution licensee are not unbridled and are circumscribed which mutandis are enshrined in Electricity Act, Rules and UERC regulations and Supply Code respectively.
- viii) Being aggrieved with said impugned order dated 24.02.2022 in their complaint no. 64/2021 the present appeal is being preferred on the following amongst other grounds.
 - a) The impugned amount raised by UPCL has been issued in a most illegal obscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner in clear violations of the settled proposition of law resulting in manifest injustice and causing serious prejudice to them and hence the same deserves to be quashed and set aside.
 - b) UPCL section is in clear violation of principles of natural justice equity and good conscience in as much as no notice or opportunity of being heard was given to them before raising the demand through impugned bill.
 - c) 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 actual having been fallen due and is not permissible in law.
 - d) No tampering with the metering system was done by the petitioner and no allegations regarding the same has been leveled by the respondents.
 - e) Because the Forum did not consider the submissions made in the complaint and hearing and also no final hearing was ever held at the Forum.

- f) Because the petitioner never admitted and have denied that the metering system was not running slow to the tune of 34.75% and that the alleged check meter study was not more than a troubleshooting exercise by respondents and cannot be termed to be a check meter study as it was not carried out in accordance with regulations of 2020.
- g) Because the Forum did not consider the following submissions made by them and dismissed the complaint.

A. That; -

- i. No advance notice of the test/check meter study was served to them.
- ii. No test report for the check meter installed at the premises was served before initiation of the test.
- iii. No duly authenticated test results were provided as mandated under clause 5.1.3 (5) of UERC (The Electricity Supply Code, Release of New Connection and Related Matters) Regulations 2020 (hereinafter shall be referred as UERC Supply Code 2020)

B. The site testing as evident from sealing certificates were carried out by the respondent without knowledge of the petitioner. Further respondent's lab is not NABL accredited also respondent is not accredited by NABL for carrying out any site testing as mandated under clause 5.1.3 (1) of UERC Supply Code, 2020 as also mandated under CEA regulations.

C. That the check meter study has been carried out by a preoccupied mind and the only purpose and intention of the respondent was to raise arbitrary assessment.

In the sealing certificate dated 14.09.2021 for check meter installation, it has explicitly been written that **“Assessment would be raised from 24.07.2020.”** which makes it abundantly clear that the entire exercise from the very beginning was carried out only to raise arbitrary assessment which is thus not legally tenable.

D. That no reliance on test results can be placed if such test has not been carried out in a NABL accredited lab more so because of the

settled law as returned by the Bombay High Court judgment in the matter of Nestle India Ltd. vs. FSSAI (WPL No. 1688 of 2015) dated 13.08.2015, relevant abstract enclosed.

- E. The test results were not admitted and it was also submitted that no opportunity was given 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 was provided before raising the impugned bill. Respondent's action is in contravention to clause 5.1.3 (12) of UERC Supply Code, 2020.
- F. The sealing certificate dated 23.09.2021 has explicitly mentioned as under: **“Check meter finalized and corrected. Y phase potential wire found burnt. Main meter found 34.75%. Assessment sheet enclosed, assessment date from 24.07.2020”**
That it is not stated that meter is running slow or fast that no such assessment sheet as mentioned was provided, that the only abnormality was found that the Y phase potential wire burnt.
- G. That as per definition of meter as provided in UERC Supply Code, 2020 and CEA regulation 2006, any other equipment apart from meter necessary for recording energy is part of meter itself, that all the interconnections made inside the meter for recording of energy thus constitutes and is part of the meter itself. That as per sealing report dated 23.09.2021, the potential wire of Y phase found burnt. That this establishes that the meter was found burnt. As the potential wire is the inherent part of the meter.
- H. The burnt meter was not got tested by the respondent, which is mandatory and a harmonious construction of the clauses will interpret that any assessment or liability can only be fastened on the consumer if the burnt meter is duly tested in the lab of the licensee. Clause 5.1.5 (2) of UERC Supply Code, 2020 provides for testing the burnt meter.
- I. That the burnt meter remained at site from 24.07.2020 as per sealing certificate dated 23.09.2021. The licensee cannot raise the bill beyond 2 billing cycles, if the burnt meter remained at site, as

such the bills subsequent to 24.09.2020 in the instant case are inconsistent with UERC Supply Code, 2020 and is liable to be quashed. Clause 5.1.7 of the aforesaid regulation provides for levy of charges for a maximum period of 2 billing cycles during which time the Licensee was expected to have replaced the defective meter.

- J. In the instant case the petitioner is entitled for compensation as per UERC SOP regulations, 2007 for the total duration of 423 days for which the burnt meter remained at site and the total value of the compensation @ Rs. 50 per day comes out to Rs. 21,150.00.
- K. Seals present in the meter at the time of check meter installation were not found when the check meter was finalized. As all the seals present are inherent part of the meter so the status of seals could not be confirmed and thus integrity of the meter could not be confirmed during the period of check meter study, so the complete exercise is not more than a troubleshooting exercise and without the adherence to the specific procedures of the UERC Supply Code 2020 so this exercise could not be termed as check meter study and that any assessment raised on the basis of such troubleshooting is not legally tenable and is liable to be quashed.
- L. That the threat extended by UPCL to disconnect the electricity without any fault of the complainant is totally illegal, arbitrary, unwarranted and without jurisdiction and hence immediate interference of this Hon'ble Court is warranted.
- M. Disconnection of the electricity to the petitioner unit shall be a direct casualty to his business and the students and staff residing at the premises in as much as the health and safety of the residents would be at stake due to power disconnection.
- N. 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.

O. That the meter was working correctly and the petitioner have never used the assessed units. That an error of 34.7% is denied in totality.

- ix) The dispute is a case of burnt meter which requires to be dealt with as per clause 5.1.5 (burnt meter) and clause 5.1.7 (billing during the period defective/stuck/stopped/burnt meter) of the UERC Supply Code Regulations, 2007 **(the said clauses pertains to UERC Supply Code, 2020 and not Supply Code Regulations 2007.)** The respondent not only defaulted procedurally with regard to check meter study but also failed to appreciate the relevant applicable clauses of Supply Code therefore the respondent should not be given advantage of its act and omission. The petitioner has referred Hon'ble Supreme Court judgment in Civil Appeal 3615 of 1996 in the matter between Bombay Electric Supply and Transport undertaking vs Laffans (India) Pvt. Ltd. and others, in which judgment has been passed on 21.04.2005 wherein it is categorically stated at page no. 7 "The appellant cannot be permitted to take advantage of its own act and omission."
- x) The petitioner has referred a case of civil appeal no. 716 of 1985 in the matter between MPEB vs Smt. Bashanti Bai whereby meter was recording only on 2 phases as one of the phases got burnt, Hon'ble Supreme Court vide judgment dated 10.11.1987 stated on page no. 7 **"In our view, the view taken about the scope of section 26 (6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said act and as such it has been rightly found by the High Court that it is the electrical inspector who alone is empowered to decide the dispute. If the electrical inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding 6 months. The appellant no. 1 is not competent pending the determination of this**

dispute by the electrical inspector to issue the impugned notice threatening disconnection of supply of electricity for nonpayment of supplementary bill prepared and sent by it. The board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy.”

Further the petitioner has stated that clause 5.1.3 (12) of UERC Supply Code, 2020 mandates **“If the consumer or his representative disputes or refuses to sign the test report, the defective meter shall not be replaced and the matter shall be decided either (a) upon the application of consumer by CGRF or Electrical Inspector or any authorized third party, who shall test the correctness of the meter and give results within 1 month”**

That at the same clause 26 (6) have been incorporated in the UERC Supply Code, 2020 and also in view of section 185 (repealed and saving) of Electricity Act, 2003, so the said judgment is applicable and it is confirmed that the respondent cannot raise any supplementary bill in case of meter not working correctly pending decision of Electrical Inspector.

- xi) That as per settled law writ petition 1069/2021 dated 10.06.2021 of Hon’ble Uttarakhand High Court whereby the Hon’ble Court has clarified that if clause 3.1.3 (Testing of meter) of the UERC Supply Code, 2007 is not complied, no assessment/supplementary bill can be raised and if any such 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 supplementary bill. The said clause 3.1.3 (Testing of meter) of Supply Code 2007 has been replaced by clause 5.1.3 of Supply Code, 2020.
- xii) The petitioner has stated that the assessment has been raised with the pre occupied mind of the respondent and the complaint was dismissed with the pre occupied mind of the Forum and no ratio decidendi has been brought out and no rival submissions have been considered in the judgment/order.
- xiii) The petitioner has further submitted that under the above circumstances petitioner having no alternative left has approached the Hon’ble Ombudsman

by way of the instant appeal for necessary relief and redressal with the respectful submission that the impugned assessment is liable to be quashed and set aside.

Prayer:

In the premises aforesaid the petitioner has submitted following prayers:

- a) Call for records of the case for perusal.
 - b) Quash and set aside the assessment vide impugned bill dated 21.10.2021 for the month of 09/2021 being the same illegal, arbitrary, perverse, malafidy and unjust.
 - c) Direct the respondent to quash the electricity bill subsequent to 24.09.2020 till defect is rectified being not in accordance with UERC Supply Code Regulations.
 - d) Direct respondent to provide compensation to the tune of Rs. 21,150.00 as per SOP Regulations, 2007.
 - e) Issue necessary directions to the respondents 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.
 - f) Pass any other order or direction which this Hon'ble Forum may deem fit and proper on the facts and circumstances and in the interest of justice.
3. The petitioner has corroborated his submissions with copies of judgments of the case laws and other submissions.
4. The Forum after perusal of the records available on file and hearing arguments from both parties have observed that as per MRI report available on file it is clear that the metering system at the premises of the complainant was recording 34.75% less or slow from 24.07.2020 to 23.09.2021 the date of finalization of the check meter due to which the assessment for the aforesaid period was added in the bill for the month of 09/2021 by the opposite party which is correct in view of the Forum and no correction in the said assessment can be done. So in the circumstances no relief can be granted to the complainant and so the complaint is liable to be dismissed and accordingly the

- v) point no. 5 Complete opportunity was provided to the petitioner by the Forum for submission of his case therefore natural justice was not denied and therefore the petitioner's contention is false.
- vi) Point no. 6 copy of the written statement before the Forum was duly made available to the complainant and as such his contention is false.
- viii) Point no. 8
 - a) The respondent has submitted that in the instant case meter was not burnt but potential wire of Y phase was burnt. Meter was recording energy as potential wire of Y phase was burnt. The meter was recording lesser energy by 34.75% so assessment has rightly been raised
 - b) At the time of departmental inspection/checking on 12.08.2021 it was duly mentioned by the undersigned on the checking report that check meter shall be installed. The checking report was duly got signed by consumer's representative and a copy thereof was given to him.
 - g) A Sub regulation 5.1.3 (5) of UERC Supply Code referred by the petitioner is not related with the instant case so no comment is required.
 - B An inspection was carried out at consumer's premises on 12.08.2021 before installation of check meter. It was duly mentioned on the said checking report that a check meter shall be installed, that the said checking report was got signed by consumer's representative, a copy of which was duly given to him. The check meter was installed with the existing meter and the supplier of the check meter is a NABL accredited company, the certificate was enclosed.
 - C From the MRI report it is clear that metering system was recording less @ 34.75% as per check meter study from 24.07.2020 to 03.09.2021 (as per sealing certificate the correct date is 23.09.2021).

- D The supplier of check meter is a NABL accredited firm certificate is enclosed.
- E As no objection on the check meter report was raised by the consumer at the time of finalization of check meter so there is no point for getting the meter tested by Electrical Inspector. Complaint was preferred by the petitioner before the Forum. The Forum has passed order in favour of the department which is in accordance with sub regulation 5.1.3 (12) of UERC Supply Code, 2020.
- F The respondent have submitted that after raising the assessment the consumer himself met him in his office along with his accountant and complete details regarding the assessment were explained to him and necessary documents related to assessment were also given to him.
- G He has stated that in the instant case meter was not burnt but wire of the PT of Y phase was burnt.
- H The respondent has stated that in the instant case the meter was not burnt so there was no necessity of its testing. The sub regulation 5.1.5 (2) of Supply Code referred by the petitioner is not related with the instant case.
- I He has again submitted that in the instant case meter was not burnt but only potential wire of Y phase was burnt and meter was duly recording energy as potential wire of Y phase was burnt so the meter was recording lesser energy by 34.75% so testing of meter was not required as such sub regulation 5.1.7 of Supply Code as referred by the petitioner is not attracted in the instant case.
- J He has submitted that no violation has been made of UERC SOP Regulations therefore no compensation is payable to the petitioner.
- K The details of the seals on the check meter and the main meter as were at the time of check meter installation was duly mentioned on the sealing certificates as seals were not changed at the time of

finalization of check meter so details of the seals were not mentioned in the sealing certificate.

O He has stated that as in the instant case the meter was not burnt but PT wire of the Y phase was burnt and meter was duly recording the energy and as PT wire of Y phase was burnt so meter was recording lesser energy by 34.75% so assessment as raised is correct.

- ix) He has again stated that as in the instant case the meter was not burnt but only PT wire of Y phase was burnt and meter was duly recording the energy and because PT wire of Y phase was burnt so meter was recording less by 34.75%. Further he has submitted that during the process supply to the consumer was not disturbed so there has been no mistake by the respondents in compliance to UERC's standards and therefore there is no justification for allowing any compensation. The case of M/s Bombay Electric Supply Company and Transport undertaking vs Laffans India Pvt. Ltd. as referred by the petitioner is all together different from petitioner's case.
- x) Thus the case of MPEB vs Smt. Bashanti Bala referred to by the petitioner is all together different from petitioner's instant case.
- xi) Sub regulation 5.1.3 (7) of UERC Supply Code, as referred by the petitioner is not related with the instant case.
- xii) The respondent has stated that as per MRI report it is clear that meter was recording less by 34.75% as per check meter study from 24.07.2020 to 03.09.2021 (as per sealing certificate correct date is 23.09.2021) so the assessment raised is correct which has also been upheld by the Forum. The assessment is also supported by the electronic records and the consumer's consumption pattern also establishes that the assessment is correct.

In view of above the appeal preferred the Hon'ble Ombudsman has been preferred with [us2#/r4khu#gnc#m1#/r4gLY#p06v](#) and is therefore liable to be dismissed. #

7. The petitioner has submitted his rejoinder dated 21.03.2022 along with an affidavit on oath, contents of which are as follows:

i) The petitioner has requested to decide the following substantial questions of fact and law, apart from framing and dealing with any other substantial questions of fact and law which may be considered by the court as valid to decide the disputed issues in accordance with principles of natural justice and fair play.

a) Whether UPCL's test labs (including for carrying out site testing) are duly accredited by NABL as mandated by CEA regulation 17.03.2006 which have been framed under section 55 (1) read with section 73 (e) and section 177 (2) of Electricity Act, 2003. Whether the test report generated by UPCL which does not qualify to be categorized as an accredited test lab is reliable more so because of the settled law as returned by the Hon'ble Bombay High Court judgment in the matter of Nestle India Ltd. vs FSSAI (WPL no. 1688 of 2015) dated 13.08.2015.

b) Whether the mandatory condition imposed under clauses 3.1.3 sub clause 4 that the meter testing report, should be furnished in the prescribed format in Annexure VIII and whether the calculations returned by the respondents with meter sealing certificate (although no calculation was returned with sealing certificates and sealing certificate specifically mentioned that meter was working correctly) is sustainable in law whereas the test result has to amplify that **consumer meter recorded --% less/more consumption** and on the basis of such test report the answering respondent had to conclude **need replacement/results are within limit** where in absence of such prescribed certificates mere submission or mere sealing certificate (without any such prescribed calculations and results) would suffice.

c) Mandate of the substantive requirements enshrined under clause 5.1.3 of UERC notification dated 29.10.2020?

- d) Whether, on facts, grounds and binding statutory law/regulations could UPCL unilaterally and without prior notice as mandated under clause 5.1.3 (5) of UERC Supply Code vide notification 17.04.2007 **(date 17.04.2007 of the notification appears wrong, in fact this clause pertains to notification dated 29.10.2020)** install a check meter and test the same without informing the petitioner about the proposed date and time of testing at least 2 days in advance. Whether without adhering to the mandated procedure, could UPCL open the sealing of the meter and thereafter issue a sealing certificate/conduct test reports/conduct tamper reports whereas the binding mandates of Electricity Act was not religiously followed and after opening the sealing /installing the test meter a signature of the employee of the petitioner was mechanically obtained, which is against the principles of natural justice and fair play, notwithstanding the fact that the petitioner is not even sure how many times more would UPCL have tested/opened the seal of the electric meter as there are many irregularities in the seal number engraved in the seal and installed in the meter?
- e) Whether any assessment can be raised by the respondent without procedurally complying to clause 5.1.3 (Testing of meters of Supply Code 2020 more so because of the settled law WP 1069/2021 dated 10.06.2021 of Hon'ble High court of Uttarakhand which is having the binding effect in the instant dispute at hand. Copy of the judgment is attached.
- ii) Contents of the written statement filed by the respondent before Hon'ble Ombudsman are specifically and categorically denied being devoid of merits, baseless and no cogent explanation has been furnished with respect to contentions of the petitioner, hence denied except to the extent, which are specifically and categorically admitted herein the following paragraphs:
- iii) The dispute raised by the petitioner in his appeal is based on Electricity Act, 2003, Indian Electricity Rules, 1956, UERC regulation vide notification dated 29.10.2020 and CEA notification dated 17.03.2006 respectively. Further it is

brought on record that powers of distribution licensee i.e. UPCL are not unbridled but are circumscribed, which mutandis are enshrined in the electricity Act, Rules and UERC regulations and the Electricity Supply Code, respectively.

- iv) The petitioner visited respondent's office and some report of the meter were provided to him, while the respondent was making their point, however no cogent explanation was given by the respondent and further no sealing certificate was provided. The sealing certificates were provided only after a letter dated 01.12.2021 was written to the respondent, but no test results have been provided by the respondent till now.

Point no. E), F) and G) Contents of para 1, 2 and 3 need no reply as the respondent has not denied the submission.

- viii) Contents of para 4 of written statement need no reply as respondent has not denied the submission, however it is pertinent to mention that it is now an admitted fact that the sealing certificates were not provided to the petitioner at the time of purported check meter study and were only provided after the petitioner runs every corners of the office of the respondent.
- ix) Contents of para 5 is denied in totality. The Ld. Forum neither hear the arguments of the petitioner nor made the respondent to answer various contentions raised by the petitioner This fact have already been brought to the notice of Forum through email with a copy to UERC and Ombudsman.
- x) Contents of para 6 is denied in totality The Forum only provided a copy of the letter no. 2627 dated 21.12.2021 submitted by the respondent. The said letter does not qualify to the written statement as per established procedure of the Forum and further no documents referred in the said judgment was ever provided.
- xi) Contents of para 7 of WS need no reply as respondent has not denied the submissions.
- xii) Contents of para 8 A are denied in totality. And it is submitted that the sealing certificate have stated that "Y phase potential wire was burnt". That

as per definition of the meter any equipment apart from meter necessary for recording energy is part of meter, thus burnt potential wire implies burnt meter itself. Further it is denied that the meter was recording 34.75% less as purported check meter was not carried out in accordance with UERC Supply Code, 2020 and further no test results were provided to the petitioner thereto.

- xiii) Contents of para 8 b) is denied in totality. The respondent never provided any communication with regard to date 12.08.2021 as is referred here, to the petitioner and also the respondent never provided copy of sealing certificate to the petitioner which was provided only after letter dated 01.12.2021 written to respondent by the petitioner.
- xiv) Contents of para 8 c) of written statement needs no reply as respondent has not denied the submission.
- xv) No reply to para 8 b) and e) has been submitted as such the respondent has agreed to the submissions.
- xvi) Contents of para 8 f) of the written statement needs no reply as respondent has not denied the submission. It is pertinent to mention that the respondent has accepted all the submissions of the petitioner,
- xvii) Contents of para 8 g) A) of the written statement is denied in totality. The respondent have raised the alleged assessment on the basis of the purported check meter study carried out at the premises of the petitioner. For any testing carried out of the consumer which may lead to fixation of any liability of any sort , whether financial or otherwise, it is incumbent on the respondent to act as per clause 5.1.3 (5) of UERC Supply Code, 2020.
- xviii) Contents of para 8 g) B) are denied in totality. It is denied that the respondents have made inspection of the premises on 12.08.2021 and that the Executive Engineer has mentioned for installation of check meter as no such communication was ever received from the respondent hither to and also no such letter was ever submitted by the respondent before Forum or Hon'ble Ombudsman.

That the submission of the respondent with regard to the firm supplying the meter being NABL accredited is nobody's case with reference to the dispute as hand, that the purported check meter study/meter testing has been carried out by the answering respondent and not by the meter manufacturer or supplier and further the referred CEA regulation mandates the lab of the distribution licensee to be NABL accredited as against the meter supply/manufacture.

Needless to mention that the installed check meter was not a fresh energy meter and had already clocked 15703 units as per sealing certificate dated 14.09.2021. Whereas as per **clause 5.1.3 (5) of UERC (The Electricity Supply Code, Release of New Connections and Related matters) Regulations, 2020** states “provided that where the Licensee is installing the test/check meter along with 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 installing the testing”

- xix) Contents of para 8 g) c denied in totality, the MRI report is indicative only and it only shows the discrepancies and because of the discrepancy the meter may run slow or fast. MRI report nowhere establishes that the meter is running slow to the tune of 34.75% on the basis of abnormalities as indicated by the MRI report, the respondents are bound to establish the slowness or fastness in accordance with the procedure established under UERC Supply Code, 2020.
- xx) Contents of para 8 g) d are denied in totality and the petitioner has already detailed out at para no. 18 of this rejoinder which may be referred to and the same is not repeated here for sake of brevity.
- xxi) Contents of para 8 g) e is denied in totality as the sealing certificates were provided only after letter dated 01.12.2021 written to the respondent by the petitioner. and further no test results have been provided till now.

- xxii) Contents of para 8) f are denied in totality. Details have been given at point no. 4 above which may be referred to and the same is not repeated here for the sake of brevity.
- xxiii) Contents of para 8) g are denied in totality. That the petitioner has detailed out at point no. 12 above, which may be referred to and the same is not repeated here for the sake of brevity.
- xxiv) Contents of para 8 g) h are denied in totality. That the meter was burnt and a harmonious construction of clause 5.1.5 of UERC Supply Code, 2020 would imply that any assessment in case of burnt meter can only be made if after testing of the meter it can be established that the reasons of burning can be attributed to the consumer.
- xxv) Contents of para 8 g) i are denied in totality. That it is denied that the meter was running 34.75% slow and it is submitted that the clause 5.1.7 is related to the instant dispute at hand.
- xxvi) Contents of para 8 g) j are denied in totality. That the referred clause of UERC SOP regulation is very much applicable to the dispute at hand.
- xxvii) Contents of para 8 g) k are denied in totality. That the integrity of the seal is never maintained and meter was opened many times during the purported check meter study.
- xxviii) Contents of para 8 g) l of written statement need no reply as respondent has not denied the submission.
- xxix) Contents of para 8 g) m of written statement need no reply as respondent has not denied the submission.
- xxx) Contents of para 8 g) n of written statement need no reply as respondent has not denied the submission.
- xxxi) Contents of para 8 g) o of written statement is denied in totality. The respondent never established as per the procedure given in UERC Supply Code that the meter was running 34.75% slow hence denied in totality.

- xxii) Contents of para 9 are denied in totality. The respondents have themselves written in the sealing certificates dated 23.09.2021 that **“Check meter finalized and correct. Y phase potential wire found burnt. Main meter found 34.75%. Assessment sheet enclosed. Assessment date from 24.07.2020”**

That as per definition of the meter all the interconnections are part of meter itself, hence burnt potential wire would directly imply the burnt meter itself. That no regulation of UERC stipulates for raising assessment in case of burnt meter.

- xxxiii) Contents of para 10 are denied in totality. The case is very much similar. In the submitted case meter was not recording energy from 1 phase as 1 phase of the meter got burnt that in the instant case also respondent has alleged that the meter was not recording due to potential wire of Y phase found burnt.

- xxxiv) Contents of para 11 are denied in totality. The respondents has raised additional/supplementary bill on the basis of purported check meter study the UERC Supply Code, Regulation 2020 stipulates if check meter has been used for testing of meter. The test report of the same is to be provided before initiation of such study. That it is incumbent upon the respondent to have procedural compliance to clause 5.1.3 before raising any assessment/supplementary bill. This view has been fortified in **WP 1069/2021 dated 10.06.2021 of Hon’ble High court of Uttarakhand.**

- xxxv) Contents of para 12 are denied in totality. The MRI report is only indicative and represent any abnormality if present in the metering system. That the metering system may run slow or fast based on such abnormality and the slowness or fastness if any has to be established as per procedures given in UERC Supply Code, Regulations, 2020.

- xxxvi) The respondents have raised the assessment clandestinely by adding the alleged assessed units directly in the bill for the month of September 2021 without giving any breakup or reason of such assessment and also the answering respondent never provided any notice/ letter for such assessment

which is not only against principles of natural justice and fair play but also against fair business practice.

xxxvii) That in representation no. 41/2021 dated 18.02.2022 at the Hon'ble Ombudsman in the matter between ITBP and EE, UPCL, Hon'ble Ombudsman has quashed the assessment and have categorically stated at para 17 and 18 that the respondent have not followed the relevant UERC regulations and entire procedure adopted by UPCL was violative of procedural law hence the assessment is liable to be quashed.

xxxviii) 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 the assessment raised thereof. That the various case laws submitted clearly mandates that no assessment can be raised without having procedural and other compliances of UERC regulations, 2020, thus the purported check meter study and the results obtained are having no sanctity and are merely a troubleshooting exercise on respondent's part and thus no sanctity can be attributed to the assessment raised and therefore the entire assessment is liable to be dismissed and quashed with costs.

xxxix) It is therefore most humbly prayed that 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 in this rejoinder. Application as well as the petitioner would crave leave of the Hon'ble Court to allow furnishing of any evidence/documents/judgment to substantiate the pleadings of the petitioner, for which act of kindness the petitioner shall as in duty bound, ever pray. A copy of Hon'ble High Court judgment in WP no. 1069 of 2021 has been adduced as annexure 1 to the rejoinder.

8. Hearing in the case was fixed for 29.03.2022, which was postponed to 08.04.2022 on petitioner's request and again to 18.04.2022 and finally 25.04.2022 was fixed for arguments in the case. Accordingly the hearing was held on prefixed date 25.04.2022. Both parties appeared and submitted their oral arguments. The arguments were

concluded with mutual consent. Order was reserved for a date to be pronounced in due course.

9. All documents available on file have been perused. Relevant regulations as referred by the parties have also been perused. Forum's case file of compliant no. 64/2021 was summoned from the Forum and has also been gone through. It has been found that the petitioner is a consumer of respondent with connection no. 610 with contracted load 60 KW under RTS-2. The respondent's case is this that a checking of the metering equipment was done on 12.08.2021, signatures of the consumer's representative were also obtained in the checking report. During the said checking Y phase voltage on the meter was found 0 (zero). As mentioned on the aforesaid checking report intention of the respondent for installing check meter was indicated. The check meter was subsequently installed on 14.09.2021, when a meter no. 0272567 of secure make was installed as a check meter with consumer's existing meter no. 01896 (secure make). The KWH and KVAH readings in the check meter at the time of its installation were 14858 and 15703 respectively. Following remarks have been mentioned on this sealing certificate **"Check/test meter installed as per MRI abnormality. Assessment would be raised from 24.07.2020."** The check meter was finalized vide sealing certificate dated 23.09.2021 when readings on the check meter in KWH and KVAH were 15088 and 15939 respectively. The KWH and KVAH readings on the main meter at the time of installation of check meter on 14.09.2021 were 147378 and 150023. KWH and KVAH readings on the existing main meter on 23.09.2021 at the time of finalization of check meter were 147528 and 150177 respectively. The sealing certificate dated 23.09.2021 carries the remarks as **"Check/test meter finalized and corrected, Y phase potential wire found burnt. Main meter found 34.75%. (Nothing is mentioned on the sealing certificate whether it is slow or fast) Assessment sheet enclosed. Assessment date from 24.07.2020"** An assessment for slow running of meter @ 34.75% on the basis of the check meter study was raised for 62087 units through bill for the month of September 2021 for the period 31.08.2021 to 30.09.2021. In the said bill assessed units have been shown as 62087 and total billed units including metered consumption for this billing cycle has been shown 74347 units. Total dues for the month in this bill has been shown as Rs. 4,70,342.05, however amount of assessment against the assessed units of 62087 has not been separately shown in this bill and as such it is not known as to what is the amount of

assessment against these 62087 units. The assessment for these units has been made from 24.07.2020 (the date when as per MRI report Y phase voltage was found 0 (zero) to 23.09.2021 (the date of check meter finalization). The respondent has stated that the petitioner's complaint no. 64/2021 was dismissed by the Forum vide their order dated 24.02.2022 when they upheld the assessment raised by the respondent as correct being as per rules. The respondent's case is that in the instant case only Y phase potential wire was burnt and not the meter. The meter was recording energy but recording less @ 34.75% due to burning of Y phase potential. The respondent has also denied that UERC Regulation 5.1.3 (5) is applicable in the case, according to them it is not applicable, as regards NABL accreditation the respondent has pleaded that the supplier of meter is duly accredited by NABL as such there is no necessity of getting the meter tested by Electrical Inspector. A perusal of the NABL accreditation certificate of M/s Secure Lab. Shows that it was issued on 24.07.2015 and was valid until 23.07.25017, the validity was however extended till 23.10.2017 vide NABL's letter dated 14.07.2017. Since the validity of these certificates has already expired long back as on 23.10.2017, these certificates are legally invalid and therefore cannot support respondent's case. Further the relevant regulations requires that the meter should be tested in respondent's NABL accredited lab or from a NABL accredited lab of some other concern. In the instant case such results have not been submitted, so requirement of the regulation is not fulfilled and submission of the aforesaid expired certificates do not serve any purpose and is useless. Forum's order is in accordance with regulation 5.1.3 (12). According to them regulation 5.1.5 (2) is also not applicable in the case. The case law MPEB vs Smt. Bashanti Bala according to respondent is different from the instant case. Similarly the case of Bombay Electric Supply Company against Laffans India Pvt. Ltd. is altogether different from the instant case and as such these case laws are not applicable in this case. The respondent have claimed that the assessment raised by them is fully justified which has duly been upheld by Forum and as such the appeal has been filed with bad intentions and misuse of the law and hence it is liable to be dismissed.

10. The petitioner has challenged the Forum order and the assessment raised by the respondent based on the check meter study. They have pleaded that the check meter study is invalid for the reasons that no advance notice of test/check meter study was served to them as required, and as a copy of the valid test report of such test/check

meter was not given to them before initiating the testing as required under sub regulation 5.1.3 (5) of UERC regulations, 2020. Further the check meter was not tested in a NABL accredited lab as required under sub regulation 5.1.3 (1) of aforesaid UERC regulation, 2020. The petitioner have claimed that it is a case of burnt meter because as per definition of the meter potential wire being an integral part of the meter and burning of potential wire is a case of burnt meter and as such no assessment can be raised on the basis of check meter study and sub regulation 5.1.5 (2) and 5.1.7 of UERC regulation, 2020 are applicable in their case. As such the assessment is not justified being inconsistent with regulations, and therefore needs to be set aside and quashed.

11. Further the petitioner has demanded a sum of Rs. 21,150.00 as compensation for delay of 423 days for which the burnt meter remained at site as they are entitled under schedule III of UERC SOP regulations, 2007. They have claimed that case laws of Hon'ble Supreme Court in appeal no. 3615/1996 in the matter between Bombay Electric Supply and Transport undertaking vs Laffans India Pvt. Ltd. in the judgment dated 21.04.2005, case law in Civil Appeal no. 716 of 1985 in the matter between MPEB vs Smt. Basanti Bai decided by Hon'ble Supreme Court vide judgment dated 10.11.1987, case law of WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand. A case law of Hon'ble Bombay High Court in the matter of Nestle India Ltd. vs FSSAI (Writ petition no. 1688 of 2015) decided on 13.08.2015 are also applicable in their case. In view of these case laws also the assessment raised by the respondent is not sustainable and as also theirs is a case of burnt meter.
12. In the aforesaid premises the petitioner have prayed that the assessment vide impugned bill dated 21.10.2021 for the month of 09/2021 being illegal, arbitrary, perverse, mala fide and unjust be quashed and set aside, grant compensation of Rs. 21,150.00 as applicable under SOP regulation, 2007. In addition to above the petitioner have also requested for calling case file of Forum and to grant stay (The Forum file has also been summoned and gone through, stay had already been granted so these requests stand acceded to.)
13. It has been borne out that the check meter study conducted by the respondent suffers from the following infirmities, mistakes and irregularities and violations of regulations.

The check meter no. 0272567 (secure) installed on 14.09.2021 at KWH reading 14858 and KVAH reading 15703 and finalized on 23.09.2021 is not a new meter but is a used meter as suggested by the aforesaid readings. Its whereabouts as where from it was removed, why it was removed and what was its status at the time of removal and sealing certificate of its removal have not been adduced by the respondent. Further its test results from a NABL accredited lab as mandated under sub regulation 5.1.3 (1) of UERC regulation, 2020 which reads as follows **“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.”** and as required in proviso of sub regulation 5.1.3 (5) of UERC regulation, 2020, which reads as follows: **“Provided that where the Licensee is installing a test/check meter along with 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 testing.”** have not been given to the petitioner before initiating the testing, for want of the aforesaid documents and respondent’s failure to provide test results of the check meter before initiating the testing, establishes that the meter as claimed to be a check meter, in fact is not a valid check meter as its veracity and accuracy is not established and as such check meter study conducted through such an invalid meter cannot be accepted as a correct and proper check meter study for violation of regulations and cannot be used for raising a supplementary bill on the petitioner as has been done by the respondent, as such the whole process of check meter study conducted by the respondent is held as null and void being violative of the relevant regulations as quoted above. Such being the case the assessment raised for 62087 units through the bill for the month of 09/2021 for the period 24.07.2020 to 23.09.2021 for alleged slow running of meter @ 34.75% as per aforesaid purported invalid check meter study is quashed and set aside. The respondent are directed to withdraw the aforesaid assessment and refund a sum of Rs. 2,00,000.00 deposited vide receipt dated 07.03.2022 by way of adjustment in the future bill (s) to be issued after the date of issue of this order.

14. As the respondents themselves have established that Y phase potential wire found burnt, the potential wire being internal part of the metering system and performs the same function as is performed by the P.T. In case of HT Trimeter metering system and as per definition of the meter as given in UERC Supply Code, Regulations 2020,

P.T. is a part of metering system so here in case of LT metering system potential wire is also a part of the metering system, so burnt potential wire would imply burnt meter itself, so in fact it is a case of burnt meter and as such should have been dealt with under relevant sub regulation 5.1.7 (1) of UERC regulation, 2020 as applicable in case of burnt meter, which reads as follows:

“The consumer shall be billed on the basis of the average consumption of the past three billing cycles immediately preceding the date of the meter being found or being reported defective/stuck/stopped/burnt/stolen. These charges shall be leviable for a maximum period of 2 billing cycle during which time the Licensee is expected to have replaced the defective meter.”

15. The case laws submitted by the petitioner has been perused and it is noted that although case laws are distinguishable on facts but here these case laws supports the case of the petitioner in view of facts of their case.
16. The respondent are therefore directed that after withdrawing the assessment raised by them through bill for the month of 09/2021 for 62087 units, as directed under para 13 above, issue a fresh bill in accordance with sub regulation 5.1.7 (1) of UERC regulations, 2020 as applicable in case of burnt meter, as it has been held a case of burnt meter as explained under para 14 above.
17. The petition is allowed. Forum order is set aside. Stay stands vacated as it is no more required because the petition has been allowed.
18. As regards petitioner's request for grant of compensation for a sum of Rs. 21,150.00 for delay in replacement of burnt meter, the petitioner has demanded the compensation before the Forum in his complaint but the Forum has not said anything about grant of compensation or disallowing it in its order. As the case here has been held as a case of burnt meter the consumer's request for grant of compensation is justified and therefore the compensation amounting to Rs. 21,150.00 for delay of 423 days is granted in accordance with relevant Schedule III of UERC (Standard of Performance) Regulations, 2007, the same may be given to the petitioner by the respondent by way of adjustment in his future bill.

Dated: 27.06.2022

(Subhash Kumar)
Ombudsman

Page 26 of 26
14/2022