

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Satish Kumar
S/o Late Shri Kadam Singh
Village Bhauri, P.O. Bharapur,
Tehsil Roorkee, Distt. Haridwar,
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (Urban),
Uttarakhand Power Corporation Ltd.
Civil Lines, Roorkee,
Distt. Haridwar, Uttarakhand

Representation No. 31/2023

Order

Dated: 21.11.2023

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone, (hereinafter referred to as Forum) order dated 27.06.2023 in complaint no. 50/2023 of before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (Urban), Uttarakhand Power Corporation Ltd., Civil Lines, Roorkee, Distt. Haridwar, Uttarakhand (hereinafter referred to as respondent), Shri Satish Kumar S/o Late Shri Kadam Singh, Village Bhauri, P.O. Bharpur, Tehsil Roorkee, Distt. Haridwar, Uttarakhand (petitioner) has preferred this appeal for passing judicious orders in the appeal after obtaining point wise replies of the questions raised by him in the appeal from the respondents.

2. The petitioner in the instant appeal has averred as follows. At the outset he has submitted that he is not satisfied with the hearing before the Forum as these questions were not replied by the respondent before the Forum. The point wise contents of the appeal are as follows:

- i) On receipt of checking report no. 01/774 dated 04.01.2020 he informed the respondent within 3 days on 14.01.2020 through email that his PTW connection was being used only for the purpose as allowed under relevant UPCL tariff, rules and regulations.



- ii) It is clearly mentioned in appropriate tariff orders that supply of power to private tubewells/pumping sets for irrigation purpose and for incidental agricultural process i.e. chaff cutter, thrasher, ganna kohlu and rice huller. In SDO's checking report no. 01/774 no irregularity in the meter was found neither theft of electricity was found but his ganna kohlu was found running on the PTW connection which was being used for his own use, then on which basis the unauthorized assessment has been mentioned in the checking report, documentary evidences for the same should be asked for from the respondents.
- iii) The checking report was not signed by the consumer Shri Satish Kumar while he was present at the site at the time of checking and he apprised the SDO that ganna kohlu has been installed and being used for crushing his own sugar cane. Why the checking report was not filled in, in the name of Satish Kumar.
- iv) The checking report does not carry signatures of the consumer or his representative, why his signatures were not obtained on checking report, while he was present at the time of checking at site.
- v) After disconnection he visited respondent's office for getting the connection reconnected and in his application he had clearly mentioned that the assessment raised is illegal and he is unable to deposit the same, but the application was not acknowledged as the application was not acknowledged a copy thereof was sent on 21.01.2020 via email, which was not replied by the respondent.
- vi) No payment was due against him on 17.01.2020. The bill dated 16.12.2019 was duly paid by him on 24.01.2020 on online vide receipt no. 13518250120WS000001. A provisional assessment was raised on 14.01.2020 which was objected to by him and his connection was disconnected. He has further mentioned that as per Act 15 days advance notice for disconnection is mandatory, which was not given to him.
- vii) AS mandated under Electricity Act, disconnection and reconnection report have to be given to the consumer which were not given to him and may be got made available now. The connection was disconnected on 17.01.2020 and reconnected on 27.01.2020.

viii) As per Electricity Act, no dues are liable to be recovered from any consumer after a period of 2 years from the date when it had become due for payment unless such dues are continuously shown as arrears. He had objected the first due date decided by the department as the date of issue of the letter of final assessment, where after such dues were not claimed neither any communication was made by the department for a period of 2 years 9 months from the date when it had become due.

ix) Why the unauthorized assessment based on checking report no. 01/774 dated 04.01.2020 was not added in the bills for a period of 2 years 9 months (from 28.01.2020 to 28.10.2022) as it should have been shown in the bills for the entire period of 2 years 9 months, hence it is not payable after expiry of 2 years then how it has been added in the bill after expiry of the said period.

He has requested that the respondent should give point wise replies of his queries. He has also requested that as he himself is unable to appear before Ombudsman personally, he has authorized his son Shri Viswajeet Singh to represent him in this case before the Ombudsman. He has also given his son's aadhar no. in his petition.

3. The petitioner has further substantiated his averments made in petition dated 08.07.2023 vide his application dated 22.07.2023. He has submitted that in his case the UPCL has not complied with UERC regulations. He has a PTW connection which comes under RTS-4 and the said connection was being used only for the purpose as authorized under appropriate tariff applicable to PTW connections, while the contention of UPCL is that ganna kohlu comes under RTS 5 tariff. Under the appropriate tariff, chaff cutter, thrasher, ganna kohlu and rice huller being used as incidental processes with a PTW connection and thus comes under the appropriate tariff applicable to PTW connections, while UPCL's view is that ganna kohlu does not come under the tariff applicable to PTW. He has specifically mentioned the provisions of UERC regulations which have been ignored by the respondents. He has requested that the checking report no. 01/774 be set aside for non compliance of UERC regulations.

4. After perusal of records and hearing both parties the Forum concluded that in his complaint the complainant has requested for setting aside the assessment raised by the opposite party under section 126 of the Electricity Act, 2003. The Forum has

mentioned that as per regulations 2019 for the guidelines for working and deciding complaints by the Forum under sub regulation 3.1 (4) of the said regulations, the Forum is not authorized to hear and decide the cases falling under section 126, 127, 135 to 140 and 161, thus in view of the aforesaid UERC regulations the Forum is not authorized to hear and consider the reliefs asked for by the complainant and have thus disposed off the complaint without any orders.

5. The respondent Executive Engineer submitted his written statement dated 19.08.2023 along with an affidavit under oath. Under the heading preliminary objections the respondent has stated that in the appeal the petitioner has nowhere challenged Forum order dated 27.06.2023. Further the case of the petitioner falls under section 126 of Electricity Act, which clearly bars jurisdiction of CGRF and thus the order requires no interference, however the frivolous points raised by the petitioner in appeal cannot sustained in eyes of law.

Brief facts

- i) The petitioner has domestic electricity connection no. 689BBH9610677 in his premises. On 04.01.2020 the electric meter installed at the premises were checked, the said domestic connection was being wrongly used for running sugarcane charkha and thus was being used for commercial purpose. **(The respondent's counsel however submitted an application dated 11.10.2023 making corrections in his written statement, he has stated that the category was inadvertently written as domestic in the written statement, however connection of the petitioner is of PTW/RTS4 and he has further requested that wherever the category has been written as domestic connection in the written statement it should be read as PTW/RTS4)**
- ii) On 04.01.2020 when the said connection was checked Mr. Noor Hassan was present on the premises but he denied to sign the checking report, regarding theft and unauthorized use of electricity. It was specifically stated in the inspection report that the said connection was being used to run sugarcane chakki. **In the checking report dated 04.01.2020 there is no mention of theft of electricity, however it is mentioned a case of UUE as ganna kohlu (sugar cane kohlu) (charkhi) was found running unauthorizedly with the connection of PTW.**



- iii) Provisional assessment was raised on 10.01.2020 amounting to Rs. 3,57,298.00.
- iv) The petitioner submitted an application dated 23.01.2020 stating that the amount of provisional assessment is impossible and requested to reduce the same.
- v) In consideration of petitioner's application the assessment was recalculated and final assessment of Rs. 81,703.00 was raised, which has yet not been paid.
- vi) The petitioner instead of paying the assessment amount approached the Forum where his complaint was registered as 50/2023. The Forum did not entertain the complaint as per rule 3.1 (4) of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of Grievances of the Consumers) Regulations, 2019 which clearly bars matters falling under section 126 of Electricity Act.

Para wise reply

- vii) Contents of para i) of the appeal are wrong, false and hence denied. It is submitted that the petitioner has written application dated 23.01.2020 wherein he requested that huge penalty amount was impossible and requested to reduce the penalty amount. Thus the petitioner now cannot raise any objection as to any email prior to said application was not considered.
- viii) Contents of para ii) of appeal are wrong, false and denied. It is submitted that inspection report dated 04.01.2020 clearly stipulates that the connection was being used to run sugarcane chakki. Further the petitioner was carrying commercial activity which is not permissible as per rules.
- ix) Contents of para iii) to v) of appeal are wrong, false and denied. It is submitted that Shri Noor Hassan was present at the time of inspection who denied to sign the report. The inspection report is in accordance with rules and regulations.
- x) Further he has submitted that the petitioner had given an application dated 23.01.2020 requesting that huge penalty amount was impossible to give and



requested to lower the penalty amount. Thus contents of para vi) and vii) are contrary to petitioner's own application dated 23.01.2020. However at this juncture when the case pertains to section 126 of the Act, raising such question is not only beyond jurisdiction but also not sustainable in eyes of law.

- xi) Contents of para viii) & ix) of appeal are wrong, false and denied. It is submitted that the inspection report and all the further actions has been taken as per applicable rules and regulations. Further when his complaint has been rejected on the basis of jurisdiction then without satisfying the jurisdiction aspect the petitioner cannot be permitted to argue of the contentions.
- xii) The last unnumbered paragraph of the appeal does not require any reply. Further there is not prayer as to what relief the petitioner wants and also further without satisfying the aspect of jurisdiction the petitioner cannot agitate any of its contentions. He has nowhere stated in appeal as to where the Forum went wrong in passing the order under challenge.

Prayer:

It is most respectfully prayed that the Hon'ble Court be pleased to dismiss the appeal with exemplary cost in favour of the answering respondent. Any other/further orders may be passed by the Hon'ble Court as deemed fit in the facts and circumstances of the case and in the interest of justice.

- 6. The petitioner has submitted his rejoinder dated 04.10.2023 along with an affidavit. No new facts, other then what he has already submitted in his appeal has been adduced. Allegations on the respondent for not complying with regulatory provisions have been reiterated. Case of UUE has wrongly been framed as sugarcane kohlu is allowed on a PTW connection as one of the incidental processes allowed on a PTW connection on which RTS 4 tariff as per tariff order applicable at that time was applicable and thus according to him there is no case of UUE under section 126 of the Act and there is no case of 126/135 against him and the assessment raised by the respondents is also not justified.
- 7. Hearing in the case was held on scheduled date 30.10.2023. Both parties appeared for arguments. Shri Viswajeet Singh S/o petitioner argued on behalf of the petitioner as is



authorized representative. The legal counsel of the respondent argued on behalf of the respondent. The arguments were concluded and 21.11.2023 was fixed for pronouncement of the order. All records available on file have been perused. Arguments from both parties were heard. As regards respondent's objections in their written statement and again during hearing regarding jurisdiction of Ombudsman in the instant case where the respondents have booked the petitioner for unauthorized use of electricity under section 126 of Electricity Act, 2003 and have raised an assessment under the same section, it is pertinent and appropriate to clarify the position in view of provisions under Electricity Act, 2003 and relevant UERC Regulations.

8. The legality and validity of the action taken by the respondent needs to be tested in accordance with the provisions of the Electricity Act 2003 and the Rules and Regulations framed there under. For this it is important to go into the factors that triggered off the respondent's actions. Inspection of the petitioner's premises u/s 126/135 of the Act as claimed by the respondent. To answer the respondent's objections and to clarify the position and authority of Ombudsman in such a case we have to peruse the following Acts, Rules and Regulations:

- (i) The Electricity Act, 2003 (hereinafter referred as Act of 2003).
- (ii) The Electricity Rules, 2005 (hereinafter referred to as Rules 2005),
- (iii) The Appeal to the Appellate authority Rules, 2004 (Rules framed under section 176 (2) of the Act, by the Central Government)
- (iv) UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of the Grievances of the Consumers) Regulations, 2019 (hereinafter referred to as CGRF Regulations),
- (v) UERC (Appointment and Functioning of Ombudsman) Regulations, 2004 (hereinafter referred to as Ombudsman Regulations),
- (vi) UERC (The Electricity Supply Code) Regulations, 2007 (hereinafter referred to as Supply Code 2007),
- (vii) UERC (The Electricity Supply Code) (First Amendment) Regulations, 2008 (hereinafter referred to as Supply Code First Amendment).

9. That section 126 of the Act, of 2003, falls under part XII (Investigation and Enforcement), which provides Unauthorized use of Electricity, Provisional Assessment and objection thereto and Final Assessment.



10. That the matter relating to Section 126, and 135, along with meaning of unauthorized uses, theft and procedure came to be considered by Hon'ble Supreme Court of India in Executive Engineer and another Vs. M/s Shree Sitaram Rice Mills (Civil Appeal No. 8859/2011), reported in 2011 (Volume 12), Judgment Today (Supreme Court), Page 386. In Para – 23, it held as under:

“Having dealt with the principle of interpretation of these provisions and the distinction between sections 126 and 135 of the 2003 Act, we shall now discuss the ambit and scope of Section 126 contemplates and following steps to be taken:

- (i) *An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place. (In terms of sub regulation 7.1.1 (1) of UERC Regulation 2020 the inspection team headed by an officer of the licensee not below the rank of assistant engineer/SDO has been authorized to conduct inspection in such cases instead of the Assessing officers.)*
- (ii) *The formation of a conclusion that such person has indulged in unauthorized use of electricity.*
- (iii) *The assessing officer to provisionally assess to the best of his judgment the electricity charges payable by such person.*
- (iv) *The order of provisional assessment to be served upon the person concerned in the manner prescribed giving him an opportunity to file objections, if any, against the provisional assessment.*
- (v) *The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.*
- (vi) *The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.”*

11. That the aforesaid observation of Hon'ble Supreme Court appears to have been derived from Supply Code 2007 read with Supply Code First Amendment, 2008. The regulations 5.2 of the said regulation deals with procedure for booking a case, for unauthorized use of electricity (5.2.1), submission of consumers reply assessed amount or installment thereof

and the general procedure for the same. The Supply Code 2007, contained 5.2.3 (4) read with Supply Code First Amendment 2008 which is reproduced for ready reference: UERC regulation 2007 has since been repealed by regulation 2020 and its sub regulation 7.1 and 7.1.1 are analogous to sub regulation 5.2, 5.2.1 of the then regulation 2007, so these sub regulations are applicable.

“(4) Where it is established that there is a case of UUE, the Licensee shall assess the energy consumption as per the assessment formula given in Annex X for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection and prepare final assessment bill on 2.0 times the rates as per applicable tariff and serve on the consumer under proper receipt. The consumer shall be required to make the payment within 7 working days of its proper receipt. The Licensee may, taking into consideration the financial position and other conditions of the consumer, extend the last date of payment or approve the payment to be made in installments. The amount, the extended last date and/or time schedule of payment/installments should be clearly stated in the speaking order. A copy of the speaking order shall also be handed over to the consumer under proper receipt.”

12. That Section 127 provides an appeal against the final order passed under section 126 of the Act, 2003. The Section 127 states about the appeal to the Appellate Authority by aggrieved person.
13. That the Central Government has power to make rules under Section 176 of Act, 2003. The Central Government has framed rules under Section 176, which came into force on 16.04.2004, named as “The appeal to the Appellate Authority Rules, 2004”. Rule 3 of the said Rules, 2004 is as under:

“3. Appellate Authority:- For the purpose of appeal under section 127, the State Government may, by notification in the Official Gazette, constitute an Appellate Authority consisting of one or more persons such that one of the persons shall have knowledge of matters related to assessment of electricity charges and none of them shall be directly related to the affairs of the territorial jurisdiction of the licensee or supplier of the electricity.”

14. That the Government of Uttarakhand in exercise of the powers of Section 176 (2) (u) read with Rule 3 of the appeal to the Appellate Authority, Rules 2004, has notified vide

Notification No. 78/1/2004-2002(3)/4/2004, Dehra Dun dated 02.11.2004, notifying that the District Magistrate / Collector of the concerned district shall be the appellate authority under section 127 of the Electricity Act, 2003. For ready reference the same is reproduced below:

"In Exercise the powers conferred under the provisions of section 176 (2) of the Electricity Act, 2003 the Governor hereby designate the District Magistrate / Collector of the concerned district as the Appeal Authority under section 127 of the Electricity Act, 2003."

15. Above paras show that section 176 (2) (u) of Act No. 2003, has to be read with the rules framed of the appeal to the appellate authority rules 2004.
16. That aggrieved person has to file an appeal under section 127 of the Act, 2003, if the order is under Section 126. No irregular order can fall under Section 126, only regular, after of compliance of complete procedure, and final order shall lie under section 126, the appeal shall lie against Section 126.
17. That it cannot be ruled out that the Appellate Authority under section 127 of the Act, 2003, cannot scrutinize the irregularities, scope, procedure, principle of natural justice, while passing order under Section 127 of the Act, 2003, but the Ombudsman has equal power to scrutinize whether the impugned order is an order under Section 126 or violates the Section 126.
18. That the notification No. 77/1/2004-02 (3)/4/2004 under Section 126 of the Act 2003 dated 02.11.2004 is also reproduced below for ready reference:

"In exercise of the powers conferred under Para (a) of explanation clause of Section 126 of the Electricity Act, 2003, the Governor hereby designate the officers of the rank of Executive Engineers or post equivalent thereto of the Uttaranchal Power Corporation Limited, which as at present the Licensee of electricity distribution in Uttaranchal, as the Chairman and Managing Director / Managing Director of the said Corporation may by order directed from time to time as Assessing Officers for concerned areas."
19. That for the purposes that the Ombudsman have jurisdiction to look into the scheme, whether the procedure prescribed under Section 126 has been followed or not, to place the order under Section 126. If the procedure followed is not under Section 126, the Ombudsman has full jurisdiction to deal with the order, mere mentioning of Section has no value.

In the inspection report no. 01/774 dated 04.01.2020 the inspecting officer (SDO) has nowhere established with duly supported by documentary evidences that the sugar cane kolhu (charkhi) was being run on commercial basis from petitioner's PTW connection which as per tariff order dated 27.02.2019 (which was the appropriate tariff for financial year 2019-20) under which RTS 4 was the applicable rate schedule for PTW connection and under which schedule chaff cutter, thrasher, cane crusher and rice huller were also allowed as incidental process. So use of cane crusher as mentioned in the checking report dated 04.01.2020 is an authorized use and it cannot be said to be an unauthorized use of electricity (UUE) under section 126 of the Act, so the respondents have erred in framing a case of UUE and raising final assessment for Rs. 81,703.00 on the basis of said checking report which cannot be appreciated and is liable to be quashed and set aside, such being the case Ombudsman has full jurisdiction to deal with the instant case.

20. That for the purposes, we have to place reliance upon the Electricity Act, 2003, in Section 42(6), further provides that Consumer has full power to make a representation to the Hon'ble Ombudsman for redressal of his grievances. For ready reference the said Section 42 (6) is reproduced below:

"42 (6): Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission."

21. That the Section 2(15) of the Act, 2003 defines the definition of the Consumer, which is reproduced below for ready reference:

"2(15): 'consumer' means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected to the purpose of receiving electricity with the works of a licensee, the Government or such other person as the case may be:"

22. That Electricity Rules, 2005 defines the powers of Ombudsman under Rule 7 (3) of the Rules. For ready reference the said Rule is reproduced below:

"7(3) The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the rules and Regulations made hereunder or general



orders to directions given by the Appropriate Government or the Appropriate Commission in this regard before setting their grievances."

23. That Regulation 4(1)(a) of the said Ombudsman Regulation 2004 reads as under:

"The Ombudsman shall have following powers and duties:

(a) To receive

(i) The representation against any order of the Forum.

(ii) Non Redressal of Grievance by the Forum

(iii) And consider such representation and pass appropriate awards in accordance with the Act and Rules or Regulation made there under."

24. That the Regulation 3.6 of the CGRF Regulation 2019 states and defined appeal.

"3.6 Appeal before Ombudsman

Any consumer aggrieved by the order of the Forum or non-disposal of his complaint by the Forum within the specified time limit may prefer an appeal to the Ombudsman appointed by the Commission under the Act, in such form and manner, as may be laid down in the Regulations of the Commission."

25. That the aforesaid CGRF Regulation 2019 shows that every order passed by the Forum is subject to the jurisdiction of the Ombudsman, and there are only few exceptions wherein the jurisdiction of the Hon'ble Ombudsman is impliedly barred.

26. That the aforesaid Ombudsman Regulations 2004 shows the definition of the Consumer, Electricity Service, Forum and Grievance. For ready reference the definition of Grievances mentioned in the Regulation 2 (k) of the said Regulation is mentioned below:

"(k) "Grievance" shall mean a grievance of the Consumer arising out of the failure of the Licensee to register or redress a Complaint, and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a Complaint."

27. That the aforesaid Act, 2003, Rule 2005, CGRF Regulation 2019, Ombudsman Regulation 2004, clearly speaks that every order passed by the Forum is subject to the jurisdiction of the Hon'ble Ombudsman.



28. That the Hon'ble Ombudsman to maintain judicial discipline, do not decide the cases also following within the jurisdiction of Collector, Dehradun under section 126, and Section 135. Further the CGRF Regulation 1.2(1) (c) and (d) defines the definition of complaint, which forbids the Ombudsman, not to decide the appeal or representation under Section 126, 127, 135 to 140 and 161 Accident in Distribution, Recovery of any arrears where the bill amount is not disputed or any grievances pertaining to shifting of the electric lines/poles/equipments. For ready reference the said Regulation 1.2(1) (c) and (d) is reproduced below :

"1.2 (c) "Complainant" shall include-

- (i) A consumer as defined under subsection (15) of section 2 of the Act;*
 - (ii) An applicant for new connections;*
 - (iii) In case of death of a consumer, his legal heir (s) or authorized representative;*
 - (iv) An authorized representative;*
 - (v) Any consumer association registered under the Societies Registration Act, 1860 or under any other law for the time being in force; or*
 - (vi) Any unregistered association of consumers, where the consumers have similar interest;*
- (d) "Complaint" means a letter or application filed with the Forum seeking redressal of grievances concerning the supply of electricity, new connection or the services rendered by the Distribution Licensee (s), including alteration in load/demand, meter related matters, bill related issues and cases where licensee (s) has charged price in excess of the price fixed by the Commission or has recovered the expenses incurred in excess of charges approved by the Commission in providing any electric line or electric plant or has failed to provide compensation to the consumer defined under the UERC (Standard of Performance) Regulations;"*

29. That to analyze the situation whether the blanket jurisdiction of the Ombudsman, can be taken away by Regulations, stating that jurisdiction is barred, if the order is under Section 126 and 127. The similar type of matter regarding jurisdiction of Civil Court, where jurisdiction is barred by some other statute, comes into picture, and defined in various rulings, for example in case 2008 (3) SLT page 733 of Hon'ble Supreme Court. These

judgments hold that ouster of jurisdiction is not a Rule. No authority shall blindly believe that it has no jurisdiction.

30. That as stated above the Hon'ble Ombudsman have full jurisdiction over all the Forums orders passed by them, and have further jurisdiction to look to his jurisdiction by analyzing the judgment by the Forum and Section 126 and 135 of the Electricity Act, 2003. The Ombudsman has to look into, the facts, whether the judgment falls under section 126, 135 and exception contained in Regulation 1.2(1) (c) and (d) are in applicable.
31. That the Hon'ble Ombudsman Mr. Diwakar Dev, has decided, representation no. 03 of 2009, Mr. Samit Aggarwal Vs. Consumer Grievance Redressal Forum, Kumaon Region and has decided the jurisdiction of CGRF, and exclusion of his jurisdiction under Section 135 of the Act 2003, and found that the order under challenge in that case does not comply the procedure and the legal ingredients stated in Section 135 of the Act, 2003, and hence the order under challenge was beyond the scope of Section 135 and falls under any other order appealable before Hon'ble Ombudsman and set aside the order of the Forum stated to be passed under Section 135 (2) read with Section 126, and cancelled the assessment order stated to be passed under Section 126 holding that it is beyond the exception, whereby the jurisdiction is barred, hence he has jurisdiction. The defense of the Distribution Licensee was that the Hon'ble Ombudsman has no jurisdiction because the order in that case was under Section 126 and 135 (2) of the Act, 2003. The distribution licensee was disbelieved. The same ratio decendi has been applied by the undersigned in passing order dated 26.02.2020 in petition no. 03/2020 being a similar case.
32. That from record it appears that distribution licensee has not challenged the order of the Hon'ble Ombudsman in the aforesaid representation No. 3 of 2009 before Hon'ble High Court of Uttarakhand at Nainital, and can be treated to be final on the subject of interpretation appeal to the Appellate Authority by aggrieved person. of "ouster of jurisdiction".
33. That as far as the present case is concerned the distribution licensee (respondent) has filed his written statement and in which has taken a defense that the Ombudsman has no jurisdiction in the matter. Their objections have duly been addressed in the above clarifications.

34. That hence, in view of the above clarifications based on provisions in Electricity Act, 2003, Supply Code Regulations, 2007 (since amended vide regulation 2020), Ombudsman Regulation 2004 and CGRF Regulation 2019 and Hon'ble Supreme Court's aforesaid ruling (referred in para 10 above) as also the then Ombudsman's clarification in representation no. 03/2009 referred above (in para 32) and keeping in view of the principle "res-judicata pro veritate habetur" (i.e. an adjudicated matter shall be deemed correct). I am of the definite view that Ombudsman has jurisdiction on all orders passed by the Forum except the exception contained in Regulation 1.2 (1) (c) and (d) of the CGRF Regulation 2019 and therefore further I am of the view that Ombudsman has full power to look into his own jurisdiction, by analyzing whether the ingredients contained in Hon'ble Supreme Court aforesaid Judgment has been fulfilled and the orders falls under Section 126/135 of the Act, to oust the jurisdiction. As in the instant case the respondent have violated the relevant Supply Code Regulation (sub regulation 7.1 and 7.1.1 of regulation 2020) as the checking on 04.01.2020 vide checking report no. 01/774 has not been properly filled by the Inspecting Officer (SDO) on the basis of which the Assessing Officer has booked a case of unauthorized use of electricity under section 126 of the Act and have raised a final assessment of Rs. 81,703.00 and have communicated the same to the petitioner. Such being the case the checking report dated 04.01.2020 is void in law and thus they have vitiated the whole procedure. As such the aforesaid checking report is declared as infructuous and accordingly case of unauthorized use of electricity under section 126 of the Act framed against the petitioner and consequently raising final assessment of Rs. 81,703.00 cannot be upheld as the entire exercise has been conducted in an arbitrary manner totally different from that prescribed under law and is therefore cannot be appreciated and approved and accordingly the demand of Rs. 81,703.00 raised and case of unauthorized use of electricity is hereby quashed. The Forum's order is also set aside as the Forum has not examined the case properly whether it is infact a case of unauthorized use of electricity under section 126 and have simply disposed off the case without passing any order on merits and holding that it is beyond their jurisdiction to hear and decide such a case. Petition is allowed, as far as case of unauthorized use of electricity under section 126 of the Act and consequential demand of Rs. 81,703.00 raised by the respondent, is concerned. Stay stands vacated as the assessment has been quashed.


(Subhash Kumar)
Ombudsman

Dated: 21.11.2023