

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Amrish
S/o Late Shri Jhal Singh
Hotel Dreamland, Rohalki,
Bahadrabad, Haridwar, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Jwalapur, Haridwar,
Uttarakhand

Representation No. 52/2023

Order

Dated: 20.02.2024

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone, (hereinafter referred to as Forum) order dated 09.11.2023 in his complaint no. 110/2023 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Jwalapur, Haridwar, Uttarakhand (hereinafter referred to as respondent) Amrish S/o Late Shri Jhal Singh, Hotel Dreamland, Rohalki, Bahadrabad, Haridwar, Uttarakhand (petitioner) has preferred this appeal for setting aside the disputed bill and setting aside Forum's order among other prayers as mentioned in the petition.

2. The petitioner has averred that he has preferred a complaint before the Forum registered as complaint no. 110/2024, which was dismissed by the majority decision of the quorum consisting of member (Technical) and Member (Consumer) vide their order dated 09.11.2023. His complaint was against the arbitrary, illegal, unjustified and unwarranted demand of Rs. 1,08,587.00 raised by the respondent through electricity bill dated 10.03.2023 for the month of February 2023 in which the aforesaid disputed amount was added in the aforesaid bill in addition to monthly consumption charges for the period 30.01.2023 to 28.02.2023. He has a 30 KW connection no. JW0K000009735 at his premises and there has been no default in

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making payments of the regular monthly bills. The petitioner is a commercial unit engaged in the hotel business running in the name of M/s Dreamland hotel located at Bahadrabad, Haridwar. Officials of the respondent came at his premises on 17.12.2022 and installed a check meter. Purpose and intention of installation of the check meter was not communicated. His signatures were taken on the sealing certificate at the time of installation but its copy was not given to him. Subsequently the departmental officers visited his premises and removed the meter at their own without his knowledge. Subsequently meter test was conducted by M/s YMPL. The petitioner was made to sign the report however no copy of the test report was given to him. In the said report it was categorically mentioned that the metering system was running correctly.

- (i) On receiving the impugned bill, he visited the office of respondent to know about the impugned bill. He was threatened to deposit the amount else his supply shall be disconnected. The respondent did not do anything regarding his grievance and hence a complaint was made to Forum as referred above. During proceedings before Forum the respondent submitted tampered sealing certificate no. 34/501 dated 16.01.2023 and that time it came to his notice that the metering system was replaced on 16.01.2023, thereafter through an affidavit dated 29.09.2023 he apprised the Forum that the sealing certificate has been created with malafide intention and cannot be relied for adjudication in the instant dispute. The quorum of the Forum consisting of Consumer Member and Technical Member dismissed the complaint vide its order dated 09.11.2023, while the Member Judicial has been pleased to allow the complaint vide his order dated 02.11.2023. The quorum's order is in denial of the principle of natural justice as no show cause notice, reply, opportunity of hearing was given.
- (ii) His appeal is based on Electricity Act, 2003, Indian Electricity Rules, 1956 and CEA notification dated 17.03.2006 as also UERC regulation vide notification dated 29.10.2020. The present appeal is preferred against the impugned order dated 09.11.2023 on the following grounds: that the additional amount has been added arbitrarily and secretly without any details or breakup which is against natural justice and fair business practice. Further it is in a

most illegal, obscure, erroneous, arbitrary, unwarranted, perverse and unjust manner in clear violation of the settled proposition of law resulting in manifest in justice and causing serious prejudice to him and the same deserves to be quashed and set aside. Further because he has never admitted and have denied that the metering system was running slow by 21.89% in KVAH and that the alleged check meter study was not more than a troubleshooting exercise on the part of respondent and cannot be termed to be a check meter study as the same was not carried out as mandated in UERC regulation 2020. Further the Forum did not consider and perused the written and oral submissions made by him and dismissed the complaint.

- a) No advance notice of check meter study was served to him.
 - b) No test report for the check meter installed at the premises was served before initiation of the test, no duly authenticated test results were provided, so the respondents have violated sub regulation 5.1.3 (5) of UERC regulation, 2020 as also have violated sub regulation 5.1.3 (1) and (12) of the said UERC regulation.
- (iii) Respondent's action for check meter installation was in gross violation of section 162 of Electricity Act, 2003. The CEA regulation dated 17.03.2006 framed under section 55 (1) read with section 73 (e) and section 177 (2) of Electricity Act, 2003, which mandates that the meter testing report must be issued by NABL accredited testing laboratory has not been complied with by the respondent in carrying out check meter study. He has referred case law in writ petition no. 1688 of 2015 dated 13.08.2015 of Hon'ble Bombay High Court in the matter of Nestle India Ltd. vs FSSAI, which provides that no reliance on the test results can be placed if such test has not been carried out in a NABL accredited lab. The petitioner has submitted that his meter was working correctly and he never used the assessed units. The error of 21.89% on KVAH as alleged is denied in totality. Relying upon the respondent's submission and sealing certificate dated 16.01.2023 the quorum has dismissed the complaint. The quorum in its judgment held that there is no difference in the signed and unsigned copy of sealing certificate no. 34/501 dated

16.01.2023 which establishes that the details as entered in the certificate is according to and on the basis of MRI report of the meter, that the said conclusion of the quorum is not legally tenable. Further the quorum did not peruse and put on record the circumstances which results in conducting of meter test by M/s YMPL dated 24.03.2023. It is pertinent to mention that no sealing certificate has been prepared and handed over to the petitioner, which is in violation of UERC regulation, 2020, copy of order no. 1065/UPCL/C/CCCP-11/5122-23 (YMPL) dated 03.02.2023 was not provided to him.

(iv) That in the following judgments Hon'ble Ombudsman have allowed appeal in favour of consumer on the same ground and question of fact and law as is raised herein and held if valid test report of check meter inclusive of current transformer and potential transformers as the case may be, not provided that the check meter study is null and void.

- a) Representation no. 23/2023 dated 19.07.2023 in the matter of M/s Dehradun Premier Motor Limited, Dehradun vs UPCL.
- b) Representation no. 21/2023 dated 19.07.2023 in the matter of M/s Kishan Brothers, Dehradun vs UPCL
- c) Representation no. 43/2022 dated 20.02.2022 in the matter of Shri Anil Kumar Garg, Dehradun vs UPCL
- d) Representation no. 03/2023 dated 27.02.2023 in the matter of Shri Surjeet Singh Jolly, Dehradun vs UPCL.
- e) Representation no. 42/2022 dated 03.03.2023 in the matter of M/s Ferreterro India Pvt. Ltd. vs UPCL.

3. Further as per settled law WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand, whereby the Hon'ble High Court has clarified that if clause 3.1.3 of UERC regulation, 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 mentioned that clause 3.1.3 (7) has to be fulfilled before raising any assessment/supplementary bill. The said clause of 3.1.3 of UERC supply code, 2007 has been replaced by clause 5.1.3 of UERC supply code, 2020.



4. The petitioner has further submitted that the respondent without providing the test results of alleged check meter study have replaced the meter and this action of the respondent resulted in denial of the opportunity to the petitioner to get the meter tested by the electrical inspector. That the respondent cannot be rewarded for their gross violations of regulations, that the Hon'ble Supreme Court has clearly established in the civil appeal no. 3615 of 1996 in the matter of Bombay Electric Supply and Transport undertaking (petitioner) vs Laffans India Pvt. Ltd. (Respondent) in para 3 of page 7 ***"The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission. The act of removing the meter and the omission to make a reference to the Electrical Inspector."***
5. That under the above circumstances petitioner is left with no alternative but to approach the Hon'ble Ombudsman by way of the present appeal for necessary relief and redressal, it is humble and respectful submission of the petitioner that the impugned assessment to be quashed and set aside by the Hon'ble Ombudsman. In the premises aforesaid the petitioner has made the following prayers:
- a) Call for records of the case and Ld. Forum file for perusal.
 - b) Quash and set aside the additional amount of Rs. 1,08,587.00 being the same illegal, arbitrary, perverse, mala fide and unjust.
 - c) Quash and set aside order no. 110/2023 dated 09.11.2023 of Ld. Quorum of the Forum.
 - d) Provide the copy of referred work order along with scope of work and terms and conditions in between respondent and M/s YMPL.
 - e) Provide the copy of referred work order along with scope of work and terms and conditions in between respondent and YMPL.
 - f) Issue necessary directions to the respondent not to disconnect the electricity supply of the complainant'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.
 - g) Pass any other order or direction, which this Hon'ble Appellate Court may deem fit and proper on the facts and circumstances and in the interest of justice.

6. In the instant case the petitioner's complaint no. 110/2023 was dismissed by a majority order dated 09.11.2023 passed by a quorum of Member (Technical) and Member (Consumer). In the said order the quorum has mentioned that an assessment for Rs. 1,08,587.00 was raised for the period 06.03.2022 to 16.01.2023 for the existing meter found running slow by 21.89 % in a check meter study, conducted by the respondents by installing a check meter on 17.12.2022 vide sealing certificate no. 17/1295 dated 17.12.2022 which was finalized on 16.01.2023 vide sealing certificate no. 35/501 dated 16.01.2023 and therefore the old meter was removed and the check meter was left at site as consumer's meter. The said meter was also got tested by the respondents through M/s YMPL in which study the meter was found running correctly. Although testing of this meter on 24.03.2023 has no concern with the assessment under dispute. This testing of meter on 24.03.2023 establishes that the present meter which was installed as check meter is working correctly. The complaint was dismissed by the quorum vide their order dated 09.11.2023, as it is having no force, in their view.
7. The Member (Judicial) however has passed a dissenting order dated 02.11.2023 wherein mentioning that the respondents have not complied with various relevant UERC regulations as applicable in the case, in conducting the check meter study and therefore he concluded that adding of additional amount of Rs. 1,08,587.00 in the bill for 02/2023 on the basis of such a check meter study is wrong in the eyes of law and hence the respondent have no right to charge the disputed amount from the petitioner and has therefore quashed the assessed amount of Rs. 1,08,587.00 and directed the opposite party to issue a revised bill by deleting the amount of assessment along with any interest if added in the bill. He has further directed that the meter seal removed on 06.09.2023 a new seal be provided on the meter and sealing certificate be given to the consumer. The member judicial in his aforesaid order has also mentioned that the connection is still in the name of Shri Jhal Singh who, as per records had already expired in the year 2016, he has directed that the said connection be transferred in the name of his legal heir as per law and applicable regulations.
8. The respondent, Executive Engineer submitted his written statement vide letter no. 21 dated 02.01.2024 wherein he has submitted pointwise reply as follows:



Point no. 1, 3 4 (a), 5, 7, 15 no comments. Point no. 2 amount of assessment for slow running of meter Rs. 1,08,587.00 has been added in the bill and sent to the petitioner.

Point no. 4 b) meter no. 19628519 is installed at petitioner's connection no. JW0K000009735. A check meter no. 5136750 was installed on the said meter vide sealing certificate no. 17/1295 dated 17.12.2023, which is duly signed by the petitioner. Testing of the installed meter no. 5136750 was done by M/s YMPL on 24.03.2023. A copy of the report of testing was submitted by the petitioner before the Forum in his complaint on 25.07.2023, so his averment that the said report was not received by him proves to be false.

Point no. 4 d) No threat was given to him ever neither his connection was disconnected.

Point no. 4 e) the check meter was finalized on 16.01.2023 in the presence of consumer representative, however he went away and did not return, so check meter finalization sealing was not got signed from him. This was also averred by Shri Radheshyam JE on 01.09.2023 before Forum.

Point no. 4 f) & g) As per reply of point no. 4 e)

Point no. 6 The assessment for slow running of meter Rs. 1,08,587.00 was added in the bill for March 2023. The assessment was raised in accordance with sub regulation 5.1.3 read with regulation 10 (a) of UERC regulation, 2020.

Point no. 8 As per reply under 4 e)

Point no. 9 The sealing certificate dated 17.12.2023 tallies with the MRI of main meter and check meter, this sealing certificate has duly been signed by the petitioner.

Point no. 10 The installed meter no. 5136750 was tested by M/s YMPL on 24.03.2023, this sealing has also been submitted by the petitioner with his complaint before Forum on 25.07.2023,

Point no. 11 As regards petitioner's averment dated 07.10.2023 and his letter dated 29.09.2023 and 06.10.2023 the detailed reply has already been submitted vide letter dated 19.09.2023 and 14.08.2023. Regarding petitioner's allegation that some official from the department visited his premises on 06.09.2023 at 08:40 pm, he was having



MRI machine and he had broken meter seal, it is clarified that a report was asked for from M/s IMON Cartage Pvt. Ltd. Haridwar vide letter no. 4889 dated 08.10.2023, they informed vide their letter dated 19.0.2023 that "On dated 06.09.2023 our authorized representative Mr. Himanshu went to the concerned consumer Mr. Jhal Singh connection no. JW0K000009713 at 08:40 pm. Mr. Himanshu (9557500801) is working with us as meter reader, he took the MRI which report is enclosed here with for your reference."

Point no. 12 Connection of the petitioner for 30 KW load is existing. His meter is LT CT connected. His installed meter was tested on 24.03.2023 by M/s YMPL, the said report was enclosed by the petitioner with his complaint before the Forum on 25.07.2023 and the same is also signed by the petitioner.

Point no. 13 Assessment for slow running of meter Rs. 1,08,587.00 was added in the bill for March 2023, the assessment was raised in accordance with sub regulation 5.1.3 for 12 months in accordance with UERC regulation, 2020.

Point no. 14 As per reply against point no. 8.

In addition to above replies, the respondent has also submitted as follows:

- A. A complaint was made by the petitioner before the forum on 25.07.2023 which was registered as complaint no. 110/2023.
 - B. Reply to the complaint was submitted before the Forum vide his letter no. 3473 dated 14.08.2023. Details of the reply have been mentioned in the written statement which are not being repeated here and may be referred in the file.
9. The respondent have substantiated his submissions with documentary evidences copies of which has been adduced with written statement.
10. The petitioner has submitted a rejoinder dated 22.01.2024 along with an affidavit under oath. Most of the points of the rejoinder are reiteration of the contents of his petition. He has mentioned relevant regulations of UERC, CEA and according to him these regulations have not been complied with by the respondent in conducting check meter study and raising assessment on the basis of such study for alleged slow running of meter. He has also mentioned that it is mandatory for the respondent

corporation to get its laboratory NABL accredited as mandated in CEA regulations and which he has again referred. The case laws of Hon'ble Bombay High Court and Hon'ble High Court of Uttarakhand has again been reiterated and has requested that in view of his submissions in appeal as well as in this rejoinder and allow him to argue his case and ^{to} ~~it~~ allow furnishing of any evidence/ documents/ judgements to substantiate the pleadings.

11. Hearing in the case was held on scheduled date 08.02.2024. Petitioner appeared himself and the respondent were represented by Shri Amit Tomar SDO, both parties argued their respective case. The arguments were concluded with mutual consent and 20.02.2024 was fixed for judgment.
12. Counter arguments from both parties were heard, documents available on file have been perused and examined. Relevant UERC regulations 2020 and CEA regulations, 2006 as well as case laws from Hon'ble High Court of Uttarakhand judgment dated 10.06.2021 in writ petition no. 1069 of 2021 and case law of Hon'ble Supreme Court in appeal no. 3615 of 1996 judgment dated 21.04.2005 Hon'ble Bombay High Court judgment in the matter of Nestle India Ltd. Vs FSSAI (W.P.L.) no. 1688 of 2015 dated 13.08.2015 as submitted by petitioner has also been gone through. Forum's case file of complaint no. 110/2023 was also summoned as requested for by the petitioner and has been gone through. It is found that a connection no. JW0K000009713 for 30 KW contracted load is existing in the name of Shri Jhal Singh for a hotel named Dreamland at Rohalki, Bahadrad, Distt. Haridwar, which is now being looked after by Shri Amrish S/o Late Jhal Singh who reported to have expired in the year 2016 but the said connection is still running in his name.
13. It is observed that a check meter no. 5136750 with CT of ratio 150/5 (MF 30) was installed at the premises of the consumer on 17.12.2022 vide sealing certificate dated 17.12.2022 (sealing certificate no. 17/1295) on consumer's existing meter no. 19628519 having CT of ratio 75/5 with MF 15. The check meter was finalized vide sealing certificate dated 16.01.2023 (sealing certificate no. 34/501) while sealing certificate dated 17.12.2022 for check meter installation is duly signed by JE UPCL and the consumer, 2 photocopies of the same sealing certificate dated 16.01.2023 have been adduced by the petitioner one of which do not carry any signature either of



the UPCL's representative or petitioner and another copy carries signature of JE (UPCL) but there is no signature of the petitioner, which suggests that this sealing certificate was not filled in/signed by respondent's representative at site at the time of finalization of check meter but it was signed sometime thereafter perhaps in respondent office. As per this so called check meter study the existing meter was reported running slow by 21.85% in KWH and 21.87% in KVAH due to voltage on Y phase missing. An assessment amounting to Rs. 1,08,587.00 was added in the bill for the month of February 2023 issued on 10.03.2023 on account of slow running of meter as per the so called check meter study. There is no evidence to show that the check meter study was conducted in accordance with relevant UERC regulation, 2020 and CEA regulation 2006 as there is no evidence to show that advance notice was given to the petitioner showing respondent's intention to install a check meter, neither test results of the proposed check meter from NABL accredited lab was given before initiation of the check meter study.

14. Having found no solution from the respondent, the petitioner approached to Forum with a complaint, which was registered as complaint no. 110/2023. In the instant case the complaint was decided by a majority order of Member Technical and Member (Consumer) vide their order dated 09.11.2023 in which the complaint was dismissed. However Member (Judicial) passed a dissenting judgment dated 02.11.2023 wherein he has mentioned in detail the various relevant UERC regulations which should have been followed in the instant case but have not been complied with any of such relevant regulations. Judicial member has also mentioned that CEA regulations regarding NABL accreditation have also not been complied with and he has therefore decided the complaint in petitioner's favour and directed the respondent to withdraw the assessed amount of Rs. 1,08,587.00 raised by them on the basis of the check meter study which was not carried out in accordance with relevant regulations and hence he has ordered that the respondents are not entitled to raise and realize the amount of the disputed bill. It is clarified that in the situation when Forum's order is not unanimous the majority order is considered as Forum order and hence in the instant case the order passed by the quorum of member technical and member consumer on 09.11.2023 is considered as Forum's order and member judicial dissenting order dated 02.11.2023 is considered as a note of dissent. The petitioner has also mentioned 5 nos. judgments



in the similar cases passed by this Ombudsman in the past in all such cases the petitions were decided in consumer's favour for not following relevant regulations. The case laws from Hon'ble High Court of Uttarakhand judgment dated 10.06.2021 in writ petition no. 1069 of 2021 Hon'ble Bombay High Court judgment in the matter of Nestle India Ltd. Vs FSSAI (W.P. 1688 of 2015) dated 13.08.2015 as well as case law of Hon'ble Supreme Court judgment dated 21.04.2005 in Civil appeal 3615 of 1996 adduced by the petitioner also supports the petitioner's case. It is clearly established on the basis of documentary evidences that the respondents have not complied with the relevant UERC regulation, 2020 as well as CEA regulation, 2006.

15. A perusal of records show that the relevant UERC regulation and CEA regulations as referred by the petitioner which all are applicable in the instant case, but have in fact not been complied with in conducting the check meter study as there is no evidence on file that advance notice was given to the petitioner for installing check meter, test results of the meter to be installed as check meter from an accredited lab were not given to the petitioner before initiating the check meter study. The respondents however have tried to justify that the check meter was duly tested by M/s Sai Computer Ltd. but this does fulfill the requirement of the Regulations.
16. Admittedly no test lab of UPCL had been accredited by NABL till the check meter study was conducted nor there was any mobile testing lab with UPCL for carrying out checking/testing of consumer's meter at site/at consumer premises as mandatory under NABL policy. Neither any evidence has been adduced by the respondents to show that UPCL has executed some agreement or MOU with some NABL accredited lab of some other utility or organization for getting their meters tested in such a lab, till their own laboratory is accredited by NABL. Such being the case any check meter study conducted by them, as a result of which, if existing meter was found running slow with reference to such a check meter, shall be invalid in law and no supplementary bill can be raised on the basis of the results of such illegal study and if any such supplementary bill is raised by the respondents that shall be illegal and shall be liable to be quashed and set aside.
17. It is observed that since the respondents have not complied with the relevant regulations and other legal provisions in conducting the check meter study and as

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veracity of the meter which was installed as check meter was not established as NABL accredited test certificate of the said meter was not given to the petitioner before initiating installation of check meter. The result of the check meter study declaring existing meter 21.85% in KWH and 21.87% in KVAH slow cannot be relied upon and as the entire exercise of conducting check meter study and raising supplementary demand amounting to Rs 1,08,587.00 is devoid of law being violative of the relevant regulations. On the other hand the petitioner's case has force of regulations and the case laws submitted by them also supports their case. The ratio decidendi in the petitions/representations no. 23/2023, 21/2023, 43/2022, 03/2023 and 42/2022 respectively was the same i.e. non compliance of the relevant regulations and statutory provisions, as in the instant case, so adhering to the principle "res judicata pro veritate habetur" (an adjudicated matter shall be deemed correct). It would be logical and justified to apply the same principle in deciding the same petition also and the petition is therefore, being decided accordingly on the same ratio decidendi. The petition therefore succeeds and is allowed. Forum order is set aside. The disputed demand of Rs. 1,08,587.00 raised by the respondent is also quashed and set aside. Although it is not on record, but if any amount has been deposited by the petitioner against the disputed supplementary demand, the respondents are directed to refund the same, if any by way of adjustment in the bill(s). In view of the facts and merits of the case the petition is allowed. Forum order passed by Member Technical and Member Consumer is set aside. However, the dissenting order passed by Member Judicial is appreciated and is upheld being consistent with relevant regulations.

Dated: 20.02.2024


(Subhash Kumar)
Ombudsman