

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Gaurav Agarwal
M/s Shree Ganesh Stone Crushing Co.
37, Abhishek Nagar, Kankhal
Haridwar, Uttarakhand

Vs

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

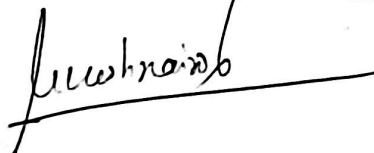
Representation No. 06/2024

Award

Dated: 14.10.2024

Present appeal/ representation has been preferred by the appellant against the order of Consumer Grievance Redressal Forum, Haridwar Zone, (hereinafter referred to as Forum) order dated 27.12.2023 in complaint no. 166/2023 by which Ld. Forum has allowed the complaint of appellant M/s Shree Ganesh Stone Crushing Co., Bhogpur through Shri Gaurav Agarwal, 37, Abhishek Nagar, Kankhal, Haridwar, Uttarakhand, (petitioner) against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Laxar, Distt. Haridwar, Uttarakhand (hereinafter referred to as respondent).

2. In the instant representation dated 30.01.2024 the petitioner M/s Shree Ganesh Stone Crushing Co. has averred as follows:
- Connection no. for stone crusher is LK0K000005467.
 - All bills were being paid timely.
 - Check meter was installed at their stone crusher without any intimation to them.
 - A sum of Rs. 11,40,000.00 was added in the bill as arrears after about 6 months.
 - A complaint was made before the Forum against the above arrear.



vi) Order was passed by the Forum after hearing and in compliance of which bill for Rs. 4,25,000.00 was raised.

vii) It is not possible to pay such a high amount so the case be decided.

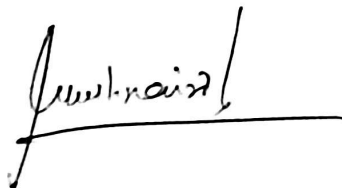
viii) Procedure as per UERC regulation was not followed in installation of check meter therefore the impugned assessment is not justified and is liable to be withdrawn.

3. A delay condonation application dated 30.01.2024 has also been submitted with the request that after issue of Forum order on 27.12.2023, bill was issued on 25.01.2024 online causing delay in submission of the representation. It has therefore been requested that the representation be admitted. The petitioner has also submitted an affidavit and a copy of Forum's order dated 27.12.2023 in their complaint no. 166/2023 before the Forum as also copy of the bill dated 16.09.2023 for the period 31.07.2023 to 31.08.2023 for a total sum of Rs. 16,86,063.00 including Rs. 11,40,049.00 against sr. no. 20 of the bill showing amount due, as also a latest bill summary showing total due amount as Rs. 4,25,907.00. A copy of their letter dated 23.09.2023 addressed to Executive Engineer, EDD, Laxar, with the request that Rs. 11,40,049.00 added in the bill be deleted and a corrected bill be issued.
4. After hearing parties and perusal of records the Forum observed that an assessment for Rs. 11,40,049.00 was added in the bill of 29.08.2023 on account of installed meter held running slow by 33.21% in a check meter study conducted from 20.02.2023 (date of installation of check meter) and 10.05.2023 (date of finalization of check meter). In view of the Forum, this assessment was not justified because as per documentary evidences i.e. the MRI report, the Y phase voltage was missing or was found less on different days, which have been worked out by the Forum in tabulated form in its order and accordingly they calculated that the meter was running slow by 54.07% in the month of April 2023, so Forum was of the opinion that the assessment raised by the opposite party is liable to be revised as per their calculation sheet given in the order. Further they were also of the opinion that calculation of the electricity consumption in NH/EP/OP/MP be worked out on the basis of consumption recorded in the past under the above time slots. Accordingly the Forum directed the opposite party to revise the assessment in accordance with the calculation sheet prepared by the Forum on the MRI data.



5. The respondent, Executive Engineer has submitted his written statement vide letter 545 dated 26.02.2024 along with a notarized affidavit. (Earlier he has requested vide his letter no. 386 dated 09.02.2024 for engagement of advocate to contest the case permission was granted vide letter no. 947 dated 16.02.2024 as also time for submission of written statement was allowed upto 26.02.2024 vide letter no. 943 dated 12.02.2024). The respondent has submitted as follows in his ws dated 26.02.2024

- i) That contents of para 1 are matter of record and hence need no reply.
- ii) That the contents of para 2 are matter of record and hence need no reply.
- iii) That the contents of para 3 of the appeal are wrong and denied. It is further humbly submitted that the check meter was installed at the premises as per the regulation.
- iv) That the contents of para 4 as represented are wrong and denied. It is submitted that check meter was installed on 20.02.2023 due to Y phase voltage missing as analyzed from MRI report. The check meter was finalized on 10.05.2023 and it was observed that a 11KV PT was defective due to which consumption was not correctly recorded and hence new PT was installed and slowness of meter was assessed at 33.21 % and accordingly assessment was raised for Rs. 11,40,049.00 for the period 30.06.2022 to 10.05.2023.
- v) That contents of para 5 are matter of record and hence need no reply. It is further submitted that the learned Forum directed the respondent to revise the assessment as per methodology revised by the Forum and accordingly the assessment was revised from 11,40,049.00 to Rs. 3,81,099.00. However, the appellant did not even deposit the same and filed the present appeal. It is humbly submitted that respondent does not agree with the methodology for determining the slowness given by the learned Forum and since the appellant himself is aggrieved and challenged the same therefore the impugned order needs to be set aside. It is humbly submitted that the setting aside assessment on purely technical and procedural issues actually confers benefit to such consumers which actually is not only a loss on corporation but also burdens the consumer of the state.



vi. No reply has been submitted by the respondent against this para of the appeal.

vii) That contents of para 7 are wrong and denied. It is submitted that the appellant is liable to make payment.

viii) That the contents of para 8 of the appeal as represented are wrong and denied. That there are no ground of appeal actually in favour of appellant. The appellant has only raised false frivolous contentions which do not qualify as legally sustainable ground.

It is humbly submitted that the records of the proceedings clearly demonstrated the consumption done by the appellant. However, the same escaped billing due to technical issues. The appellant wants to avoid his liability of payment by taking purely procedural grounds about giving notice and signing of sealing reports etc. which does not actually affect the energy consumed by the appellant. He has also submitted an affidavit duly notarized.

6. The petitioner has submitted a rejoinder to respondent's written statement along with an affidavit dated 14.03.2024 under the signatures of petitioner's authorized representative Mr. Raman Shrivastava duly authorized vide authorization letter dated 29.08.2024.

- i. Certified that his name and address is correct.
- ii. Service connection no. of the Stone crusher is LKK000005467.
- iii. All bills were being paid timely.
- iv. Respondent's submission that check meter was installed as per rules, is wrong.
- v. The meter was not installed in accordance with commission's regulation 2020.
- vi. The assessment raised on the basis of the meter which was not installed in accordance with rules is wrong and is liable to be withdrawn.
- vii. The Forum's order is not justified and the petitioner is not satisfied with the same. Because the check meter was not installed in accordance with the UERC regulation and therefore the impugned assessment is not justified and is liable to be withdrawn.

7. Hearing in the case was fixed for 28.03.2024 which was adjourned for 08.04.2024 on petitioner's request. This date was also postponed indefinitely as the then Ombudsman's tenure was to expire shortly. Again 30.08.2024 was fixed for hearing

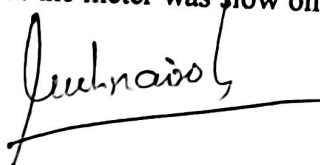
which was also adjourned on respondent's request and 11.09.2024 was therefore fixed for the date of hearing which was also adjourned and 25.09.2024 was therefore fixed for the final date for hearing.

8. Both parties appeared for arguments on the scheduled date 25.09.2024. The petitioner appeared himself and the respondent, Executive Engineer appeared himself along with his advocate. Both parties argued their respective case. The respondent's advocate has requested for submission of written arguments within 3-4 days, the same was submitted by him on 30.09.2024 along with photocopies of Ombudsman's orders in representation no. 08/2022 and 28/2021, which were taken on record. Advocate for the respondent submitted as follows in his written arguments:

- i) At the outset he has submitted that the representation is not maintainable under the law for the following reasons:
 - a) The appeal has been filed in a cursory manner without demonstrating any specific ground or reasons explaining how the petitioner is aggrieved by Forum's impugned order.
 - b) Any party filing an appeal against impugned order is required to provide adequate justification and reasons and grounds of appeal, but in the instant case the petitioner has failed to demonstrate such reasons and grounds. Thereby failing to meet the legal requirement for filing the appeal.
 - c) In the instant appeal the petitioner has challenged the subsequent bills issued by the respondent in compliance of Forum's order, which is not maintainable.
 - d) Under para 7 of the appeal the petitioner has stated that they would not pay the revised pay amounting to Rs. 4,25,000.00, this clearly indicates that he is deliberately unwilling to settle the dues.

Facts of slow meter not disputed.

- ii) The meter of the petitioner was found slow by 33.21% and respondent had accordingly charged the dues for 314 days. The Forum acknowledging the fact of slow meter but determined that the meter was slow only for 74 days and as a



result directed to revise the bill, as such no illegality was committed by the respondent in issuing the revised bill.

- iii) The petitioner was unjustly benefitted from the slow meter causing wrongful loss to the respondent. On this ground alone the representation warrants dismissal with costs.

Compliance with the impugned order

- iv) The bill was revised to Rs. 4,25,000.00 in compliance with Forum's order, consequently the revised bill cannot be challenged before the Hon'ble Ombudsman, therefore grievance of the petitioner stands resolved and no interference is required by Hon'ble Ombudsman in the matter, as held by the Hon'ble Ombudsman in representation no. 08/2022 and representation no. 28/2021.

Lack of grounds for appeal

- v) The petitioner has failed to demonstrate any substantial ground for maintainability of the appeal. Further the appeal does not highlight any illegality or error in the impugned order. Therefore on this ground alone, the appeal is liable to be dismissed.
9. After hearing arguments from both parties and perusal of records available on file including respondent's written arguments dated 30.09.2024, facts of the case have been observed as under:
10. A 500 KVA connection was released in favour of M/s Ganesh Stone Crusher Co., Bhogpur, Khankhal, Haridwar on 15.01.2009. The petitioner's case is that, they have been making payments against their connection no. LK0K000005467 timely. A check meter was installed by the respondent at their premises, without any notice to them and without their knowledge. A sum of Rs. 11,40,000.00 was added as arrears in the bill dated 16.09.2023, after about 6 months. A complaint was lodged by the petitioner against the said arrear, shown in the bill. Subsequently a revised bill of Rs. 4,25,000.00 was issued in compliance to Forum order. The petitioner has averred that the check meter was installed in their premises without following the procedure laid down by the Commission and therefore the impugned assessment is not justified and



is liable to be quashed. The petitioner has also averred that it was not possible to pay such a high amount and has requested that their grievance be redressed.

The same averments have been made by the petitioner in his rejoinder also.

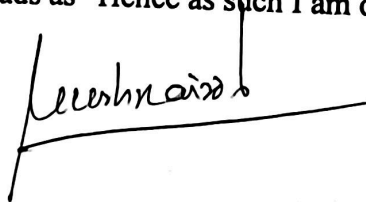
11. On the other hand while the respondent have averred that no reply against para 1, 2 and 5 of the representation is required being a matter of record and have denied contents of para 4, 7 and 8 being wrong. The respondent has further submitted that check meter was installed as per regulation on 20.02.2023 due to Y phase voltage missing as per MRI report analysis, which was finalized on 10.05.2023. It was observed that 11 KV PT was defective due to which consumption was not correctly recorded and hence new PT was installed and slowness of meter was assessed at 33.21% and accordingly assessment was raised for Rs. 1,14,049.00 for the period 30.06.2022 to 10.05.2023 as mentioned under para 4 of the written statement (However the amount of assessment under para 5 of the written statement has been mentioned as Rs. 11,40,049.00). The respondent has further submitted that this assessment amount was revised to Rs. 3,81,099.00 in compliance to Forum's directions for revising the assessment as per methodology revised by the Forum. The petitioner did not deposit the same and filed the present appeal. The respondent has specifically mentioned in under para 5 of their written statement that they do not agree with the methodology for determining the slowness given by the Ld. Forum and since the petitioner himself is aggrieved and challenged the same therefore the impugned order needs to be set aside. They further stated that setting aside assessment on purely technically and procedural issues actually confers benefit upon such consumers which actually is not only a loss to the corporation but also burdens to the consumers of the State. As such the petitioner is liable to make the payment.
12. The respondents have tried to justify their action and procedure for conducting check meter study holding meter 33.21% slow and have justified their assessment amounting to Rs. 11,40,049.00 for a period of 314 days from 30.06.2022 to 10.05.2023. They have although revised the bill to Rs. 4,25,000.00 and subsequently for Rs. 3,81,099.00 in compliance to Forum's order dated 27.12.2023 but have themselves stated that they do not agree with the methodology adopted by the Forum and its orders for revising the bill as per their order dated 27.12.2023 and have themselves submitted that the Forum's impugned order needs to be set aside.

[Signature]

13. Facts of the case are as follows:

- a) As claimed by the respondent the check meter was installed on 20.02.2023, which was finalized on 10.05.2023 due to Y phase voltage missing, but no sealing certificates for installation and finalization of the check meter have been adduced by the respondent either with their written statement or during hearing and or with their written arguments, in the absence of which it is not possible to ascertain whether their averment is correct or not and what were the contents of these sealing certificates.
- b) The respondents have specifically mentioned under para 4 of the written statement that the 11 KV PT was defective due to which the consumption was not correctly recorded and hence new PT was installed. As no documentary evidence for replacement of PT has been adduced, it is therefore not established as to when the defective PT was replaced i.e. either before or after the check meter study or during the check meter study.
- c) The respondent have claimed that the existing meter of the petitioner was assessed as 33.21% slow (the respondent specifically mentioned word assessed, which suggests that the slowness of the meter was not ascertained as per check meter study but it was assessed).
- d) As no evidence i.e. test results of the check meter from NABL accredited lab has been adduced before this Ombudsman, it is clearly established such results were not provided to the petitioner before commencement of check meter study as required under sub regulation 5.1.3 (1) of UERC Supply Code 2020, in the absence of which sanctity of the correctness and veracity of the check meter is not established and as such results of such a check meter study, holding existing meter running slow by 33.21% cannot be upheld and consequently the assessment raised for a sum of Rs. 11,40,049.00 raised through the bill dated 16.09.2023 cannot be upheld and the same is liable to be quashed.

The same ratio decidendi has duly been applied by the Hon'ble High Court of Uttarakhand in its judgment dated 10.06.2021 in WP no. 1069 of 2021 (M/S). The relevant substance of judgment reads as "Hence as such I am of the view that



since a very assessment itself was not foundationed as per Regulations of 2007...
The WP is dismissed."

- e) Since orders of the Forum for revision of the bill for Rs. 4,25,000.00 on the basis of the methodology and formula devised by them at their own, not being consistent with relevant UERC regulations and revision of the assessment bill in compliance of the impugned Forum order cannot be appreciated and is therefore liable to be set aside.
- f) Ombudsman's orders dated 23.05.2022 in representation no. 08/2022 and order dated 30.11.2021 in representation no. 28/2021 adduced by the respondents with their written arguments are not applicable in the instant case as these representations pertain to IDF billing and RDF/NA billing, while the instant representation is regarding a case of assessment raised on slow running of meter as per so called check meter study, which study is liable to be set aside for not following the relevant UERC regulations.

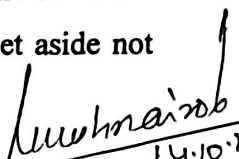
Order

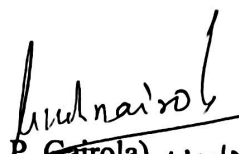
The check meter study and its results declaring existing meter slow by 33.21% by assessment is set aside not being foundationed on relevant UERC regulations and impugned assessment amounting to Rs. 11,40,049.00 raised as arrears in the bill dated 16.09.2023 is set aside and quashed. Forum order dated 27.12.2023 is set aside not being consistent with relevant regulations. Representation is allowed.

Dated: 14.10.2024

Order signed dated and pronounced today.

Dated: 14.10.2024


(D.P. Gairola) 14.10.2024
Ombudsman


(D.P. Gairola) 14.10.2024
Ombudsman