

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Ferreteria India Pvt. Ltd.
Khasra No. 227,
Village Lakeshwari, Bhagwanpur,
Roorkee, Distt. Haridwar,
Uttarakhand

Vs

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

Representation No. 42/2022

Order

Dated: 03.03.2023

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone (hereinafter referred to as Forum) order dated 30.11.2022 in his complaint no. 90/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Bhagwanpur, Distt. Haridwar (hereinafter referred to as respondent) M/s Ferreteria India Pvt. Ltd. Khasra No. 227, Village Lakeshwari, Bhagwanpur, Roorkee, Distt. Haridwar has preferred this appeal for interalia setting aside impugned order dated 30.11.2022 and for rejection of the supplementary demand.

2. At the outset, the petitioner has averred that the appeal is being filed against Forum order dated 30.11.2022 in his complaint no. 90/2022 against respondent whereby the complaint has been rejected by the Forum. The appeal has been filed on the following grounds that subject matter is within jurisdiction of Ombudsman:

- i) That the petitioner declares that the case is within the period prescribed in the Act.
- ii) The petitioner is a private limited company and the present case is filed through its manager.



- iii) He has an electricity connection no. 00422 under industrial category, sanctioned load was 950 KVA and after getting 250 KVA additional load sanctioned on 25.01.2021, the present sanctioned load is 1200 KVA.
- iv) A check meter was installed in the factory for measuring the speed of the installed meter in his factory on 29.06.2022 (as per sealing certificate this is the date of finalization of check meter and as per sealing certificate the date of installation of check meter is 31.05.2022.) After investigation it was mentioned in the report that "check meter final and old meter found 18.7% slow in KWh and 16.47% slow in KVAh because of Y phase CT saturated, assessment can be raised as per UERC norms." and on that basis a supplementary bill of Rs. 56,68,806.00 is calculated for the period 29.06.2021 to 26.06.2022 and it was directed to ensure to deposit the entire supplementary bill within 15 days.
- v) Vide letter no. 3471 dated 23.08.2022, the respondent directed that petitioner to deposit supplementary bill Rs. 54,68,806.00 within 15 days.
- vi) Objections to this demand was filed on 19.09.2022 before opposite party, but the opposite party rejected the objections and issued a demand notice for Rs. 54,68,806.00 through their letter no. 4291 dated 28.09.2022
- vii) An application was moved on 17.09.2022 to the opposite party for excluding supplementary bill from the monthly bill however the opposite party rejected the plea and sent a letter to the effect that deposit supplementary bill amount immediately.
- viii) A complaint was filed before the Forum which was registered as complaint no. 90/2022 ut the Forum rejected the complaint vide order daed 30.11.2022.

Grounds of appeal

- ix) The Forum's impugned order is out rightly erroneous and on the face of it is incorrect, most cryptic and passed without application of mind. The Forum has failed to provide justice to the petitioner.
- x) The Forum has forgotten to apply the regulation 5.1.3 of UERC regulation, 2020 (hereafter referred to as regulations).

- xi) The petitioner is aggrieved with the impugned order passed by the Forum as such order is not legally maintainable and enforceable and is against the rules and regulation of UERC and Electricity Act, 2003.
- xii) The respondent and the Forum have acted totally arbitrarily, de hors the Electricity Act, 2003 and relevant UERC regulations. .
- xiii) The respondent has falsely represented the facts before the Forum and the Forum has been biased in assessing the facts.
- xiv) Respondent's act is arbitrary and unlawful, without any reason and just based on conjecture, surmises and presumption. The respondent has no authority and jurisdiction to make such conclusions, acts of the respondent are against the provisions of electricity Act, 2003, Supply Code, Regulations as also other rules and applicable regulations.
- xv) The respondent acted against the regulation and also against justice.
- xvi) The respondent has falsely represented facts before the Forum, who has been biased in assessing the facts.
- xvii) The petitioner cannot be penalized for the complacency, inefficiency and incompetency of the respondent. They cannot be permitted to act on their whims and fancies and the respondent has no authority against the law and prescribed procedure and to jump fanciful conclusion without any basis and reason.
- xviii) Demand notice issued by opposite party is illegal and has no force of law, therefore eligible to be dismissed.
- xix) The respondent has rejected the objections filed by the petitioner in hasty manner and ignore the basic principles of law and passed the above mentioned demand/order illegally and arbitrarily.
- xx) The respondent has stated arbitrarily in the above mentioned order that the CT of Y phase found saturated and it has been assessed that the main meter was slow in comparison to check meter and the demand was assessed according to supply code regulation, of UERC. And only on that issue



assessed the arrears of the electricity bill and ignored all the objections raised by the petitioner before them.

- xxi) The authority has stated that Y phase CT was found saturated without any evidence thereof.
- xxii) If for the sake of argument it is taken that CT was found saturated for that the respondent is solely responsible.
- xxiii) The petitioner has been paying bills regularly and less recording of consumption if any, was due to respondent's mistake and so they cannot be permitted to take benefit of their own mistake.
- xxiv) It is the duty of the respondent to ensure that bills are issued on correct meter readings every month and it was their duty to check the meter every month while taking the reading, and petitioner is not liable for respondent's inaction or negligence. The respondents are themselves responsible for any default and therefore there is no question to pay the supplementary electricity bill as demanded and the demand is liable to be cancelled.
- xxv) There is no action on the part of the petitioner company or its employees for any violation in smooth functioning in electricity supply.
- xxvi) Before installing check meter its working should have been ensured that it is working properly and it should also be seen that where from it has been taken. But these things have not been considered at the time of installing the check meter, therefore in the absence of these formalities in proper functioning of the check meter cannot be ruled out.
- xxvii) The Forum did not consider the fact that check meter was not a new one, but it has been used somewhere. The respondent has submitted no evidence how and under which circumstances this check meter was removed and why it was used as a check meter in the premises of the petitioner. The readings of the check meter on 31.05.2022 and as recorded in the respective sealing certificate suggests that the check meter has been installed in their premises after removal from somewhere.



- xxviii) The Forum has not considered the fact that no valid test results of this meter was given to the petitioner before initiating testing/installation of check meter, which is a gross violation of sub regulation 5.1.3 (5) so the meter installed as a check meter in the instant case cannot be accepted as a valid check meter as there is no evidence of its accuracy.
- xxix) No sealing certificate was provided to them at the time of removal of the check meter and the sealing certificate was not got signed by the authorized representative, which clearly shows foul play on respondent's part and these facts have been overlooked by the Forum while passing the impugned order.
- xxx) It is pertinent to mention that it is the duty of the respondent to check meter reading on monthly basis, which they failed to do and therefore they are solely responsible for this negligence. The Forum has overlooked this fact also.
- xxxi) The Forum has forgotten that no rebuttal was given by the respondent that for not checking the meter/CT/PT within time/before or at every month or about the respondent's negligence.
- xxxii) The respondent has not given rebuttal to this fact why the petitioner will be responsible for the liability to pay the supplementary bill.
- xxxiii) The Forum did not consider the fact raised by the petitioner that he is a manufacturer makes the goods keeping in mind the expected expenses for manufacturing the goods and sell it at price which include actual cost of manufacturing of that product along with profit.
- xxxiv) If the petitioner was informed earlier by the respondent regarding improper working of the meter by performing his duties within time, the petitioner could have sold the manufactured goods at higher prices including the expenses/liability which the petitioner has to pay in the form of supplementary bill.
- xxxv) It is also pertinent to mention that same points were raised before the Forum in rejoinder but no rebuttal has been filed by the respondent regarding aforesaid facts. And the Forum also failed to consider the same fact in the impugned order.



- xxxvi) The inspection team worked under the instructions of the respondent has not followed sub regulation 5.1.3 para 1 of regulation 2020 and they have ignored this fact knowingly and decided the matter arbitrarily.
- xxxvii) The inspection team has not prepared the sealing certificate as mentioned in annexure VIII of regulation, 2020. The inspection team did not follow the mandatory rules as mentioned in regulation, 2020.
- xxxviii) It is mandatory for the respondent to give a notice of provisional assessment, but the respondent sent a direct notice of supplementary bill to the petitioner without giving any opportunity of being heard as such respondent prepared the final assessment bill in a hasty manner and directed the petitioner to deposit the same.
- xxxix) An application was moved to the respondent on 17.09.2022 for excluding supplementary bill from the monthly bill. The respondent rejected the plea raised before them and sent a letter for depositing supplementary bill Rs. 54,68,806.00 immediately. They have ignored all the pleas. They threatened disconnection if supplementary bill was not paid.
- xxxx) The petitioner is not in a condition to pay the alleged supplementary bill and in case their supply is disconnected for nonpayment of the supplementary bill they fear that factory will be closed and petitioner will face financial loss for which he is not responsible.
- xxxxi) Since the respondent is adamant and pressurizing the petitioner for depositing the entire amount of supplementary bill it is in the interest of natural justice that respondent is directed to exclude the supplementary bill from the monthly bill till disposal of the case, otherwise purpose of filing the appeal will be infructuous.
- xxxxii) The Hon'ble Ombudsman may kindly direct the respondent to separate/exclude the amount of supplementary bill from the monthly bill and do not disconnect the supply to the factory till final order of this appeal.
- xxxxiii) It is declared that no other appeal in this matter has been filed or pending in any other court.



xxxxiv) It is further declared that no writ petition/suite regarding this matter has previously been filed before any Court or any other authority, nor any such petition or suite is pending before any of them.

Prayer

- A) Allow the appeal and set aside the impugned order dated 30.11.2022 passed by the Forum in complaint no. 90/2022.
 - B) Direct the respondent to cancel/reject the supplementary demand bill and absolve the petitioner from any liability mentioned in the letter mentioned above.
 - C) To instruct/direct the respondent to exclude the supplementary demand in the future monthly electricity bill and not to disconnect the electricity supply of the petitioner till the matter is sub-judice before the Hon'ble Ombudsman.
 - D) Full cost of the complaint and compensation for the harassment and monetary loss of the petitioner.
 - E) Any other relief, which Hon'ble Ombudsman may deem fit.
3. The petitioner has requested for Forum's case file of his complaint no. 90/2022, which has duly been collected from the Forum. The petitioner has substantiated his averments with documentary evidences such as respondent's letter 10.10.2022 addressed to the petitioner, petitioner's letter to respondent having no date of dispatch but appears to have been received in the office of respondent on 19.09.2022, another letter of petitioner to respondent also received in respondent's office on 19.09.2022, respondent's letter dated 28.09.2022 to the petitioner as also respondent's letter dated 23.08.2022, AE (Meter) letter dated 01.07.2022 to respondent, copy of sealing certificate no. 9/53 dated 31.05.2022 for installation of check meter, sealing certificate no. 07/60 dated 29.06.2022 for finalization of check meter, detailed calculation for assessment amounting to Rs. 54,68,805.97 as issued by respondent, copy of Forum's letter dated 30.11.2022 by which Forum's order dated 30.11.2022 has been forwarded to the parties, authority letter in favour of Shri Prabhakar Jha, Works manager, vakalatnama in favour of Shri Ashutosh Gupta, Advocate.
4. After hearing arguments from both parties and perusal of records and deliberation in the case at length the Forum arrived at the conclusion that the assessment (supplementary bill) raised by the respondent on the complainant has been in accordance with UERC (The Electricity Supply Code, Release of New Connection

and Related matters) Regulations, 2020 (as per clause 5.1.3) and is therefore correct and the complaint is liable to be dismissed having no force and having concluded as such the Forum dismissed the complaint vide their order dated 30.11.2022.

5. The respondent Executive Engineer has also engaged a legal counsel for pleading his case as the same facility was offered to him because the petitioner has filed and pleading his case through a legal counsel. The respondent has submitted his written statement dated 29.12.2022. The respondent has submitted point wise reply to the petition as follows

Brief facts

- i) The instant case is neither related to slowness of the meter nor has any such assessment or penalty being made. It is only the supplementary bill raised against the actual consumption of the petitioner. The meter (X0780492) installed at petitioner's premises has not been replaced. It is still at petitioner's premises and is working properly, however the consumer has arm twisted the complete true facts merely to escape the liability to the tune of Rs. 54,68,806.00.
- ii) In May 2022 during the observation of MRI of meter no. X078492 (secure) it was observed that the current in Y phase is being recorded approximately half of the current in respect to R&B phases, it was observed that the external CT of Y phase which was installed in the 33 KV metering cubicle of the petitioner's premises was saturated and was not passing the actual current to the meter (This abnormality has occurred in 20.05.2021)
- iii) The petitioner was informed regarding this situation vide letter no. 2084 dated 25.05.2022.
- iv) That on 31.05.2022 a separate metering system with meter no. Q0483039 was installed in series with the existing 33 KV metering cubicle to assess the actual power consumption being consumed by the petitioner and thus finding out the percentage difference.
- v) On 29.06.2022 the check meter was finalized and it was observed that old meter was recording lesser consumption due to the saturation of external Ct of Y phase. It was observed that the consumption was recording 18.71% lesser in KWAh and 16.47% lesser in KVAh.



- vi) The supplementary bill Rs. 54,68,806.00 was raised for the period 29.06.2021 to 29.06.2022 through letter no. 3471 dated 23.08.2022. The supplementary bill has been raised as per the balance of the electrical units which were consumed by the consumer but could not have been billed as consumption recorded in meter was affected by external parameter.
- vii) During the finalization of the check meter the saturated CT of Y phase was replaced on 29.06.2022. The current in all 3 phases reflected same in all phases.
- viii) The petitioner filed complaint before Forum with registration no. 90/2022 with prayer to (a) cancel/reject the supplementary demand bill and (b) to instruct/direct the respondent to separate/exclude the supplementary bill and not to disconnect the electric supply to the factory during the final hearing/judgment of case. The Hon'ble Forum vide order dated 30.11.2022 rejected the prayer/complaint of the petitioner stating that the complaint having no force.
- ix) The error in the billing consumption due to the saturation of Y phase CT (50% less) can be elaborated with the help of the chart given below:
(The respondent has tried to explain his view through an empirical formula.

Para wise reply

- i) Contents of para i) & ii) are matter of record and hence require no comment. The petitioner may produce supporting document to prove the same.
- ii) Contents of para iii) are admitted. The petitioner is a consumer of UPCL under industrial category with sanctioned load of 1200 KVA at 33 KV with connection no. BHOK000000422.
- iii) Contents of para iv) & v) of appeal are matter of record, however it is submitted that in May 2022 during the observation of MRI of meter no. X0780492 (Secure) it was observed that the current in Y phase is being recorded approximately half of the current in R & B phases. It was observed that external CT of Y phase which was installed in 33 KV metering cubicle at petitioner's premises was saturated and was not passing the actual current to the meter. Petitioner was informed regarding this situation vide letter no. 2082 dated 25.05.2022. On 31.05.2022 in the presence of the representative of petitioner a separate metering system

with meter no. Q0483039 was installed in series with the existing 33 KV metering cubicle to assess the actual power consumption being consumed by the petitioner and thus finding out the percentage difference, hereinafter called check meter. The check meter was finalized on 29.06.2022 in the presence of petitioner's representative who has also signed the sealing certificate. On comparing the consumption recorded in both the meters (main meter X0780492 and check meter Q0483039) for the checking time it was observed that the metering system installed at petitioner's premises with meter no. X0780492 was recording lesser consumption due to saturation of external CT of Y phase. It was observed that the consumption was being recorded 18.71% lesser in KVAh and 16.47% lesser in KVAh after observation of MRI and load survey of meter it was observed that Y phase CT was saturated since 20.05.2021 and was passing lesser current in the meter. Accordingly supplementary bill of Rs. 54,68,806.00 was raised for the period 29.06.2021 to 29.06.2022 and was sent to petitioner vide letter no. 3471 dated 23.08.2022.

- iv) Contents of para vi) & vii) are wrong, false and hence denied. In reply thereof it is submitted that the petitioner herein filed his objection which was received in the office of EDD, Bhagwanpur on 21.09.2022. In his objection the petitioner has raised baseless objections and the same was informed to him vide letter no. 4291 dated 21.09.2022 and 4496 dated 10.10.2022. It was clarified that supplementary bill was not as per section 126 of the Act, which is for unauthorized use. It was also informed to him that the supplementary bill has been raised and provided to him for deposition is not a penalty nor an assessment against unauthorized use. This supplementary bill is actually difference of the bill which he did not pay due to saturation of CT and which was not reflected in his bill for last 12 months and he has used the electric power for this amount also, so this is the difference of the electricity bill which was billed to him and the actual bill which should have been paid by the petitioner. The supplementary bill raised is right and should be paid by the petitioner and the same was informed to him through aforesaid letters dated 28.09.2022 and 10.10.2022.



- v) Contents of para viii) are matter of record, however in reply it is submitted that the petitioner filed complaint no. 90/2022 before Forum which was rejected vide Forum's order dated 30.11.2022.
The Grounds stated by the petitioner has no force in law and the whole appeal is liable to be dismissed.
- vi) Contents of para ix) to xii) are wrong, false and hence denied. In reply it is submitted that order passed by the Forum is totally in accordance to the rules and regulations, hence the petitioner should pay Rs. 54,68,806.00 which has been raised against supplementary bill.
- vii) Contents of para xiii) to xix) of the appeal are not just wrong, false but also questions the integrity of the authority established by law, the petitioner for merely for making the grounds of appeal have raised question mark on functioning of the authority established by law. The order passed by Forum is well within the boundaries of applicable rules and regulations. The petitioner by arm twisting the true facts of the case wants to evade its liability of making payment of Rs. 54,68,806.00.
- viii) Contents of para xx) to xxv) of appeal are wrong false and hence denied. In reply thereof it is again submitted that in the load flow analysis of the MRI data that Y phase CT not passing full current to the meter, so the meter was recording lesser consumption also elaborated mathematically in earlier paras. Supplementary bill for Rs. 54,68,806.00 is raised well within the applicable rules and regulations.
- ix) Contents of para xxvi) to xxx) of the appeal are wrong, false and hence denied. In reply thereof it is submitted that Electricity Test Lab, Roorkee is NABL accredited and UPCL has full authority to install the check meter to assess the consumption. Petitioner was also informed regarding the lesser recording of the meter vide letter no. 2082 dated 25.05.2022 and he was also informed regarding installation of check meter. The check metering system with meter no. Q0483039 which was installed in series with the existing metering system of the petitioner was duly tested by lab (NABL accredited). The petitioner is conveying bogus information and falsely raising the question over the check meter, this meter was initially installed at 33 KV Raipur substation, in 33KV Raipur 1 line to check the performance of ABT meter on 13.04.2022 and it was received from the



site on 24.05.2022. Accuracy of this meter was also checked with ABT meter and it has been observed that the meter is functioning well. During removal of the meter on 24.05.2022, the KWh reading of the meter was 22363 when the meter was installed at the premises of petitioner the KWh reading was 22368, the difference of 5 units occurs during taking of the reading at load and shutdown of the line for removing the meter. This meter was tested in Test lab, which is NABL accredited. In both of the events i.e. installation of check meter on 31.05.2022 and finalization of the check meter on 29.06.2022, representative of petitioner were present and had signed sealing certificate 53/9 and 60/07 so this is a false blame from the petitioner that he has not been provided by the sealing certificate. The petitioner's bills are being generated on monthly basis. The NABL accreditation certificate of Test lab, Roorkee is attached herewith as annexure no. 10 and the sealing of the meter no. Q0483039 dated 13.04.2022 and 24.05.2022 are attached herewith and marked as annexure no. 11 to 12.

- x) Contents of para xxxi) to xxxviii) of the appeal are wrong, false and hence denied. In reply thereof it is submitted the request of the petitioner was denied and petitioner was continuously asked to deposit the supplementary bill. The Forum had gone through all the documentary evidences and has rightly rejected the complaint. The respondent has rightfully worked in accordance with UERC regulations, the petitioner is just trying to arm twist the facts that sealing report has not been prepared correctly, whereas the fact is both the sealing of 31.05.2022 and 29.06.2022 are having all the necessary parameters to assess the consumption. The supplementary bill was provided to the petitioner in proper manner and the petitioner to save himself from the liability of Rs. 54,68,806.00 is deliberately arm twisting the true and correct facts. Copy of MRI reports of both the meters main and check meter of 31.05.2022 and 29.06.2022 are attached herewith.
- xi) Contents of para xxxix) to xxxxiv) of the appeal are wrong, false and hence denied. In reply it is submitted that the petitioner has made prayer in front of Forum to exclude the supplementary bill which was rejected by the Forum, the supplementary bill raised vide letter no. 3471 dated 23.08.2022 is very much correct and totally in accordance with rules and

regulations of UERC and Electricity Act, 2003 and is liable to be paid by the petitioner. Actions of the respondent along with his team members are totally as per the rules and regulations as established by law. Supplementary bill was raised on 23.08.2022 and after 5 months the petitioner has not paid this bill and still enjoying the power supply. It is also brought to kind notice of the Hon'ble Ombudsman that the petitioner has submitted his letter dated 09.12.2022 which was received in respondent's office on 12.12.2022 requesting for 12 installments for the supplementary bill, the same was forwarded to SE, EDC, Roorkee with recommendation and necessary action vide letter no. 5694 dated 12.12.2022. This was also forwarded to SE to Chief Engineer, Distribution, Haridwar zone vide letter 3392 dated 17.12.2022. The supplementary bill has been added in the bill and is liable to be paid by the petitioner, since this is a bill against actual consumption so they should not be excluded from the monthly electricity bills. Copy of letter no. 17.10.2022 and 09.12.2022 written by the petitioner to the respondent are annexure herewith.

Prayer

It is most respectfully prayed that this 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 this Hon'ble Court as may deemed fit in the facts and circumstances of the case and in the interest of justice. A list of documents annexed with the written statement has been provided with written statement as index. The written statement has been submitted with an affidavit under oath and an application requesting vacation of interim stay has also been submitted by him and the vakalatnama of Shri Naman Kamboj, Advocate has also been submitted with the written statement.

6. The petitioner has submitted a rejoinder to respondent's written statement with an affidavit under oath dated 11.01.2023 as follows:
 - i) Contents of para i) and ii) of counter (written statement) are not admitted hence denied.
 - ii) Contents of para iii) are matter of record hence require no comment.



- iii) Contents of para v), vi) & vii) are not admitted and hence denied.
- iv) Contents of para viii) admitted to the extent that the petitioner filed a complaint before Forum but the Forum has decided the case which is not legally sustainable.
- v) Contents of para ix) is an arithmetical formula which is not applicable in the case and hence denied.
- vi) Contents of para i) & ii) need no reply.
- vii) Contents of para iii) to xi) of para wise reply of the written statement are not admitted, hence denied.
- viii) The prayer claimed in the written statement is not admitted and liable to be rejected.
- ix) That in addition to the appeal it is further stated that the petitioner was not informed by the respondent of any testing done by the meter accredited by YMPL, neither any information of checking or testing of meter nor any checking report was given to the petitioner and assessment of Rs. 54,68,806.00 was raised on the petitioner vide letter 23.08.2022, because of Y phase CT saturated but no mention of the alleged check meter, which was accredited by YMPL was stated in the said letter. Petitioner was never informed about any abnormality or fault observed in the so called checking. The petitioner was not aware about the correctness and accuracy of the alleged check meter installed or whether the check meter was installed as per methodology prescribed for installation of check meter.
- x) That in addition to the appeal the fact that the check meter was not a new meter but it had been used somewhere was not countered by the respondent, even the respondent has not shown in his written statement, from where this check meter was removed and why it was used as a check meter in the premises of the petitioner.
- xi) In addition to the appeal it was not countered by the respondent that no valid test report of this meter was given to the petitioner before initiating the test or

installation of the check meter, which is a gross violation of sub regulation 5.1.3 (5).

- xii) It is not countered by the respondent in this reply that no sealing certificate has been provided to the petitioner at the time of installing the check meter or at the time of its removal. Moreover the sealing certificate at the removal of alleged check meter which is a part of record was not signed by authorized signatory.
- xiii) It is not countered by the respondent that if the petitioner was informed earlier by the respondent regarding improper working of the meter by performing his duties within time, the petitioner could have sold the manufactured goods at higher prices including expenses/liabilities which the petitioner has to pay in the form of supplementary electricity bill.
- xiv) In addition to the appeal if any such incident was happened then it is the fault of the respondent only for which the petitioner could not be penalized.
- xv) That it is further stated that the order passed by the Forum that was not legally sustainable and was not as per law and the assessment raised by the respondent was not also according to rules and regulations therefore the same was not legally enforceable and respondent was not entitled to recover the said amount from the petitioner.
- xvi) That in addition to the appeal it is further stated that it is the duty of the respondent to justify the said demand as per the rules and regulations. The burden of proving any demand raised by the respondent is upon the respondent only. The respondent cannot discharge the burden by merely stating that the assessment is correct or that any amount is due but this fact has to be established by the respondent according to the law.
- xvii) That in addition to this rejoinder the petitioner has reasserted and reiterated the entire facts of the appeal.
- xviii) That the petitioner has deposited 50% of the assessment amount in compliance of the order passed by the Hon'ble Court on 30.12.2022. Therefore it is in the interest of justice to continue the stay order till disposal of the appeal.



- xix) The order passed by the Forum is liable to be set aside and the respondent be directed to cancel the supplementary bill issued by him.
- xx) The reply presented by the respondent is liable to be rejected and the appeal is liable to be allowed.
- xxi) It is therefore most humbly prayed that this appeal deserves to be allowed and may kindly be allowed in the interest of justice, such other order may also be passed as deemed fit and proper in the facts and circumstances of this appeal.

7. Hearing in the case was held on scheduled date on 27.02.2023. Both parties appeared. The petitioner was represented by his legal counsel and the respondent, Executive Engineer himself appeared with his legal counsel for arguments. Both parties made their respective argument. The arguments were concluded with mutual consent and 03.03.2023 was fixed for pronouncement of order in the case. Arguments from both parties were heard, documents available on file has been perused. Case file of complaint no. 90/2022 before the Forum was summoned from the Forum and has also been gone through. Relevant UERC regulations, provisions in Electricity Act, 2003 as also the provisions in relevant rate schedule of current as well as previous tariff orders issued by UERC have also been perused. The following case laws have already been referred by the undersigned in the similar matters which are also applicable in the instant case. Hon'ble High Court of Bombay in WP (L) 1688/2015 judgment dated 13.08.2015, case law of Hon'ble High court of Uttarakhand WP no. 1069 of 2021 judgment dated 10.06.2021 and case law of Hon'ble Supreme Court case no. 3615 of 1996 judgment dated 21.06.2005.

8. In brief the petitioner's case is that the entire exercise of check meter study conducted by the respondents is merely a troubleshooting exercise and cannot be treated as a genuine check meter study due to noncompliance and violation of relevant regulations, statutory provisions as referred in the petition, rejoinder and written argument. They have claimed that no assessment or supplementary bill can be raised if check meter study is not conducted in accordance with the regulations and legal provisions and the petitioner has therefore claimed that the check meter study conducted by respondents, its results declaring the main meter running slow by 16.47% in KVAh and supplementary demand amounting to Rs. 54,68,806.00 raised and intimated through respondent's letter no. 3471 dated 23.08.2022. Forum's order



dated 30.11.2022 in their complaint no. 90/2022 before them dismissing their complaint are liable to be quashed and set aside for not being consistent with the relevant regulations and statutory provisions and thus are arbitrary, illegal, unjustified and unwarranted and the petitioner has thus requested that the demand raised by the respondents as well as Forum's order may be quashed and set aside.

9. On the other hand the respondent's case is that as a perusal of MRI report of meter no. X0780492 (Secure) in the month of May 2022 it was observed that current in Y phase is being recorded approximately half of the current in R&B phases, they found that this abnormality have occurred on 20.05.2021. Therefore a check meter study was conducted by installing a check meter no. Q0483039 on 31.05.2022 vide sealing certificate no. 09/53 which was finalized on 29.06.2022 vide sealing certificate no. 07/60. In this study the main meter installed at the premises of the petitioner was found running slow by 16.47% in KVAh and 18.17% in KWh, although the current on Y phase was appearing low w.e.f. 20.05.2021 and continued so till 29.06.2022, the date when check meter was finalized, where after the current in Y phase also became normal after replacement of Y phase CT. The supplementary demand amounting to Rs. 54,68,806.00 was raised through letter dated 23.08.2022 for a period of 12 months from 29.06.2021 to 29.06.2022 in accordance with UERC regulations, 2020. As such the demand raised is genuine. They have claimed that the check meter study and assessment on the basis of check meter results have been done as per provisions in UERC regulations, 2020. The respondent has also claimed that monthly bills are being issued on the basis of MRI and therefore the respondent's have claimed that actions have been taken in accordance with regulations and the demand raised is genuine and is payable by the petitioner.
10. Before arriving at a decision in the case, it will be necessary and expedient to see the following relevant UERC regulations, provisions of Electricity Act, 2003 and tariff provisions, which are applicable in the case and to see whether such regulations and statutory provisions have duly been complied with in conducting check meter study and raising supplementary bill on the basis of such study.
 - i) UERC (The Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020 (hereinafter referred to as UERC regulations 2020)

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a) 5.1.1 (6) "It shall be the responsibility of Licensee to maintain the meter and keep it in working order at all times."

b) 5.1.3 Testing of meters

"(1) 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.

(2) All the meter test labs shall have CCTV surveillance system.

(3) The Licensee shall conduct periodical inspection/testing and calibration of the meters, in the following manner:

Periodicity of meter tests – The Licensee shall observe following time schedule for regular meter testing as per Table 5.1 below:

Table 5.1 Periodicity of Meter Tests

Category	Interval of Testing
Bulk Supply Metes (HT)	1 Year
LT meters	5 Years

CT ratio and accuracy of CT/PT, wherever applicable, shall also be tested along with meter.

Provided that periodicity of testing of meters installed at PTW connections shall be at least once in 2 years."

c) 5.1.3 (5)

"The Licensee shall, within 30 days of receiving the complaint, carry out testing of meter as per the procedure specified in these regulations and shall furnish duly authenticated test results to the consumer. The consumer shall be informed of proposed date and time of testing at least 2 days in advance.

Provided that where the Licensee is installing a test/check meter alongwith meter under test for verification of energy consumption, in such

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cases the Licensee shall be required to provide a copy of valid test report of such test/check meter to the consumer before initiating the testing."

ii) Electricity Act, 2003, Section 163 Power of Licensee (1)

"Power of Licensee to enter premises and to remove fittings or other apparatus of Licensee

(1) A licensee or any person duly authorised by a licence may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or upon which the electric supply- lines or other works have been lawfully placed by him for the purpose of-

(a) inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee; or

(b) ascertaining the amount of electricity supplied or the electrical quantity contained in the supply; or

(c) removing where a supply of electricity is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, meters, fittings, works or apparatus belonging to the licensee."

iii) UERC Tariff Orders RTS 5: LT and HT Industry 3 ii) Time of Day tariff:

"ToD Meters shall be read by Meter Reading Instrument (MRI) only with complete dump with phasor diagram, Tamper Reports, full load survey reports etc. shall be downloaded for the purpose of complete analysis and bills shall be raised as per ToD rate of charge."

11. The position of compliance of the aforesaid regulations and statutory provisions in the instant case vis a vis the provisions provided therein is discussed hereunder.

A) Sub regulation 5.1.3 (5) provides for advance notice at least for 2 days for carrying out testing of the meter. In the instant case the respondent gave a notice to the petitioner showing their intention for installation of a check meter on 30.05.2022 vide their letter no. 2082 dated 25.05.2022, but the



check meter was installed on 31.05.2022 vide sealing certificate no. 09/53 by a team of 4 UPCL officers consisting of Executive Engineer (Distribution), Executive Engineer (Test), SDO (Distribution) and AE (Test). This sealing certificate also carries signature of petitioner's representative. Thus it is seen that although advance notice was given but the meter was not installed on the prescribed date 30.05.2022 but was installed on another date 31.05.2022. There is no evidence available on file showing that the revised date for installation of check meter was intimated to the petitioner.

Section 163 of the Electricity Act, 2003 also provides for giving a notice to the consumer before entering the premises for the purposes as stipulated in the said section and as explained in the above para, this provision has not been complied with.

Proviso of the aforesaid regulation makes it mandatory for the Licensee to provide a copy of the valid test report of such test/check meter to the consumer before initiating the testing. There is no evidence available on file to show that this proviso has been complied with by providing a copy of valid test report of the check meter to the consumer before initiating testing. The petitioner has also denied having received any such test report. The respondent however under para 9 of the "heading para wise reply" of his written statement dated 29.12.2022 has claimed that electricity test lab of Roorkee is NABL accredited and UPCL has full authority to install the check meter to assess the consumption. The check metering system with meter no. Q0483039 which was installed in series with the existing metering system of the petitioner was duly tested by lab (NABL accredited). He has further submitted that the said meter was initially installed at 33 KV Raipur substation in 33 KV Raipur 1 line to check the performance of ABT meter on 13.04.2022 and it was received from the site on 24.05.2022. Accuracy of this meter is also checked with ABT meter and it has been observed that the meter is functioning well. The meter was tested in Electricity Test Lab which is NABL accredited. Further he has mentioned that NABL accreditation certificate of Electricity Test Lab is attached as annexure 10 and sealing of the meter Qo483039 dated 13.04.2022 and 24.05.2022 is attached herewith as annexure 11 and 12. No test certificate of the proposed check meter

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(Q0483039) is however available on the case file. Perusal of annexure 10 shows that it is a certificate of calibration of a test lab at roorkee by some private company YMPL (Yadav Measurements Pvt. Ltd.) who has issued this calibration certificate. It is thus not a accreditation certificate of the said lab by NABL as claimed by the respondent, Executive Engineer. It is pertinent to mention here that UPCL headquarter in their latest communication letter no. 3121 dated 13.12.2022 issued by Chief Engineer Commercial, UPCL, Dehradun to the Secretary, UERC, Dehradun wherein latest status of accreditation of UPCL laboratories has been intimated according to which no lab of UPCL has yet been accriditated by NABL as yet, however, the matter of getting a test lab at Dehradun accriditated by NABL is under progress and accreditation of one lab at Haldwani is also under process. This letter has been taken on record in the case file and contentions of respondent are not substantiated, in fact appears to be incorrect in view of the said letter.

This shows that respondent's claim that Test lab at Roorkee is NABL accredited does not prove to be correct and thus proves to be a false and misleading statement. Further as regards sealing of meter Q0483039 dated 13.04.2022 and 24.05.2022 as per annexure 11 and 12 mentioned in the aforesaid para of written statement, these are the sealing certificates for installation and finalization of the check meter study conducted at Raipur substation wherein the aforesaid meter no. Q0483039 was installed as a check meter and which after removal from the said site was installed as a check meter at the petitioner's premises, without testing this meter in a accredited lab, vide sealing certificate dated 31.05.2022. These sealing certificates are not the test certificates of the meter installed as check meter in the instant case and therefore do not fulfill the requirement of the proviso of aforesaid sub regulation and since no such test certificate of the said meter is available, it was neither provided to the petitioner before initiating installation of check meter nor there is any proof of veracity of the check meter and thus veracity of the check meter is not established, due to noncompliance of the regulation.

- B) Sub regulation 5.1.3: Testing of meters provides the meter test lab of the licensee shall be NABL accredited or it shall utilize the services of other accredited test lab till its lab get NABL accredited.



As is evident from the clarification given under the explanation under 5.1.3 (5), no UPCL lab has yet been accredited by NABL and as no test certificate of the meter installed as check meter has been adduced by the respondent it appears that services of any accredited lab has also not been utilized for testing of meter, as no test certificate from any such lab has been placed on record. It will be worthwhile to mention here that this matter has been taken up with UPCL for a long time and repeatedly by undersigned as well as by UERC, but no UPCL lab has yet been got accredited by NABL, although as informed by UPCL authorities accreditation of Dehradun and Haldwani labs are under process.


Sub regulation 5.1.3 (3) provides for periodical inspection/testing and calibration of the meter of bulk supply HT consumer once in a year along with testing of CT ratio and accuracy of CT/PT wherever applicable. There is no evidence available on file to show that periodical testing of the metering equipment of the petitioner has been carried out in accordance with above sub regulation. Petitioner is a consumer with 1200 KVA contracted load, this belongs to H.T. category. It is also evident from the respondent's submission under para 2 of the written statement that in the month of May 2022 during the observation of MRI meter no. X0780492 (Secure) it was observed that current in Y phase is being recorded approximately half of the current in respect to R&B phases and this abnormality have occurred on 20.05.2021. This suggests that no periodical testing was carried out between the period 20.05.2021 to May 2022 which is a violation of the aforesaid sub regulation. Now if periodical testing would have been carried out, and tariff provision under RTS 5 rate schedule para 3 (ii) Time of Day tariff as mentioned above have also been complied with and because if these provisions would have been complied with, the phenomenon of lesser current to meter through Y phase CT would have been detected at a very earlier stage of issuing the bill for the month of May 2021 and the problem would have been resolved at its very early stage without creating any complication. This also shows that the respondents were not serious towards their duty for keeping the meter in working order at all times as mandated under sub regulation 5.1.1 (6) of UERC regulation, 2020.

12. It is pertinent to bring on record that the check meter study was started by a team of 4 UPCL officers consisting of Executive Engineer (Distribution), Executive Engineer (Test), SDO (Distribution) and AE (Test) by installation of check meter vide sealing certificate no. 09/53 dated 31.05.2022 but the study was completed and finalized by only one officer of the aforesaid team viz. SDO (Distribution) vide sealing certificate no. 07/60 wherein as recorded on the sealing certificate "check meter final. Meter found 18.7% slow in KWh while 16.47% slow in KVAh, CT of Y phase is replaced by new one because Y phase CT has been saturated." Supplementary demand amounting to Rs. 54,68,806.00 has been raised on the basis of the results mentioned in this sealing certificate declaring the main meter slow by 18.75% in KWh and 16.47% in KVAh.
13. The meter testing team has been referred under sub regulation 5.1.3 (6) of UERC regulation, 2020 and in the instant case the meter testing team is consisted of 4 officers viz EE (Dist), EE (Test), SDO (Dist) and AE (Meter) and the entire study right from installation of check meter and its finalization had to be done by the said team, but in the instant case the study was finalized/completed only by one officer of the team i.e. SDO (Dist), thus the entire check meter study has been vitiated (destroyed the legal validity of the check meter study) and thus no reliance can be placed on such a vitiated study and consequently its results cannot be legally accepted and accordingly no supplementary demand could have been raised on the basis of such vitiated check meter study.
14. The case laws of Hon'ble Supreme Court, Hon'ble High Court of Bombay and Hon'ble High Court of Uttarakhand also directs that no supplementary bill or demand can be raised if relevant regulations, act provisions and other statutory provisions have not been complied with.
15. In view of above deliberations, clarifications, explanations and non compliance of relevant regulations by the respondents and also keeping in view the orders passed by the undersigned in past in a number of similar petitions, the same ratio decidendi shall apply in the instant case also, which is also supported in the aforesaid case laws. Hence the instant appeal is allowed, Order of Forum dated 30.11.2022 passed in complaint no. 90/2022 is hereby set aside. The impugned supplementary demand amounting to Rs. 54,68,806.00 raised through letter dated 23.08.2022 based on the



results of vitiated check meter study is hereby quashed and set aside. The respondents are directed to withdraw the aforesaid demand. Further respondents are directed to refund 50% of the aforesaid impugned demand, admittedly deposited by the petitioner with the respondent as a condition of the stay order, by way of adjustment in the future bill(s). Interim stay order stands vacated as it is no more required because the petition has been allowed.

Dated: 03.03.2023


(Subhash Kumar)
Ombudsman