

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Vardhman Stone Crusher
Laxar Road, Bhogpur,
Prop. Shri Ankur Jain
S/o Late Shri Naresh Chand Jain,
293, Govindpuri, Haridwar
Uttarakhand

Vs

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

Representation No. 08/2024

Order

Dated: 08.04.2024

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone, (hereinafter referred to as Forum) order dated 08.01.2024 in complaint no. 117/2023 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Laxar, Distt. Haridwar, Uttarakhand (hereinafter referred to as respondent), Shri Ankur Jain, Prop. M/s Vardhman Stone Crusher, Laxar Road, Bhogpur, Distt. Haridwar (petitioner) has preferred this appeal for setting aside Forum's order and for allowing reliefs as claimed.

2. The petitioner has averred in the instant petition dated 12.02.2024 as follows:-

Brief facts of the case:

- i. That petitioner firm having a electricity connection no. 29992230608000082 (as per bill the correct connection no. is LK0K000001218) in Laxar road, Haridwar.
- ii. He has been making timely and regularly payments of all the bills received from respondent.
- iii. In the month of June 2023, department raised illegal demand of Rs. 7,44,708.00 including 5,28,021.00 as the arrears and Rs. 2,16,687.00 as the current bill



amount for the month of July 2023. Aggrieved by the same he preferred a complaint before the Forum.

- iv. The respondent submitted a reply to the Forum on his application vide letter dated 04.09.2023.
- v. The respondent further filed certain documents before the Forum vide letter dated 07.11.2023.
- vi. Arguments were held before the Forum, both parties submitted their arguments.
- vii. After hearing the matter the Forum passed 2 separate judgments wherein Member Judicial vide its order dated 15.01.2024 allowed the complaint and set aside the entire demand.
- viii. The other 2 members, Member Technical and Consumer partly allowed the complaint vide order dated 08.01.2024, however also confirmed the illegal and unjustified demand, act of the respondent causing loss the petitioner.

Hence being aggrieved by impugned judgment dated 08.01.2024 the present appeal is preferred inter alia on the following grounds:

Ground of appeal: because

- a. Member Technical and Consumer erred in considering this fact that the whole demand raised by the department was illegal and arbitrary.
- b. The aforesaid 2 members failed to consider this fact that the entire bill raised by the department for Rs. 7,44,708.00 was liable to be quashed in totto.
- c. Member Technical and Consumer erred in considering the fact that the check meter fixed by the department in his premises on the basis of which they claimed the said unreasonable demand, was not fixed in accordance with provisions of Electricity Supply Code 2020 and hence the readings given by the said check meter were not creditable and could not be relied upon.
- d. The observation made by Member Technical and Consumer in regard to the meter reading for the month of February 2022, October 2022 and January 2023 are absurd, vague and without any basis.
- e. Member Technical and Consumer without any rhyme and reason directed the respondent department to issue fresh bill for the month of February

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2022, October 2022 and January 2023 on the basis that the meter was running slow by 46.66% for the said months.

- f. Member Technical and Consumer erred in not considering the law laid down by Ombudsman in the matter of Sardar Harjeet Singh vs Executive Engineer in representation no. 25/2023.
- g. Member Technical and Consumer failed to consider the fact that the department claimed that they have sent the check meter installed in the premises of the petitioner to Jaipur for inspection, however in regard to the same no information was ever provided by the department, either to the petitioner or to the Forum entirely overlooking the fact that primarily under law they were mandatorily required to intimate the same to the petitioner and secondly that the Forum repeatedly called upon the department to provide the inspection report, however they deliberately ignored the same.
- h. Member Technical and Consumer failed to consider the fact that clause 5.1.3 (5) of Supply Code, 2020 specifically provides provisions wherein the department on the request of the petitioner was mandatorily required to get the installed meter inspected within 30 days from the date of submission of request by the petitioner and was also required to provide copy of certificate of inspection issued in respect thereof further the department was also under obligation to intimate about the same to the petitioner 2 days prior however the department failed in all these areas.
- i. Member Technical and Consumer failed to consider the fact in spite of the specific directions made by the Forum to submit detailed inspection report. The department failed to provide the same, which were considerable enough to draw an adverse inference against working of the department and also raised serious concern in regard to working of the department and credibility of the documents submitted by the department.
- j. Member Technical and Consumer erred to consider this fact that sealing report dated 24.12.2022 and 12.01.2023 in regard to the meter installation on the premises did not bear signatures of the petitioner and also neither the same bear any endorsement that the petitioner denied to sign the same, however the department was required to get the same signed by petitioner

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as per Supply Code, which proved the fact that the said report was false and prepared as an afterthought and could not be relied upon.

- k. Member Technical and Consumer failed to consider the fact that vide letter no. 3623 dated 02.12.2023 it was assailed by the department that the check meter installed on the premises of the petitioner was not fixed on the ground of any apprehension but was fixed on the basis of technical ground, however no such technical ground was recorded in any proceedings.
- l. Member Technical and Consumer ignored this fact that it was assailed by the department that the meter sent for inspection was not sealed as there was no requirement to pack and seal the meter for sending the same in spite, contrary to the fact that the Supply Code, 2020 specifically provides that before sending meter for inspection it is mandatory requirement to seal the same as there exists serious apprehension of tampering the meter during the period of it being removed and received for inspection by the concerned laboratory.
- m. Member Technical and Consumer failed to consider this fact that the check meter fixed was not verified from NABL lab, which is mandatory requirement and hence in absence of the check meter not being a verified meter from NABL lab its reading could not be appreciated and considered.
- n. Member Technical and Consumer failed to overlook this fact that electricity department vide its written arguments dated 21.12.2023 filed before District Forum has admitted this fact that the previous meter fixed in the premises of the petitioner was giving correct reading.
- o. Even otherwise without prejudice to any right of the petitioner herein it is admitted that the Member Technical and Consumer failed to consider this fact that as per report of the check meter it was running slow by 33.33% only, whereas the said members arbitrarily directed department to issue fresh bill considering slow by 46.66%.
- p. Member Technical and Consumer failed to appreciate this fact that in the bill under dispute amount of Rs. 2,16,687.00 was against the bill for the month of July 2023, the said figure was ascertained by the department on the basis of average figure from previous month's bill cycle. It is pertinent to mention here that in the month of June the Electricity consumption in the petitioner's unit was low, the said fact could have also been verified on

a comparative study of the bill cycle of last instances in the month of June, the said calculation of Rs. 2,16,687.00 was also wrong and hypothetical.

- q. The above mentioned members have not considered the evidence filed by him in the complaint. The aforesaid members have also not considered the provisions of Electricity Act, 2003.
- r. The aforesaid members have wrongly interpreted the material on record and the pleadings of the parties.
- s. The Member Judicial vide its order dated 15.01.2024 correctly held that the procedure followed by the department was not proper and adequate and correctly set aside the bill under dispute.
- t. The order passed by Member Technical and Consumer is not a reasoned order.
- u. Order dated 08.01.2024 passed by Member Technical and Consumer is against the facts, law, merits and not tenable in law.
- v. The judgment passed by the aforesaid 2 members is erroneous and is based on appreciation of incorrect facts.
- w. The aforesaid 2 members have not followed the principles of natural justice while passing the impugned order.
- x. The aforesaid 2 members have passed the judgment arbitrary, illegally and capriciously.
- y. The aforesaid 2 members passed the impugned order on the basis of surmises and conjectures.
- z. The respondent had failed to discharge the burden of proof placed upon it.
- aa. The respondent has concealed the material facts.
- bb. Order of Member Technical and Consumer is no est in the eyes of law.
- cc. Neither Member Technical and Consumer, neither the Member Judicial passed any amount against damages and cost of litigation.

In view of his above averments the petitioner has prayed that his appeal may kindly be allowed and order dated 08.01.2024 passed by the majority members in complaint no. 117/2023 be set aside and his petition filed be allowed for all reliefs claimed and any other relief in the nature of compensation or damages as deems fit and proper under the above circumstances, be granted. He has substantiated his averments by submission of documents in the form of annexure as mentioned under appropriate

d.

para of the appeal. He has also submitted a notarized affidavit under oath with the appeal. The petitioner has also submitted an application for granting stay for operation and effect of the impugned order dated 08.01.2024. (Interim stay was granted vide order dated 13.02.2024, which was subsequently extended till next date of hearing 23.02.2024 vide order dated 20.02.2024. The interim stay was however vacated vide order dated 07.03.2024.)

3. The Forum passed order dated 08.01.2024 in complaint no. 117/2023 by a majority decision by member technical and consumer. However a dissenting order has been passed in this complaint by member judicial on 15.01.2024. In the majority order the Forum has directed that a revised assessment for the month of February 2022, October 2022 and January 2023 be raised for slow running of meter by 46.66% and the assessment raised by the opposite party amounting to Rs. 5,28,021.00 be cancelled. The revised bill as per direction in this order be worked out by taking consumption in NH/EP/OP/MP on proportionate basis of the consumption in these segments in the past bill in the corresponding period. The member judicial however passed a dissenting order dated 15.01.2024 wherein the member judicial allowed the complaint by setting aside the assessment amount of Rs. 5,24,021.00 included in the total amount of Rs. 7,44,708.00 issued for the month of June 2023 and the assessment and check meter study has been held null and void for not following relevant UERC Supply Code Regulation, 2020.
4. The respondent Executive Engineer has submitted his written statement along with a notarized affidavit vide his letter no. 546 dated 26.02.2024 wherein he has submitted his para wise replies as given hereunder :- That :-
 - i. Contents of para i and ii of the appeal are matter of record and hence need no reply.
 - ii. Contents of para iii of the appeal so far pertains to record needs no reply however it is wrong to say that department has raised illegal demand of Rs. 7,44,708.00, the facts are more fully explained in additional pleas.
 - iii. Para iv, v, vi, vii & viii are matter of record and hence need no reply. However, it is submitted the order dated 08.01.2024 is totally wrong and against provisions of the regulations. The Forum has against the law devised a mechanism for ascertaining slowness of the meter which cannot be sustained in

d.

law. The Forum has given a benefit of reducing the assessment from Rs. 5,28,021.00 to Rs. 1,77,512.00. The appellant has not even deposited the reduced amount. The facts are more fully explained in additional pleas.

There are no grounds 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 submitted that records of the proceedings clearly demonstrated the consumption done by the appellant however; the same escaped billing due to technical issues. Facts are more fully explained in additional pleas.

The appellant wants to avoid his liability of payments by taking purely procedural grounds about giving notice and signing of the sealing reports etc which does not actually affect the energy consumed by the appellant.

ADDITIONAL PLEAS

That:-

- i. In the month of November 2022 abnormality was observed in the MRI report and therefore check meter was installed at petitioner premises on 24.12.2022 in the presence of his representative.
- ii. The check meter was finalized on 12.01.2023 as the Y-Phase CT was cracked and opened and therefore not drawing any current. It was replaced with new CT. however the old meter remained at his premises as there was no fault in the meter and the check meter was removed.
- iii. Copy of the sealing certificate was provided to the consumer's representative who did not sign the sealing report and said that only the owner would sign and owner would come to the office for the same.
- iv. The meter was 32.55% (in KVAh slow) and then as per MRI analysis assessment of Rs. 5,28,021.00 was raised for the period 01.01.2022 to 12.01.2023.
- v. It is submitted that without even the support of MRI the slowness of meter was around 33.33% can even otherwise be as ascertained once it was found that the CT was correct and open as per electricity law. The less energy recorded would be 1/3 of the energy if in any of the phase missing. Therefore in the presence of circumstances it was proved beyond doubt that the appellant was billed for the consumption of energy which was 32.55% less than the actual consumption.

d.

- vi. The appellant did not deposit the assessment raised and filed a complaint dated 23.08.2023 before the Forum the parties presented their case and filed necessary documents.
- vii. The respondent clearly established before the Forum the amount of assessment raised was not only proved but also on the basis of provision for raising assessment for the slow meter. However, Forum passed totally an illegal order devising its own mechanism against regulations. For raising assessment in case of slowness of meter.
- viii. The respondent and the appellant himself do not agree with the correctness of the impugned order and therefore in any case order of the Forum needs to be set aside.
- ix. The consumption of the appellant as assessed is correct and the appellant should be directed to pay an amount of Rs. 5,28,021.00 to the respondent. It is submitted that the setting aside assessment on purely technical and procedural issue actually confers benefit upon such consumer which actually is not only a loss to the corporation but also burdens to the consumers of the state.
- x. The appellant has tried to rely upon certain order of the Hon'ble Ombudsman and thereby clearly showing that he has no justification against the assessment raised. Other than relying upon certain order which were passed in different circumstances and for different considerations. It is relevant to point out here that the Hon'ble Ombudsman in certain other cases has even directed for recreating the site conditions in order to create a balance where in due to certain lapses on part of respondent do not confer benefit upon the consumer which is the most just manner doing justice between the parties. In the present case there is no difficulty for respondent for creating the site condition and establishing the correctness of the assessment raised.
- xi. It is also stated that appellant has suppressed material facts before the Forum and also before Hon'ble Ombudsman that he has already filed a original suit no. 288 of 2023 before Hon'ble Civil Judge Senior Division, Haridwar.
- xii. It is also to state that the appellant has submitted false affidavit dated 23.02.2024 before Hon'ble Ombudsman. In that affidavit appellant has mentioned incorrectly that no suit before Civil Court or any authority is pending with regard to the bill raised for Rs. 7,44,708.00 in the month of June 2023 the respondent has sought time to file rebuttal against the same. Therefore

d.

the facts in this regard are more fully be explained in the rebuttal to the said affidavit.

- xiii. It is most humbly submitted that regulation 3.1 (3) of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of Grievance of Consumer) Regulation 2019 clearly states that forum shall not entertain grievance if the same is pending before any Court or Forum and appellant has filed a case bearing no. Original suit no. 288 of 2023 which is pending before Hon'ble Civil Judge, Senior Division Haridwar.
 - xiv. In light of above facts the present appeal is not maintainable and is liable to be dismissed even otherwise the impugned order is not only incorrect but is also not acceptable to any of the parties. Therefore in any case order dated 08.01.2024 is liable to be set aside and the assessment raised by the respondent be upheld as per the regulations. If the Hon'ble Ombudsman find any procedural lapses then it is submitted in such case the correctness of the assessment be ensured by recreating the site conditions rather than giving an outright benefit to the appellant. The respondent has corroborated his submission with documentary evidences as referred in the written statement.
5. The petitioner has submitted a rejoinder dated 22.03.2024 along with an affidavit duly notarized. In the beginning he has averred that averments made in the alleged written statement are wrong baseless, malafide and hence specifically denied. The petitioner has submitted that the respondent by virtue of alleged written statement have narrated certain additional facts which were not part of his pleadings before the Forum and therefore cannot be agitated at this stage. He has alleged that the written statement was not given to him by the respondent, however it was transpired on the date of hearing that a written statement is available on record, which is being considered by the Ombudsman and thereafter copy of the same was received. He has also challenged reply by the respondent with additional pleas as according to him there is no such provision in law and he has therefore challenged the admissibility of the written statement, however para wise reply to the alleged non maintainable written statement has been submitted, as follows:
6. It is stated that para i and ii of the written statement do not call for any reply. True facts have been stated in para i and ii of his petition which are being reiterated and reaffirmed. In reply to para iii of written statement, contents are denied to the fact that

d.

alleged demand of Rs. 7,44,708.00 was not illegal. True facts have been mentioned under para iii of the petition and the same are being reiterated and reaffirmed. Contents of para iv to vii of written statement do not call for any reply. Further contents of para viii of written statement are wrong and denied. Contents of para i to iii and v of the written statement under the heading additional pleas are wrong and denied. Further contents of para v to xiv of the written statement under the heading additional pleas all are wrong and denied. Rest of the contents of his rejoinder are merely reiteration or repetition of what he has already averred in his petition. He has requested that his appeal is therefore liable to be allowed.

7. Hearing in the case was held on scheduled date 28.03.2024. The petitioner appeared himself along with his advocate. Respondents were represented by their advocate and senior law officer of UPCL as well as the respondent Executive Engineer himself. Both parties argued their respective case verbally. The petitioner apart from verbal arguments also submitted a written argument dated 28.03.2024, which was taken on record. The petitioner also committed that he will withdraw the Civil Suit under reference and shall submit Hon'ble Civil Court's order allowing withdrawal of the case along with notarized affidavit to that effect. Arguments were concluded and 08.04.2024 was fixed for pronouncement of order in the case.
8. Arguments from both parties were heard, documents available on file were perused. After perusal of records/documents available on file, it is borne out that the petitioner is a consumer of UPCL with 220 KVA load for running stone crusher. The respondents after observing irregularity in MRI, installed a check meter at petitioner's premises on 24.12.2022 which was finalized on 12.01.2023 vide sealing certificates no. 31/28 and 39/28 respectively. Both these sealing certificates do not carry signatures of the consumer or his representative. Both these sealing certificates are signed by AE (T) and JE (T). The sealing certificate dated 24.12.2022 also has signatures of SDO (D). As per this check meter study the existing meter was found running slow by 32.20% in KWH and 32.55% in KVAH and assessment for slow running of meter as per the check meter study amounting to Rs. 5,28,021.00 was raised through an entry in the bill for the month of July 2023 for the period 30.06.2023 to 31.07.2023 issued on 11.08.2023. The gross amount of this bill including current bill and the aforesaid assessment is Rs. 7,51,611.00. The petitioner has preferred a complaint dated 07.10.2023 before Forum where it was registered as

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complaint no. 117/2023. The complaint was disposed off by a majority decision of the Forum by the quorum consisting of Member Technical and Consumer vide order dated 08.01.2024 wherein the complaint was allowed and the opposite party was directed that cancelling the assessment Rs. 5,28,021.00 a revised assessment bill for the month of February 2022, October 2022 and January 2023, in which months, the recorded consumption in the meter being 46.66% less be raised taking consumption in slots NH/EP/OP/MP in proportion to the consumption recorded in these slots in the past. Being an order of the majority quorum this order shall be considered as Forum order as mandated in relevant regulations, however the Member Judicial passed a dissenting order on 15.01.2024 wherein the member judicial passed order as “परिवादी द्वारा प्रस्तुत यह परिवाद स्वीकार किया जाता है। विपक्षी विभाग को द्वारा प्रेषित बिल सं० 29992230608000082 माह जून 2023 में प्रेषित मु० 7,44,708/- रुपये का बिल जिसमें अंतिम माह का एरियर के रूप में 5,28,021/- रुपये दर्शित किये गये हैं, को निरस्त किया जाता है तथा चैक मीटर स्थापित करने की प्रक्रिया विद्युत अधिनियम तथा विद्युत सप्लाई कोड 2020 के प्राधानों के अन्तर्गत न होने के कारण अवैध एवं शून्य घोषित की जाती है।” In the aforesaid order the Member Judicial has quashed and set aside the assessment of Rs. 5,28,021.00 raised by the respondent on the grounds that the procedure for installation of check meter was not in accordance with provisions of supply code regulation 2020 and has therefore held it illegal and declared it as null and void.

9. The petitioner in the instant appeal has alleged a number of irregularities in passing order dated 08.01.2024 by the majority members for revising the assessment only for the month of February 2022, October 2022 and January 2023 on the basis of meter running slow by 46.66% on a methodology of their own which is in consistent with the relevant regulations and has therefore prayed that majority order dated 08.01.2024 passed by Member Technical and Member Consumer in his complaint 117/2023 be set aside and appeal be allowed. The petitioner has also alleged that Member Technical and Member Consumer have failed to consider the fact that the installed check meter was not verified from NABL lab which is mandatory and therefore in the absence of the check meter not being verified from NABL its reading would not be appreciated and considered.
10. The respondents in para 8 under the heading additional pleas of their written statement dated 26.02.2024 submitted before this Ombudsman has also stated “*That the respondent and petitioner himself do not agree with the correctness of the*

impugned order and therefore in any case the order of Forum needs to be set aside. It is therefore admitted by both the parties that majority order of the Forum dated 08.01.2024 needs to be set aside", as it is not consistent with the regulations but the majority members have devised their own mechanism for ascertaining the slowness of the meter which cannot be sustained in law, however the respondents have issued a revised assessment bill for Rs. 1,77,512.00 in compliance to Forum order dated 08.01.2024 instead of earlier assessment of Rs. 5,28,021.00 raised on the basis of check meter study. The respondents have also stated under para 11 of additional pleas in their written statement as *"That it is also to state that appellant has suppressed material facts before the Learned CGRF and also before the Hon'ble Ombudsman that he has already filed a original suit no. 288 of 2023 before Hon'ble Civil Judge Sr. Division, Haridwar"* Further referring to sub regulation 3.1.3 of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of Grievance of Consumer) Regulations, 2019 which clearly states that Forum shall not entertain grievance if the same is pending before any court of law and petitioner has filed a case bearing no. original suit no. 288 of 2023 pending before Hon'ble Civil Judge Sr. Division Haridwar. The respondents have stated that in the light of these facts the present appeal is not maintainable and is liable to be dismissed even otherwise the impugned order is incorrect but is also not acceptable to any of the parties. The respondents have therefore submitted that the order dated 08.01.2024 is liable to be set aside and the assessment raised by the respondent be upheld as it is as per regulations.

11. The respondent has submitted a reply with affidavit dated 04.03.2024 to petitioner's submissions vide letter dated 23.02.2023, wherein inter alia the respondent have submitted that notice under section 3 dated 01.11.2023 was issued including the amount challenged by petitioner before the Forum and before Hon'ble Ombudsman. Details of the bills have also been given. The respondent has further submitted that section 3 notice dated 01.11.2023 was issued for a sum of Rs. 8,58,125.00, when amount was not fully deposited by the petitioner and also there was no stay granted by the Forum. In view of their submissions the respondents have pleaded that the present appeal is not maintainable and is liable to be rejected and the stay order granted and extended till next date of hearing is liable to be vacated (The stay was vacated vide order dated 07.03.2024).

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12. The petitioner in his written arguments dated 28.03.2024 has inter alia argued on pending Civil Suit no. 288 of 2023 preferred before Civil Judge, Sr. Division Judge Haridwar. The petitioner has submitted that cause of action to the Civil Suit is separate to the present dispute and also the complaint in pursuance to which the present appeal is pending was filed prior to the said suit and hence existence of the said suit does not hamper the present proceedings. The petitioner submitted that the Civil Suit was filed as has been legally advised to him and also ensures and undertakes to withdraw the same forthwith if the same is found to be in contravention to the provisions of law. Further the petitioner stated that if going by the assertions of the respondent the said suit is not maintainable, the respondent was free to agitate the said fact before the concerned Civil Court, which they did not do and contrarily are pressing upon the existence of the said suit, before Ombudsman, which is not sustainable in the eyes of law.
13. After examination of records /documents as also consulting relevant regulations and hearing arguments from both parties it is borne out that the petitioner's case is that as the check meter study conducted by the respondents from 24.12.2022 to 12.01.2023 without prior intimation to them as also without submission of results of the proposed check meter from NABL accredited lab and without giving any opportunity to the petitioner for getting the meter checked by independent authority and as the check meter was installed and finalized in their absence which is evident from the fact that the sealing certificates for installation and finalization of check meter do not have their signatures, therefore the assessment amounting to Rs. 5,28,021.00 raised by them through bill for the month of July 2023 on account of the existing meter found running slow by 33.55% in KVAH as per the check meter study, is arbitrary and illegal and is liable to be quashed and they have prayed that the same assessment should be waived off. Further the majority decision dated 08.01.2024 passed by Member Technical and Consumer needs to be set aside. On the other hand the respondent's case is that the check meter study was conducted after observing irregularity in the MRI, which indicated that current in Y phase CT was missing and therefore the consumer was billed for lesser energy than what he actually consumed and the extent of which was ascertained as 32.55% in KVAH, the petitioner is liable to pay the assessment amount Rs. 5,28,021.00 which was demanded through bill for the month of July 2023.

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14. The respondent claimed that the complaint before the Forum and present appeal before the Ombudsman is not maintainable as per provisions under sub regulation 3.1 (3) of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of Grievance of Consumer) Regulation, 2019 as a Civil Suit no. 288 of 2023 preferred before Civil Judge, Sr. Division Judge Haridwar is pending and further the respondents have pleaded that although the majority decision of the Forum dated 08.01.2024 is liable to be quashed not being consistent with relevant regulations, the petitioner is liable to pay the assessment amount Rs. 5,28,021.00 raised for slow running of the meter by 33.55% in KVAH. They have also claimed that the check meter no. 8056085 was duly tested in YMPL's NABL accredited lab and test results dated 01.11.2023 have been adduced and they have prayed that while the present appeal be dismissed the petitioner be asked to deposit the assessment amount. **(Test results of the check meter dated 01.11.2023 adduced by the respondents during the proceedings of the case has no relevance as the results of the check meter from NABL accredited lab had to be given to the petitioner before initiation of the check meter study, as mandated in relevant regulations).**
15. Before passing order in the case it is necessary to clarify whether respondent's objection that the instant petition is not maintainable as per provisions of sub regulation 3.1 (3) of UERC regulation, 2019 referred above as the petitioner has filed Civil Suit no. 288 of 2023 before the Sr. Division Judge Haridwar. The said regulation is reproduced below: *"The Forum shall not entertain grievance if it pertains to the same subject matter for which any proceedings before any court, authority or any other Forum is pending or a decree, award or a final order has already been passed by any competent court, authority or Forum."* The above regulation provides that a complaint before the Forum shall not be entertained if it pertains to the same subject matter for which a case has been filed in some court. As is evident from the Civil Suit a copy of which have been adduced by the petitioner, the said suit has been filed against issue of notice under section 3 of Govt. Dues Recovery Act, 1958 for a sum of Rs. 8,58,125.00 which of course includes assessment amount of Rs. 5,28,021.00 also and for declaring section 3 notice dated 01.11.2023 as illegal and for not issuing recovery certificate against the said notice, but the assessment amounting to Rs. 5,28,021.00 raised by the respondent for slow running of

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meter has not been challenged in the Civil Suit, so filing the said Civil Suit is not violation of the aforesaid regulation 3.1 (3) of regulation 2019, moreover as committed by the petitioner during hearing, he has submitted duly notarized affidavit dated 05.04.2024 along with Hon'ble Civil Judge, Sr. Division, Haridwar's order dated 02.04.2024 vide which withdrawal of the original suit no. 288/2023 has been allowed and hence respondent's objection claiming that the present appeal is not maintainable is not sustainable and as such this appeal is maintainable before undersigned.

16. As no evidence has been adduced by the respondents to show that relevant UERC regulations under 2020 have been complied with in conducting the check meter study, its results holding existing meter running slow by 32.55% in KVAH and 32.20% in KWH and raising assessment amounting to Rs. 5,28,021.00 on the basis of such results are held null and void not been foundationed on relevant UERC regulations. The Hon'ble High Court of Uttarakhand judgment in Writ Petition no. 1069 of 2021 which is reproduced below has also held that as assessment itself was not foundationed on relevant regulations the court is not willing to exercise its supervisory jurisdiction under Article 227 of the Constitution of India.

"In view of the fact that there was a procedural flaw and the Consumer Grievance Redressal Cell, had simplicitor directed to refund the amount, which was held to be wrongfully determined by the petitioners, to be made payable towards the electrical consumption, which was imposed made on the respondent/consumer and which was imposed on account of the slow meter, which it had directed that they may proceed with but only after compliance of the provision of Clause 3.1.3 of the 2007 Regulations of UERC. Hence, as such I am of the view that since a very assessment itself was not foundationed as per the Regulation of 2007, this Court is not willing to exercise its supervisory jurisdiction under Article 227 of the Constitution of India."

The relevant Sub-Regulations 2007 have now been replaced by UERC Regulations 2020 and therefore the case law is attracted in the instant case."

17. In view of non compliance of aforesaid regulations and so adhering to 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 instant

petition as has been decided in a number of similar petitions in past and as also in view of Hon'ble Uttarakhand High Court's above mentioned case law, the check meter study, its results declaring existing meter slow by 32.55% in KVAH and assessment amounting to Rs. 5,28,021.00 raised through an entry in the bill for the month of July 2023 based on such study results are held null and void for non compliance of relevant UERC regulations and the assessment is therefore quashed and set aside. Majority order of the Forum dated 08.01.2024 is quashed and set aside, being inconsistent with relevant UERC regulations and based on hypothetical assumptions whereby the majority quorum devised their own methodology in passing order dated 08.01.2024. Petition is allowed.

Dated: 08.04.2024


(Subhash Kumar)
Ombudsman