

**THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

Smt. Surjeet Kaur Jolly  
W/o Shri Jagjeet Singh Jolly,  
27, Narendra Vihar,  
Dehradun, Uttarakhand

Vs

The Executive Engineer,  
Electricity Distribution Division (South),  
Uttarakhand Power Corporation Ltd.  
18, EC Road, Dehradun, Uttarakhand

Representation No. 03/2023

**Order**

Dated: 27.02.2023

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 17.12.2022 in his complaint no. 98/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (South), Uttarakhand Power Corporation Ltd., Dehradun (hereinafter referred to as respondent) Smt. Surjeet Kaur Jolly W/o Shri Jagjeet Singh Jolly, 27, Narendra Vihar, Dehradun has preferred this appeal for setting aside the impugned bill amounting to Rs. 6,01,213.00 added in the bill dated 08.08.2022 for the month of 07/2022 and as also setting aside Forum's aforesaid order.

2. The petitioner has averred that:

- i) The petitioner, Smt. Surjeet Kaur Jolly has preferred the instant appeal dated 17.01.2023 on being aggrieved with Forums' order dated 17.12.2022 in her complaint no. 98/2022 before the said Forum against respondent, Executive Engineer.
- ii) She has stated that complaint no. 98/2022 was instituted by her before the Forum against respondent for raising arbitrary, illegal, unjustified and unwarranted demand of Rs. 6,01,213.00 raised through electricity bill dated 08.08.2022 for the month of 07/2022.



- iii) She has stated that she is a consumer of the respondent with connection no. SD0K00003216 with 71KVA contracted load and has been regularly paying the consumption charges as per demands being raised by the respondents through monthly bills and there has been no default on her part since the date of release of connection.
- iv) The factual matrix leading to filing the present grievance are detailed below:
- a) The petitioner is a commercial unit engaged in the bakery business located at Patel Nagar, Dehradun.
  - b) Subsequent to alleged check meter study conducted by the respondents, they informed her telephonically about the assessment raised. She visited respondent's office and denied the assessment amount. Thereafter the respondent secretly added the amount of Rs. 6,01,213.00 in the bill dated 08.08.2022 without giving any breakup or details, which is in clear violation of fair business practice and against principles of natural justice and fair play.
  - c) On visiting respondent's office to enquire about the additional amount which was denied by her, the respondent did not provide any document or explanation for the impugned bill and refused to revise the bill and sent the bill for subsequent months without removing the arbitrary assessment.
  - d) Since the respondent did not do anything regarding her grievance, she was forced to file a complaint no. 98/2022 before the Forum which was dismissed by it, vide order dated 17.12.2022.
  - v) There was a total denial of principles of natural justice by Forum, as no show cause notice, reply, opportunity of hearing was given to her and Forum's order was not a speaking order.
  - vi) The ensuing dispute raised by her in the appeal is based on Electricity Act, 2003, Electricity Rules, 1956, CEA notification dated 17.03.2006 and UERC, regulations dated 29.10.2020 and it is being brought on record that the judicial discipline entails that the powers of the Distribution Licensee



(UPCL) are not unbridled but are circumscribed which mutatis mutandis are enshrined in Electricity Act, Rules and UERC regulations.

vii) The instant appeal is being preferred on being aggrieved against impugned Forum order dated 17.12.2022 on following amongst other grounds:

- A. The additional amount was added arbitrarily and secretly without any details or breakup which is against principles of natural justice and fair business practices.
- B. The impugned amount raised by UPCL has been issued in a most illegal obscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner in clear violation of the settled proposition of law resulting in manifest injustice and causing serious prejudice to the petitioner and hence the same deserves to be quashed and set aside.
- C. Action of UPCL is in clear violation of principles of natural justice, equity and good conscience in as much as no notice or opportunity or of being heard was given to her.
- D. It is well settled proposition of law that a person cannot be penalized or asked to pay undue amount by the state without the same actually having been fallen due and is not permissible in law.
- E. No tampering of the metering system was done by the petitioner and no allegation regarding the same has been leveled by the respondent.
- F. The petitioner never admitted and have denied that the metering system was running slow by 67.46%. The alleged check meter study was not more than a troubleshooting exercise on respondent's part and cannot be termed to be a check meter study as it has not been carried out as per provisions as mandated in UERC regulations, 2020.
- G. The Forum did not consider and peruse the following written and oral submissions made by petitioner and dismissed the complaint.
  - a)
    - i) That no advance notice of the test/check meter study was served to the petitioner.
    - ii) No test report for the test/check meter installed at the premises was served before initiation of the test.
    - iii) No duly authenticated test results were provided.



**(UERC regulation 5.1.3 (5) of Supply Code, Regulations, 2020 reproduced)**

No document was provided by the respondent for compliance of the above regulation, without perusing the categorical fact. The Forum has dismissed the complaint which is totally illegal and against the established law and regulations.

- b) The site testing has been carried out by the respondent without knowledge of the petitioner. The respondent without informing the petitioner of their intention, purpose and possible consequences of alleged check meter study had taken the signature of the petitioner in a mechanical manner. Further the testing lab of the respondent is not accredited by NABL also the respondent is not accredited by NABL for carrying out any site testing. (Provisions of sub regulation 5.1.3 (1) of UERC Supply, Code, regulations, 2020 reproduced.)

As per CEA regulation dated 17.03.2006 under clause 17.2 mandates **"That the meter testing reports must be issued by NABL accredited labs."**

- c) No reliance on the test results can be placed if such tests have not been carried out in a NABL accredited lab, more so because of the settled law as written by Hon'ble Bombay High Court judgment in writ petition no. 1688 of 2015 dated 13.08.2015.
- d) Test results were not admitted and it is submitted that no opportunity was given to the petitioner to get the meter tested by Electrical Inspector or CGRF as the respondent never provided the test reports and removed the meter under dispute and took it along with himself without properly sealing the meter and associated equipments. The principles of natural justice and fair play were not even followed as no opportunity of hearing was provided to petitioner before raising the impugned bill. **(Provisions of clause 5.1.3 (12) of UERC Supply Code, 2020 reproduced.)**
- e) The sealing certificates no. 05/006 dated 12.03.2022 and 05/006 dated 14.04.2022 nowhere mentions any abnormality or reasons which can be attributed to the alleged slow running of meter. Further the sealing certificate nowhere mentions that the meter was running slow by





67.46% as alleged or even running slow. Thus any finding against the petitioner is not admitted and denied in totality.)

- f) That it is well settled proposition of law that a person cannot be penalized or asked to pay undue amount by the state without the same actually having been fallen due and is not permissible in law.
  - g) The meter was working correctly and the petitioner have never used the assessed units that an error of 67.46% in the meter as alleged is denied in totality.
- viii) As per settled law WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand whereby the Hon'ble High Court has clarified that if clause 3.1.3 of UERC supply code, 2007 is not complied, no assessment/supplementary bill can be raised and if any such bill is raised it will be arbitrary and illegal. In the said judgment it is categorically stated that clause 3.1.3 (7) has to be fulfilled before raising any assessment. The said clause 3.1.3 of Supply Code, regulations, 2007 has since been replaced by clause 5.1.3 of UERC regulations, 2020.
- ix) Under the above circumstance the petitioner is left with no alternative but to approach the Hon'ble Ombudsman through this appeal for necessary relief and redressal. With respectful submission that the impugned assessment is liable to be quashed and set aside by the Hon'ble Ombudsman.

**Prayer:**

In the premise of above it is most humbly and respectfully prayed that the Hon'ble Ombudsman may graciously be pleased to:

- a) Call for records of the case for perusal.
- b) Quash and set aside the additional amount of Rs. 6,01,213.00 vide impugned bill dated 08.08.2022 for the month of 07/2022, being illegal arbitrary perverse, malafide and injustice.
- c) Quash and set aside order dated 17.12.2022 of the Forum in complaint no. 98/2022
- d) Issue necessary directions to UPCL, not to disconnect the electricity supply of petitioners' and not to take any other coercive action till the petition is decided.



e) Pass any other order or direction which the Hon'ble Ombudsman may deem fit and proper on the facts and circumstances and in the interest of justice,

3. After hearing parties and perusal of the records submitted before the Forum and relying upon the record submitted by the opposite party, the Forum was of the view that assessment of Rs. 6,01,213.00 raised by the opposite party for the period 15.04.2021 to 14.04.2022 for the existing meter running slow by 67.46% is logical and justified in accordance with UERC regulations and in the circumstances the complaint is liable to be dismissed and the Forum has accordingly dismissed the complaint vide their order dated 17.12.2022.

4. The respondent, Executive Engineer submitted his written statement vide letter no. 4803 dated 30.01.2023 in which he has submitted point wise reply as follows:

- i) No facts are required.
- ii) Assessment for a period of one year based on the check meter report by test division has been raised in accordance with sub regulation 5.1.3 (10) b of UERC regulation, 2020.
- iii) As a result of installation and finalization of check meter by test division the installed meter no. UPC 01915 was found recording less by 67.46% due to lesser current on R&B phases and based on the same, the units were assessed for a period of one year from 15.04.2021 to 14.04.2022 in accordance with UERC regulation, 2020 and a supplementary demand of Rs. 6,01,213.00 was added.
- iv)
  - A) No facts are required.
  - B) The demand has been added in consumer's bill as per assessment made on check meter report.
  - C) The detailed calculations and sealing certificates for installation and finalization of check meter were made available to the petitioner. As the supplementary demand has been raised based on the assessment of actual consumed units so it will not be possible to withdraw the demand as per departmental rules.





- D) No facts are required
- v) No facts are required.
- vi) Check meter was installed at the premises of the petitioner as per sub regulation 5.1.3 (5) of UERC regulation, 2020 and demand was also raised as per sub regulation 5.1.3 (10) b of UERC regulation, 2020 for a period of one year.
- vii) A supplementary demand amounting to Rs. 6,01,213.00 was added in the bill for the assessed units for the period 15.04.2021 to 14.04.2022 based on slow running of the installed metering system at consumer's premises as per check meter, in accordance with UERC regulation, 2020. A test certificate of check meter no. 22224274 (NABL certificate as per UERC regulation, 2020 point no. 5.1.3 (1) of M/s L&T test lab enclosed.) was installed at consumer's premises as per sub regulation 5.1.3 (5) of UERC regulation, 2020 and assessment (additional demand) has been worked out for a period of one year in accordance with sub regulation 5.1.3 (10) b of UERC regulation, 2020.
- viii) The check meter was installed at consumer's premises in accordance with UERC regulation, 2020.

Copies of the documentary evidences as mentioned in written statement such as instantaneous reports, test report of meter no. 22224274 by Schneider Electric India Pvt. Ltd. calculation sheet for working out the impugned demand of Rs. 6,01,213.00, AE (test) letter dated 21.04.2022, sealing certificate dated 12.03.2022 & 14.04.2022 for installation and finalization of check meter respectively.

5. The petitioner has submitted a rejoinder dated 09.02.2023 in reply to respondent's written statement along with an affidavit. The petitioner has submitted as follows:
- i) The petitioner craves leave to decide the following substantial questions of facts and law apart from framing and dealing with any other substantial questions of facts and law which may be considered by the Hon'ble Court as valid to decide the disputed issues in accordance with the principles of natural justice and fair play.



- A) Whether the UPCL test laboratories (including for carrying out site testing) are duly accredited by NABL as mandated in CEA regulation dated 17.03.2006 in respect to its clause 17 (2) and 18 (2), whether the test report generated by UPCL which does not qualify to be categorized as an accredited testing laboratory, is reliable more so because of the settled law as written by the Hon'ble Bombay High Court judgment in the matter of Nestle India Ltd. vs FSSAI (WP (L) no. 1688 of 2015 dated 13.08.2015).
- B) Whether the mandatory condition imposed under 5.1.3 sub clause 6 that the meter testing report should be furnished in the prescribed format in Annexure viii and whether the calculations written by the respondent with meter sealing certificate (although no calculation was written with sealing certificates) is sustainable in law whereas the test result has to be amplified where in absence of such prescribed certificates mere submission of meter sealing certificate (without any such prescribed calculations and results) would suffice the mandate of substantive requirements enshrined under clause 5.1.3 of UERC notification dated 29.10.2020.
- C) Whether on facts, grounds and binding statutory law/regulations could UPCL unilaterally and without prior notice as mandated under clause 5.1.3 (5) of UERC regulation dated 17.04.2007 (date 17.04.2007 appears to have been written inadvertently, perhaps the petitioner is referring to UERC regulation, 2020) installed a check meter and test the same without informing the petitioner about the proposed date and time of testing at least 2 days in advance.
- D) Whether any assessment can be raised by the respondent without procedurally complying to clause 5.1.3 (Testing of meter) of UERC supply code, 2020. More so because of the settled law writ petition 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand, which is having the binding effect in the instant dispute at hand.
- E) Whether it is mandatory to provide a valid test report of the test meter/check meter before initiation in reference to clause 5.1.3 (5) of

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UERC supply code, 2020 and in absence of such valid test report whether the test results are valid, reliable and acceptable.

- ii) At the outset it is submitted that the contents of the written statement filed by the respondent are specifically and categorically denied being devoid of merits baseless and no cogent explanation has been furnished with respect to the contentions of the petitioner, hence denied except to the extent which are specifically and categorically admitted herein in the forthcoming paragraphs.

Point no. iii), iv) v) vi) viii) ix) x) of the rejoinder

Contents of para i), ii), iii) iv), vi), vii) & viii) of written statement are not admitted and denied.

- vii) Contents of para v) of written statement need no reply and it is an admitted fact that principle of natural justice and fair play was not followed before raising illegal assessment.
- xi) The petitioner has therefore prayed that the Hon'ble Ombudsman would be pleased to take on record the rejoinder and allow the petitioner to argue the matter both on the averments made in the appeal as well as countered to the written statement in his rejoinder. Application as well as the petitioner would crave leave of the Hon'ble Court to allow furnishing of any evidence/documents/judgment to substantiate the pleadings of the petitioner for which act of kindness the petitioner shall as in duty bound ever pray.

6. Hearing in the case was held on the scheduled date 20.02.2022. Shri Jagjeet Singh Jolly duly authorized representative of the petitioner appeared on behalf of the petitioner and the respondent Executive Engineer himself appeared. Both parties made their oral arguments. In addition to their oral arguments, both parties also submitted written arguments/written submissions. The petitioner has raised almost the same points as were raised in his petition as also in the rejoinder and have mainly stressed that the respondents have not complied with the relevant regulations in conducting the check meter study and raising the impugned demand based on such alleged check meter study and have argued that such check meter study not being conducted in accordance with the regulations cannot be considered as a legally valid study and no supplementary demand can be raised on the basis of such study. The





petitioner has also submitted that their case is also supported by the case laws submitted by them. In the written argument the petitioner has also referred the orders passed by this Ombudsman in the past, in representation no. 14/2022 of Pestleweed School, 21/2021 of M/s Windlass healthcare and 41/2021 of DIG, ITBP Academy, Mussourie. The petitioner has also submitted NABL policy for use of NABL symbol and/or claim of accreditation by accredited conformity assessment bodies (cab) and NABL accredited cab combined, ILACMRA marked. The petitioner has also submitted judgment of 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, case law of Hon'ble Supreme Court case no. 3615 of 1996 judgment dated 21.06.2005. The respondent has also submitted a letter no. 5106 dated 17.02.2023 with which a copy of test report of meter no. 22224274 (the check meter) from M/s Schneider Electric India Pvt. Ltd. and copies of sealing certificates dated 12.03.2022 and 14.04.2022 for installation and finalization of check meter respectively. All these documents have been taken on record.

7. Regarding test report of meter no. 22224274, as submitted by the respondent, on query from the respondent, he replied that this test report has been carried out in the laboratory of the manufacturer and this lab is NABL accredited. He was asked to submit documentary evidence to show that the lab is NABL accredited by 22.02.2023. The respondent has submitted NABL accreditation certificates dated 18.09.2020, 04.06.2022 & 26.12.2021 vide his letter no. 5149 dated 20.02.2023 submitted through his AE (R) on 21.02.2023. A copy of test report for above referred check meter dated 22.01.2022 from M/s Schneider Electric India Pvt. Ltd. has again been submitted. These documents have also been taken on record.
8. In brief petitioner's case is that the entire exercise of check meter study conducted by the respondent is merely a troubleshooting exercise and cannot be treated as genuine check meter study for non compliance and violation relevant regulations, statutory provisions as referred in his petition, rejoinder and written argument. The claim that the case laws of Hon'ble Supreme Court and Hon'ble High Court of Bombay and Uttarakhand also directs that no assessment or supplementary bill can be raised on the basis of a study 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 67.46% and

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supplementary demand amounting to Rs. 6,01,213.00 raised through an entry in the bill dated 08.08.2022 for the month of 07/2022, as well as Forum's order dated 17.12.2022 in their complaint no. 98/2022 before it dismissing their complaint are liable to be quashed and set aside for not being consistent with the relevant regulations and statutory provisions as well as case laws 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 respondents case is that as a perusal of MRI report revealed low current on R&B phases, therefore a check meter study was conducted by installing a check meter on 12.03.2022 and finalizing it on 14.04.2022. In this study the main meter installed at the premises of the petitioner was found running slow by 67.46% and although the current on R&B phases appearing low in the MRI report w.e.f. 08.05.2019 and continued so till 14.04.2022, the date when check meter was finalized, the supplementary demand amounting to Rs. 6,01,213.00 was raised through bill dated 08.08.2022 for the month of 07/2022 only for a period of 12 months 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 action have been taken in accordance with regulations and the demand raised is genuine and is payable by the petitioner.
10. A perusal of records shows that relevant UERC regulations as referred by the petitioner have not been complied with in conducting the check meter study as there is no evidence available on file that advance notice was given to the petitioner for installing check meter, test results of the meter to be installed as check meter from an accredited lab were not given to the petitioner before initiating the check meter study. The respondents however have tried to justify that the check meter was duly tested by M/s Schneider Electric India Pvt. Ltd. in their NABL accredited lab. A photocopy of the test certificate has been adduced with written statement. It nowhere shows that the test certificate is from NABL accredited lab as it does not carry NABL's logo, as is mandatory under NABL policy. The petitioner has also submitted NABL policy documents where it is clearly provided that a test certificate issued from NABL accredited lab shall compulsorily have NABL logo/symbol, which is not appearing on



the test certificate submitted by respondent. The test certificate dates back 22.01.2022, moreover this certificate too was also not given to the petitioner before initiating check meter study and thus this does not fulfill the requirement of the Regulation.

11. The test certificate of the check meter was adduced by the respondent with their written statement. During hearing, on query, the respondent submitted that the test certificate was issued by M/s Schneider Electric India Pvt. Ltd. (formerly L&T) from their lab which is duly NABL accredited. He also informed that the accreditation certificate of the aforesaid lab from NABL shall be submitted by 22.02.2023 and he accordingly submitted the accreditation certificate from NABL in respect of manufacturers lab vide letter dated 20.02.2023 as referred above. Submission of this test certificate, however does not fulfill the mandate provided in proviso to sub regulation 5.1.3 (5) of UERC regulations, 2020 which clearly provides that 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 and submission of this test certificate from manufacturer's NABL accredited test lab at this later stage is merely a damage control of violation of the aforesaid regulation made by the respondents and it cannot be treated as a compliance of the aforesaid sub regulation.
12. It is observed that since the respondents have not complied with the relevant regulations and other legal provisions in conducting the check meter study and as veracity of the meter which was installed as check meter was not established as NABL accredited test certificate of the said meter was not given to the petitioner before initiating installation of check meter, the result of the check meter study declaring existing meter 67.46% slow cannot be relied upon and as the entire exercise of conducting check meter study and raising supplementary demand amounting to Rs. 6,01,213.00 is devoid of law being violative of the relevant regulations. On the other hand the petitioner's case has force of regulations and the case laws submitted by them also supports their case. The ratio decidendi in the instant case is non-compliance of relevant regulations by the respondents and the same view has been taken by the Hon'ble Supreme Court and Hon'ble High Courts in the case laws adduced by the petitioner. Such being the case, the petition therefore succeeds and is allowed. Forum order is set aside. The disputed demand of Rs. 6,01,213.00 raised by the respondent is also quashed and set aside. Although it is not on record, but if any amount has been deposited by the petitioner against the disputed supplementary






demand, the respondents are directed to refund the same, if any by way of adjustment in the bill(s)

13. In a number of petitions on the same subject matter, decided by the undersigned in the past, the respondents have not complied with the UERC regulations and other statutory provisions under the Act, tariff and CEA regulations. A number of letters have been written by the undersigned to MD, UPCL and other authorities for issuing instructions to the field officers to ensure that such cases are dealt with by them strictly in accordance with relevant UERC regulations and other statutory provisions, but it appears that either such instructions have not been issued by UPCL management to their field officers or the field officers are not obeying such instructions and are still committing similar or same type of mistakes in such cases. An advisory to MD, UPCL was recently issued by undersigned in judgment dated 20.02.2023 in representation no. 43/2022. MD, UPCL is again advised to look into the matter and issue suitable instructions to all the field officers asking them to ensure compliance of relevant UERC regulations, CEA regulations, Tariff provisions and statutory provisions under Electricity Act, 2003 in dealing with consumer's cases.

Dated: 27.02.2023

  
(Subhash Kumar)  
Ombudsman