

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Thaan Singh
Vankhandi Colony, Phase -1,
Near Daksh Enclave, Fulsunga,
Rudrapur, Distt. Udham Singh Nagar,
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division – 1,
Uttarakhand Power Corporation Ltd.
Rudrapur, Distt. Udham Singh Nagar,
Uttarakhand

Representation No. 55/2023

Order

Dated: 07.03.2024

Being aggrieved with Consumer Grievance Redressal Forum, Udham Singh Nagar Zone, (hereinafter referred to as Forum) order dated 11.12.2023 in complaint no. 208/2023-24 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division – 1, Uttarakhand Power Corporation Ltd., Rudrapur, Distt. Udham Singh Nagar, Uttarakhand (hereinafter referred to as respondent), Shri Thaan Singh, Vankhandi Colony, Phase 1, Near Daksh Enclave, Fulsunga, Rudrapur, Distt. Udham Singh Nagar (petitioner) has preferred this appeal for grant of compensation.

2. The petitioner has averred as follows:

- i. His complaint no. 208/2023-24 was dismissed by the Forum vide its order dated 11.12.2023 outrightly without appreciating and considering the documents placed on record.
- ii. The said complaint was instituted before the Forum against the respondent for not providing compensation due on the petitioner on account of delay in replacement of defective meter within the period beyond statutory period of 15 days.
- iii. The factual matrix leading to the present grievance are detailed below:

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- a) The petitioner is a consumer residing at Vankhandi Nath Nagar, Fulsunga, Rudrapur.
 - b) He has a 10 KW connection under commercial category with connection no. 896A302171878.
 - c) Abnormally high electricity bill was issued by the respondent to him against which complaint was instituted with the Forum with registration no. 03/2023-24. The said complaint was dismissed by the Forum vide its order dated 05.06.2023.
 - d) Appeal against Forum's order dated 05.06.2023 was preferred before Hon'ble Ombudsman wherein prayer had been made for allowing compensation as per UERC SOP regulations 2007 and 2022. As the defective meter was not replaced within stipulated time, his averment made in petition before Ombudsman, the respondent did not deny his averment in his written statement for granting compensation under SOP.
 - e) The appeal was allowed by Hon'ble Ombudsman vide its order dated 29.09.2023 and held the meter defective (IDF) from 02/2017 to 02/2023.
 - f) Para 24 of Ombudsman order dated 29.09.2023 in appeal no. 26/2023 states ***"The petitioner's prayer for granting compensation for delay in replacement of IDF meter beyond prescribed time cannot be considered here as the demand was not raised by him before the Forum nor it was included in his complaint before the Forum."***
 - g) Subsequently he moved to Forum for payment of compensation in terms of SOP regulations.
 - h) His complaint no. 208/2023-24 was dismissed by the Forum vide its order dated 11.12.2023 without giving fair chance to him and without appreciating the documents placed on record and arguments made during various hearings.
- iv. There was total denial of principles of natural justice by the Forum in passing above referred order.
- v. Being aggrieved with aforesaid Forum's order the instant appeal is preferred on the following amongst other grounds.
- A. Because the Forum did not consider the documents placed on record.
 - B. Because Forum did not consider the argument of the petitioner that he is entitled for compensation as per schedule III of SOP regulations 2007



and 2022 @ Rs. 50.00 and Rs. 100.00 as prescribed in the schedule for not replacing the defective meter, the compensation has been calculated for a delay of 2176 days as under:

Days	Regulation applicable	Amount prescribed (In Rs.)	Total (In Rs.)
145	UERC SOP 2022	100.00	14,500.00
2031	UERC SOP 2007	50.00	1,01,550.00
		Total	1,16,050.00

The petitioner is entitled for compensation Rs. 1,16,050.00 from the respondents for not replacing defective meter within the stipulated time.

- C. Because the Forum did not peruse the relevant regulation and erred in applying the legal principles and dismiss the complaint. Forum's action in dismissing the complaint is bad in eyes of law, against principles of natural justice and also against legal principles of "**Audi Alteram Partem**".
- D. Because the respondent never denied any of the averments made by him. The respondent did not submit any written statement in the instant dispute, hence there could be no occasion for the Forum to dismiss the complaint. The respondent submitted a letter no. 1525 dated 25.11.2023 from Executive Engineer Metering stated that the petitioner never made a written complaint whereas the Executive Engineer Metering is beyond his jurisdiction to claim this as the complaint with regard to defective meter had been made by the petitioner at distribution division of UPCL and this averment was never denied by the respondent Executive Engineer, EDD, Rudrapur.
- E. That as per clause 3.1.4 (1) of UERC Supply Code regulation, 2007 meter is declared IDF if and only if as reported by the consumer meter found stuck or identified as defective that clause 3.1.4 (2) states "**Where the licensee observes that meter is not recording any consumption for the last 1 billing cycle or appears defective (ADF) he shall notify the consumer thereafter the licensee shall check the meter within 30 days and if the meter is found stuck or sopped the meter shall be replaced within 7 days.**"

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The instant dispute is with respect to IDF meter and not ADF meter that there cannot be any occasion that the consumer has not communicated to the respondent with respect to the defect in the meter, else if the respondent has observed the defect on their own, they ought to have declared the meter as ADF and not IDF.

- F. Because the Forum failed to appreciate that the dispute at hand is not about in delay in testing of meter, the instant dispute pertains to delay in replacement of defective meter, that once it is admitted and held that there is delay in replacement of defective meter and that there is violation of guaranteed standard of performance, nothing can save the respondent from the liability of payment of compensation.

That the respondent through Executive Engineer metering has crafted a story as an afterthought just to escape from the liability of payment against compensation for not replacing the meter within stipulated time.

- vi. Because the Forum failed to realize that as per point no. 4 of clause 9 Schedule III of SOP regulation 2007 testing of meter is to be done within 30 days of receipt of complaint else compensation @ of Rs. 25.00 per day is payable, however the defective meter is to be replaced within 15 days of declaring the meter defective, else compensation @ Rs. 50.00 per day is payable. Hence question of registering the complaint may come in question calculate the delay in testing so as to calculate the amount of compensation due and payable on account of delay in testing. However when the dispute pertains to replacement of defective meter the delay will start from the day meter was declared defective and had nothing to do with the date when the complaint was registered.
- vii. Under the above circumstances there was no alternative but to approach the Hon'ble Ombudsman through the instant appeal for necessary relief and redressal.

Prayer:

In the premises aforesaid, it is most humble and respectfully prayed that the Hon'ble Ombudsman may graciously be pleased to-

- a) Quash and set aside the impugned order dated 11.12.2023 in complaint no. 208/2023-24.



- b) Allow the compensation under UERC SOP regulation 2007 and 2022.
- c) Pass any other order or direction, which this Hon'ble court may deem fit and proper, on the facts and circumstances and the interest of justice.
3. The Forum in its order dated 11.12.2023 in the complaint no. 208/2023-24 have mentioned the relevant regulations applicable under SOP regulations 2007 and 2022 and was of the opinion that the compensation could have been granted provided complaint of the defective meter would have been made by him before the department in spite of providing opportunity the complainant could not adduce any evidence to show that complaint was made by him before the department, however he submitted that it was well within the knowledge of departmental officials that his meter was defective and IDF bills were being issued. Even if it is taken for granted he will be entitled for compensation when a complaint for the defective meter was made before the department either writing or online. As the complainant could not establish that he made a complaint regarding his defective meter before the department so he is not entitled to get compensation and having observed as such the Forum dismissed the complaint vide its order dated 11.12.2023.
4. The respondent Executive Engineer has submitted a notarized affidavit dated 23.01.2024 wherein he has submitted on oath as follows:
- His name and address is correct.
 - This affidavit is being submitted in reply to Ombudsman letter 888 (a) dated 16.01.2024 in respect of appeal no. 55/2023 of Shri Thaan Singh connection no. 896A302171878.
 - That compensation amounting to Rs. 1,16,050.00 has been demanded by the petitioner for not replacement of defective meter of his aforesaid connection. In reference to above, it is submitted that compensation as per UERC SOP regulation 2007 and 2022 is admissible only if a complaint has been made by the consumer before the department either in writing or online 1912.
 - UERC SOP regulation 2007 and 2022 provides as follows:

Complaints about meter:		
Sl no.	Nature of complaints	Specified Timeline
1	Complaints lodged for accuracy testing of meter	Within 30 days for testing of meter and if needed, the meter shall be replaced



		within 15 days thereafter.
2	Complaints lodged for Defective/stuck meter	Within 30 days for testing of meter and if needed, the meter shall be replaced within 15 days thereafter.
3	Complaints lodged for Burnt Meter.	Within 06 hours- restoration of supply by passing the burnt meter. Within 03 days – new meter to be installed.

- v. As no complaint either online or written was made by the petitioner before respondent/department his demand for compensation is baseless.
5. The petitioner has submitted a rejoinder dated 02.02.2024 along with notarized affidavit. No new facts about the case has been submitted in the rejoinder and most of the points are repetition or reiteration of his averments made in his petition except that he has categorically stated that Executive Engineer metering is not a party to the dispute at hand as also his submissions that the respondent has not given parawise replies to the averments made by him in his appeal and has neither denied the submissions hence all the facts as submitted by the petitioner are admitted by the respondent and are factual position with respect to the instant dispute further contents of written statement are specifically and categorically denied being devoid of merits, baseless and no cogent explanation has been furnished with respect to the contentions made in appeal, hence denied except to the extent which are specifically and categorically admitted herein.
6. Hearing in the case was held on pre-decided date 16.02.2024. Both parties appeared for arguments. Petitioner appeared himself and the respondent was represented by AE meter and AE(R). They orally submitted that as no application was submitted by the petitioner with the department for replacement of meter, compensation under SOP is not admissible to him. Arguments were concluded and order was reserved for a date to be intimated in due course.
7. Arguments from both parties were heard, documents available on file were perused. Case file of consumer's earlier petition no. 26/2023 which was decided vide order dated 29.09.2023 and a reference regarding compensation mentioned in this order has



also been made by the consumer in his instant appeal, therefore this file has also been consulted. Facts about the case are borne out as follows:

- i) The petitioner has a 10 KW commercial connection with service connection no. 896A302171878. IDF billing of his aforesaid connection continued for a prolonged period of more than 6 years from 03/2017 to 11/2022 as is evident from consumer billing history available in case file 26/2023. Meter change has been shown in the month of 03/2023 in the said billing history. The old IDF meter has been replaced vide sealing certificate no. 001/00409 dated 14.02.2023. The petitioner instituted a complaint no. 208/2023-24 before the Forum for compensation for delay in replacement of defective meter. The Forum dismissed the complaint vide its order dated 11.12.2023 on the grounds that the complainant could not establish that he had made a complaint before the department for replacement of defective meter, either in writing or online.
- ii) Since the IDF billing continued from 03/2017 to 11/2022 in a single stretch in gross violation of relevant UERC Supply Code 2007/2020 as well as tariff provisions for such a prolong period against provision for issue of IDF bills for only 2 billing cycles and as also in violation of SOP regulation which provides for replacement of defective meter within 15 days for declaring the meter defective. In the instant case since respondent continued to issue IDF bills right from 03/2017 to 11/2022, it is evident that they had declared the meter defective latest by in the month of 03/2017 and still replaced the meter on 14.02.2023. The respondents being well aware about the status of meter being defective (IDF) for such a long period from 03/2017 to 11/2022 and replaced the defective meter after such a long period of more than 6 years after the meter being found or declared defective by them against a period of 15 days as provided in Schedule III of SOP regulations, 2007 as well as of 2022, so the respondents are found guilty of making gross violation of the regulations both in issuing IDF bills for such a long period and for delay in replacement of defective meter.
- iii) In the instant case the period of IDF billing is from 03/2017 to 11/2022 so UERC SOP regulations 2007 effective from 17.04.2007, the date of notification till it was repealed by the current SOP regulation 2022 vide



notification dated 22.09.2022 and from which date the current SOP regulation 2022 are in force. To decide the issue whether compensation for delay in replacement of meter is payable to the petitioner or not, provisions in both the regulations have to be seen. Provisions in both the regulations are as follows:

a) SOP regulation 2007

For compensation

"(1) The Licensee shall be liable to pay to the affected consumers compensation specified in Schedule III for Licensee's failure to meet the Guaranteed Standards of Performance specified in Schedule I. the compensation shall be paid by the Licensee in the manner specified in Schedule III.

(2) The Licensee shall pay the compensation referred to under sub-regulation (1) above by way of adjustment in the current or future electricity bill(s) as laid out in Schedule III."

b) SOP regulation 2022

"2 (1) (g) "Centralized Customer Care Centre" means suitable IT enabled infrastructure/setup (with voice recording feature) for submission of complaint or claim of compensation, electronically (e-mail, mobile App, website of Licensee) or telephonically (voice call-Landline/mobile) or through any other mode as mentioned in these regulations and shall remain operational 24x7x365;

(h) "Claim Application" means any application put before the Licensee for compensation in the format prescribed in these Regulations."

- iv) A perusal of the above provisions of SOP regulations suggests that in regulation. 2007 it was not mandated for the consumer to submit an application for compensation for delay in replacement of meter but the Licensee was liable to pay compensation to the affected consumer as specified in schedule III for the Licensee being failed to meet Guaranteed Standard of Performance specified in Schedule I and the Licensee is therefore liable to pay the compensation as specified in schedule III and the compensation was to be paid by way of adjustment in the current or future electricity bill(s) as laid down in schedule III but aforesaid regulation of

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SOP 2022 provides for submission of a complaint or claim of compensation before the Licensee.

8. In the instant case since admittedly the meter was declared defective (IDF) since 03/2017 as IDF bills were started issuing from that month and continued till 11/2022 and meter was replaced in the month of 02/2023 vide sealing certificate dated 14.02.2023 as referred above, compensation as provided for in SOP 2007 under schedule III under point 4 meter complaints reproduced below was to be given to the petitioner for delay in replacement of defective meter beyond prescribed period at their own and without submission of any application by the affected consumer and it is immaterial that any application for compensation as required under SOP regulation 2022 was not submitted by him in the instant case as meter was already under IDF status and was very well in the notice of the respondents.

<i>Service Area</i>	<i>Standard</i>	<i>Compensation payable in case of violation of Standard (default shall be considered from the time consumer has made complaint)</i>	
		<i>Compensation payable to individual consumer if the event affects a single consumer</i>	<i>Compensation payable to individual consumer if the event affects more than one consumer</i>
<i>Replacement of defective meter</i>	<i>Within 15 days of declaring meter defective</i>	<i>Rs. 50 for each day of default</i>	

9. Such being the case the petitioner is entitled for compensation in terms of SOP regulation 2007 and as provided under schedule III of the said regulation as reproduced above for delay in replacement of defective meter beyond prescribed time limit. The respondents are directed to work out the period of delay and amount of compensation payable to the petitioner and the same be paid to him in the manner prescribed under sub regulation 4 (2) of SOP regulation 2007 as reproduced above. The petition is allowed. Forum order is set aside as the Forum has dismissed the complaint on the grounds that the petitioner could not establish that he had made a complaint before the department regarding defective meter. It is not a case of making

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a complaint for replacement of defective meter but a case of payment of compensation to the petitioner for delay in replacement of meter. The matter regarding defective meter was already in the notice of the respondent who have been issuing IDF bills for more than 6 years as mentioned above.

10. It is also pointed out that the respondent Executive Engineer appears not to be serious about contesting the case as he has not submitted a proper written statement. What he has submitted is an affidavit but no written statement is submitted. For his knowledge, it is mentioned that written statement means point wise reply to each para of the petitioner's appeal/representation duly supported by documentary evidences wherever required and as such he has submitted no written statement. It is an advisory for him for future that he should pay due care in contesting the case in favour of UPCL so that no case is decided against UPCL for any carelessness of the respondent Executive Engineer in contesting the case.

Dated: 07.03.2024


(Subhash Kumar)
Ombudsman