

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Kishan Brothers,
Paltan Bazar, Dehradun,
Uttarakhand

Vs

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

Representation No. 21/2023

Order

Dated: 19.07.2023

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone, (hereinafter referred to as Forum) order dated 12.05.2023 in his complaint no. 183/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (Central), Uttarakhand Power Corporation Ltd., 18, EC Road, Dehradun, Uttarakhand (hereinafter referred to as respondent) M/s Kishan Brothers, Paltan Bazar, Dehradun, Uttarakhand (petitioner) has preferred this appeal for a number of reliefs as mentioned in the petition and which will be reproduced hereunder in point no. 2.

2. The petitioner, M/s Kishan Brothers has preferred the instant appeal dated 23.05.2023. The petitioner has averred as follows:
 - i) The appeal has been preferred challenging Forum order dated 12.05.2023 in complaint no. 183/2022 before the Forum.
 - ii) The complaint was instituted against refusal of the respondent to accept payment against the bill dated 14.02.2023 for the month of January 2023.
 - iii) They have a commercial connection no. CDOK000009585 for 53 KVA load in their premises against which they have been regularly paying consumption bills as per demands raised by UPCL through monthly bills and there has



been no default on their part in payment of the bills since release of the connection.

- iv) The petitioner has given factual matrix leading to filing the present petition as follows:
- a) That the petitioner is a commercial unit engaged in bakery and service business located at Paltan Bazar, Dehradun.
 - b) On receipt of bill dated 14.02.2023 for the month of January 2023 they visited respondent's office for payment, however the officials refused to accept payment on the pretext that some high amount is showing against the connection. They again visited respondent's office and the respondent again refused to accept the payment.
 - c) Subsequently they visited the respondent's office and submitted a letter dated 09.03.2023 denying any such exorbitant amount allegedly due against them. UPCL officers refused to accept the letter. They again visited their office on 13.03.2023 and after repeated requests finally succeeded to submit letter dated 09.03.2023.
 - d) On their visit to respondent's office on 13.03.2023 no documents justifying alleged exorbitant amount was given to them and they were threatened to pay the amount failing which they warned that connection shall be disconnected.
 - e) The respondent never provided justification of the alleged arbitrary assessment and did not even provide the electricity bill verifying the alleged exorbitant amount.
 - f) As the respondent did not do anything regarding the grievance, they were compelled to approach the Forum and lodged a complaint before the Forum which was registered as complaint no. 183/2022 and with regard to stay against disconnection they deposited Rs. 1,00,000.00 with the respondent under the orders of the Forum. The Forum however dismissed the complaint vide its order dated 12.05.2023.
- v) There was total denial of the principle of natural justice in passing Forum order, dismissing the complaint. No show cause notice, reply, opportunity of hearing was given.



- vi) The dispute raised in the instant appeal is based on Electricity Act, 2003, Indian Electricity rules, 1956, CEA notification dated 17.03.2006, UERC regulations vide notification dated 29.10.2020 and it is brought on record that the judicial discipline entails that the powers of the distribution licensee are not unbridled but are circumscribed, which mutatis mutandis are enshrined in Electricity Act, Rules and UERC regulations.
- vii) Being aggrieved with Forum's order dated 12.05.2023. The appeal here is preferred on the following amongst other grounds.
- A. Because the additional amount was added arbitrarily and secretly without any details or breakup, which is against principles of natural justice and fair business practice.
 - B. Because 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 appellant. Hence the same deserves to be quashed and set aside.
 - C. Because UPCL's action is in clear violation of principles of natural justice, equity and good conscience as no notice or opportunity of being heard was given before raising the demand through the impugned bill.
 - D. Because 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. Because no tampering of the metering system was done by the petitioner and no such allegations have been leveled by the respondent.
 - F. Because the petitioner never admitted and have denied that the metering system was not running slow by 69.76% and that the alleged check meter study was not more than a troubleshooting exercise on the part of the respondent and cannot be termed to be check meter study as the same had not been carried out as per the provisions mandated under UERC regulations 2020.
 - G. Because Forum did not consider and perused the following written and oral submissions of the petitioner and dismissed the complaint.
 - a. That



- i. No advance notice of the check meter study was served to them.
- ii. No test report for the test for the check meter installed at the premises was served before initiation of the test.
- iii. No duly authenticated test results were provided.

Clause 5.1.3 (5) of UERC regulation 2020 reproduced.

That no document was provided by the respondent for compliance of the aforesaid regulation without perusing this categorical fact, The Forum has dismissed the complaint which is totally illegal and against the established laws and regulations.

- b. That the site testing has been carried out without the knowledge of the petitioner. The respondent without informing their intentions purpose and possible consequences of alleged check meter study had taken the signature of the petitioner worker in a mechanical manner who was never authorized by them for any such purpose and which is in gross violation of **section 163 (power for licensee to enter premises and to remove fittings or other apparatus of licensee) of Indian Electricity Act, 2003.**

- c. That the testing lab of the respondent is not accredited by NABL also the respondent is not accredited by NABL to carry out any site testing. That as per clause 5.1.3 (1) of UERC regulations, 2020 **"The meter test lab of the licensee shall be NABL accredited or it shall utilize the services of other accredited testing lab till its labs get NABL accredited"**

That as per CEA regulation dated 17.03.2006 framed under section 55(1), 73 (e) and section 177 (2) of the Act. In respect to clause 17(2) which mandates **"that the meter testing reports must be issued by NABL accredited testing labs.**

- d. That no reliance on the test results can be placed if such tests has not been carried out in a NABL accredited lab more so because of the settled law written by the Hon'ble Bombay High Court judgment in the matter of Nestle India Ltd. Vs FSSAI (writ petition L No. 1688 of 2015 dated 13.08.2015).
- e. That the test results were not admitted and it is submitted that no opportunity was given to the petitioner to get the meter tested by the

Electrical Inspector or CGRF as the respondent never provided the test report. That the principle of natural justice and fair play were even not followed as no opportunity of hearing was provided to the petitioner before raising the impugned bill.

That as per clause 5.1.3 (12) of UERC regulation, 2020 mandates "Provision reproduced"

- f. The sealing certificate no. 7/22 dated 20.12.2022 and 7/45 dated 10.01.2012, nowhere mentions that the meter was running slow of the tune of 69.76% as alleged. Thus any finding against the petitioner is not admitted and denied in totality
- g. That it is well settled proposition of law that the 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.
- h. That the meter was working correctly and the petitioner have never used the assessed units. That an error of 69.76% in the meter as alleged is denied in totality that after finalization of the alleged check meter study bill for the month of February 2023 has been generated for 5679 units and for the month of March 2023 for 3,420 units. The consumption for the period under dispute had reached to the level higher than this thus there is no occasion to believe that the meter was recording 69.76% slow as alleged.
- H. That the Forum clandestinely and in collusion with the respondent obtain the routine test report and the NABL certificate of M/s HPL and never provided these documents to the petitioner to raise his objections on them, however the description of these documents establishes that these documents cannot fulfill the requirement as stipulated in clause 5.1.3 of UERC regulations 2020. It is pertinent to mention that the respondent did not attend many of the dates at Forum and when the arguments concluded, Forum again asked the respondent to submit any documents if they wish.
- I. That the Forum vide order dated 15.05.2023 in complaint no. 183/2022 dismissed the complaint on the basis of 2 points firstly that the respondent has submitted the routine test report of meter and NABL certificate of M/s HPL and secondly that the sealing certificates were signed by the

representative of the petitioner. Thus the Forum held that compliance of clause of 5.1.3 has been made, that the Forum did not apply mind that the valid test report of the meter including valid test report of energy meter and CTs installed with it confirming the veracity of the energy meter and CTs and also confirming the ratio of CTs are to be submitted before initiating of check meter study and that the petitioner had never authorized anyone to sign the sealing certificates on his behalf. That when the Forum did not accept the application of grievance against M/s UPCL when not supported by proper authorization then how the Forum can held that sealing certificate was signed by the representative of petitioner in absence of any such authorization. That ratio decidendi of the Forum is illegal and against legal principles of stare decisis.

- J. That it has been already established in representation no. 42/2022 dated 03.03.2023, 03/2023 dated 27.02.2023, 43/2022 dated 20.02.2023 at the Hon'ble Ombudsman that the routine test report cannot be held to be valid test report as per requirement of clause 5.1.3 of UERC regulation 2020. That the said report is prepared and is submit only to fulfill the contractual obligation, the meter manufacturer is having with reference to the purchase order placed on them by the respondent, moreover the check meter along with current transformer is to be checked for their veracity before being carried to the site for check meter study.

That Forum failed to peruse the fact that no supply order has been placed on M/s HPL or any other party by the respondent to use their NABL labs for testing of meter as provided under clause 5.1.3. The Forum have overlooked all the relevant regulations and applicable laws to award the judgment in favour of the respondent. That as per meter specification for procurement of meter by respondent BIS IS 14697 is mandatory. The routine test has been carried out by the meter manufacturer in compliance of BIS IS 14697 and not in compliance of any UERC regulation.

That the energy meter and the CTs had to be checked in a NABL accredited lab before they are carried to the site of the consumer and the test result of both the energy meter and CTs are to the shown to the consumer, then only test results, if provided to the consumer can be relied

d.

upon. This not being done could render the entire check meter study null and void.

K. Respondents again carried out a check meter study vide sealing certificate 45/155 dated 04.05.2023 and 50/155 dated 10.05.2023 when the matter was subjudice before Forum. That when the petition with regard to meter was pending for disposal, the same meter was replaced without knowledge and approval of Forum. The respondent carried out the check meter study arbitrarily without providing the valid test report of the meter and the CT installed along with it and without any advance notice. In this check meter study the meter was declared 40% slow, which had already been denied by the petitioner by explicitly mentioning the same in the sealing certificate, copy of sealing certificates have been attached.

L. That in case no. 148/2022, the Forum in the matter of M/s Hotel president vide order dated 13.03.2023 wherein the main meter was found slow by 99.8%, the Forum vide order dated 13.03.2023 did not rely upon the study as clause 5.1.3 of UERC regulation, 2020 was not complied with, so the complaint was allowed in favour of the petitioner. The petitioner has claimed that the facts and circumstances of the case in their appeal are the same as that of the above referred case.

The Forum has dismissed the complaint without appreciating the fact that the principle of stare decisis and the ratio decidendi have not been followed and neither the referred judgment of Hon'ble Ombudsman was perused, which are binding on the Forum.

M. That order dated 12.05.2023 in complaint no 183/2022 of the Forum is illegal as neither the law established by the appellate court was followed nor the law established by Forum themselves.

N. That as per settled law WP 1069/2021 dated 10.06.2021 of Hon'ble High Court, Uttarakhand whereby the Hon'ble Court has clarified that if clause 3.1.3 (Testing of meter) of UERC regulation, 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 was categorically stated that clause 3.1.3 (7) has to be fulfilled before raising assessment. The said clause had been replaced by clause 5.1.3 of UERC regulation, 2020.



- O. That it is pertinent to mention that the answering respondent without providing the test results of alleged check meter study have replaced the meter and this action of respondent resulted in denial of the opportunity to the petitioner to get the meter tested by the electrical inspector. The Hon'ble Supreme Court has clearly established in Civil appeal no. 3615 of 1996 in the matter of Bombay Electric Supply and Transport Undertaking vs Laffans India Pvt Ltd in para 3 of page 7 **"The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission. The act of removing the meter and the omission to make a reference to the Electrical Inspector"**
- P. Under the above circumstances filing the present appeal before the Hon'ble Ombudsman was the only option before the petitioner. With the humble request that reliefs as mentioned in the appeal be granted and impugned assessment be quashed and set aside.

Prayer In the premises aforesaid the petitioner has made the following prayer

- a) Call for records of the case of Forum file
 - b) Quash and set aside the additional amount of Rs. 9.57.706.00, being the same illegal, arbitrary, perverse, malafide and unjust.
 - c) Quash and set aside Forum's order dated 12.05.2023 passed in complaint no. 183/2022.
 - d) Provide copy of routine test report and NABL document of M/s HPL as submitted by the respondent.
 - e) Issue necessary directions to UPCL not to disconnect the supply of the petitioner's unit on his being made regular consumption charges and not to take any other coercive action till the final decision of the present grievance petition.
 - f) Pass any other order or direction which the Hon'ble Court may deem fit and proper on the facts and circumstances in the interest of justice.
3. After perusal of records and hearing arguments from both parties the Forum was of the view that check meter no. 5135896 was installed at the complainant's premises on 20.12.2022 and was finalized on 10.01.2023 consequent upon finding low voltage in



MRI study in the installed meter no. 18303765. Pressure coil of the old meter was set right. AE (Meter) reported that as per MRI B phase voltage was found missing for 318 days 22 hours 52 minutes and 49 seconds based on the result that installed meter was running slow by 69.76%. The bills for the period 01.01.2022 to 10.01.2023 were revised for a sum of Rs. 9,57,706.00. They also perused and considered the contents of complainant's rejoinder wherein the complainant has submitted that:

- i) The test report of the check meter (which consists of energy meter and 3 nos. CTs) was not provided before initiation of test, which is mandatory, hence check meter study is null and void.
- ii) Test lab of UPCL not accredited by NABL, hence their test results have no legal validity and identity, hence assessment to be dismissed.
- iii) No advance notice for check meter study was given.
- iv) No test report of the test was provided.
- v) Consumption never increased by 69% after test was completed.
- vi) The test was not conducted in accordance with procedure established in UERC regulation 2020 and hence check meter study is null and void. Various judgment of Ombudsman were enclosed by the complainant which are binding on Forum. In all these judgment Ombudsman have quashed the assessment on non compliance of regulations.

The Forum observed that the opposite party submitted their clarification on complainant's rejoinder. They have submitted that UERC regulation 2020 (sub regulation 5.1.3) has duly been complied with in conducting the check meter study and the check meter no. 5135896 was duly tested in a NABL accredited lab of M/s HPL electric and power ltd. company. The sealing certificates for installation and finalization of check meter were also got duly signed by the complainant's representative. In the circumstances declaration of the installed meter slow by 69.76% has a force of UERC regulations and therefore the Forum was of the view that assessment amounting to Rs. 9,57,706.00 raised on the main meter found running slow by 69.76% is logical and justified. They therefore concluded that the complaint is liable to



be dismissed and they have accordingly dismissed the complaint vide their order dated 12.05.2023.

4. The respondent Executive Engineer has submitted his written statement along with an affidavit under oath vide his letter no. 1980 dated 02.05.2023, wherein he has submitted point wise reply as follows:

- i) The Forum passed order in complaint no. 183/2022 after perusal of the documents submitted by both parties which is in accordance with relevant UERC regulations.
- ii) Against the billed amount of Rs. 44,567.00 the petitioner paid Rs. 33,821.00 on 30.01.2023.
- iii) Connection no. CD0K000009585 for 45 KW contracted load is existing at the petitioner's premises 4, Paltan Bazar, Dehradun in the name of M/s Kishan Brothers.

iv)

- a) The petitioner's business is mainly of Ice-cream and bakery product. The owner/his representatives normally remains available in the premises.
- b) b, c, d and e not agreed.
- c) f Check meter no. 5135896 HPL make duly tested in NABL accredited lab was installed at the premises of the petitioner in the presence of the owner/representative and worker of the petitioner and after taking shutdown was installed as a check meter vide sealing certificate no. 42/007 dated 20.12.2022 after getting it duly signed by petitioner/representative and a copy thereof was given to him. The check meter was installed as aforesaid after observing 0 voltage on B phase in MRI of the installed meter no. 18303765 L&T make.

The check meter was finalized on 10.01.2023. Pressure coil of the main meter was set right. All parameters in the meter were found correct so the check meter was removed vide sealing certificate no. 45/007 dated 10.01.2023 and a copy was handed over to the consumer.

AE (Meter) submitted test report vide his letter no. 342 dated 23.01.2023 reporting main meter running slow by 69.76% . AE meter reported vide his

letter no. 358 dated 15.02.2023 that as per MRI report B phase voltage was found missing since 318 days 22 hours 52 minutes and 49 seconds. Accordingly bills from 01.01.2022 to 10.01.2023 were corrected and an assessment for Rs. 9,57,707.00 was raised on 23.02.2023 through bill. In the course of efforts made to ensure maximum revenue realization in the month of March the petitioner was repeatedly reminded for pending payment of the bill and the assessment amount, so his averment that he was never informed about the assessment is completely false and misleading.

- v) Not agreed .
- vi) It is based on facts.
- vii) It is based on facts.

A. A B and C Not agreed

B. D It is not a penalty imposed on the petitioner but it is a sum worked out for the energy consumed but could not be billed earlier and has now been billed as per check meter results and is in accordance with UERC relevant regulations.

C. E admitted.

D. F not agreed.

E. G a (i) A shutdown was taken for installing check meter and the petitioner/representative was duly informed. Further the sealing certificates for installation and finalization of check meter carries signatures of the same person which indicates that the person who signed the sealing certificates is a responsible and authorized employee of the petitioner.

F. G a (ii) As above.

G. G a (iii) signatures of the petitioner/representative is the witness that there was no objection on installation and finalization of the check meter, so necessity of advance notice is itself immaterial and stands rejected. As per rule copy of final arguments and written arguments submitted by opposite party is made available to the petitioner by the Forum along with evidences so the entire process is in accordance with rules and judicious.



H. G b The opposite party is an undertaking of Uttarakhand Government and is authorized Licensee for distribution of electricity in the state of Uttarakhand. Meters and parameters (MRI of the meters) is done periodically in order to ensure continuous supply and to reduce the line losses and checking is done by installation of check meter in the cases where parameters were found unreliable. Petitioner's own submission indicates that at times he did not remain available at the premises and in such circumstances his employee/manager works as an authorized representative. It is a wrong submission by the petitioner that section 163 has been violated.

I. G c Check meter no. 5135896 HPL make installed at the premises of the petitioner was tested in NABL accredited lab and all the parameters are as per approved standards. तथा जिसकी अग्रिम जाँच तिथि 07.04.2024 में नियम है। (पूर्व बिन्दु सं० - 4 (f) में साक्ष्य संलग्न)

J. G d As above.

K. G e Not agreed, the petitioner/representative signed both the sealing certificates after reading and being convinced so sub regulation 5.1.3 (11) and (12) of UERC regulation has duly been complied with.

L. G f Not agreed.

M. G g The assessment for slow running of meter is in accordance with sub regulation 5.1.3 (10) (ख) of UERC relevant regulations.

N. G h Not agreed.

viii) Not agreed.

ix) Replies under 4 (f), g, (c) and g (e) are justified being in accordance with clause 5.1.3 of UERC regulation.

x) Not agreed.

xi) Check meter was installed on the basis of MRI of the meter.

xii) Facts of appeal 148/2022 has no concern with the instant appeal.

xiii) Not agreed.

- xiv) Sub regulation 5.1.3 of UERC regulations have duly been complied with in totality in installation of check meter.
- xv) As replied under point no. xi) above.
- xiv) factual

The submissions have been substantiated with documentary evidences wherever given in the above written statement

5. The petitioner has submitted a point wise rejoinder on all the points of respondent's written statement.

- i) At the outset under point no. i) has requested the Ombudsman to decide the substantial questions of facts and law as raised hereunder apart from framing and dealing with any other substantial questions of facts and law which may be considered by the appellate court as valid to decide the disputed issues in accordance with principles of natural justice and fairplay.

A Weather the UPCL test laboratories (including for carrying out site testing for which accreditation other than from permanent laboratory is required) are duly accredited by NABL as mandated under CEA regulations 2006 and its subsequent amendments 2019 in respect to clause 17 (2) which mandates that the Licensee shall setup appropriate number of accredited testing labs or utilize the service of other accredited testing labs, which further provides that the licensee shall take immediate action to get its labs accredited if not already done, whereas clause 18 (2) mandates testing may be carried out through NABL mobile laboratories. Whether the test report generated by UPCL, which does not qualify to be categorize as an accredited testing lab, is reliable because of the settled law as written by Hon'ble Bombay High Court in the matter of Nestle Ltd. Vs FSSAI writ petition no. (L) 1688 of 2015 dated 13.08.2015.

B Weather the mandatory condition imposed under clause 5.1.3 sub clause 6 that the meter testing report should be furnished in the prescribed format and whether calculations written by the respondent with meter sealing certificate (although no calculation was written with sealing certificate) is sustainable in law and whether in absence of such prescribed certificate

mere submission of meter sealing certificate without any such prescribed calculations and results would suffice the mandate provided in clause 5.1.3 of UERC regulation 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) and as provided under section 163 of Electricity Act, 2003 install 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 of UERC regulation 2020 more so because of the settled law. WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand which is having the binding effect in the instant dispute.
 - E Whether it is mandatory to provide a valid test report of the test meter/check meter (which shall include the test report of the CTs PTs along with the energy meter) before initiation of test in reference to clause 5.1.3 (5) of UERC regulation, 2020 and in absence of such valid test report whether the test results are valid, reliable and acceptable.
- ii) It is submitted that the contents of the written statement filed by 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 following paragraphs.
 - iii) That the contents of para i) is wrong false and hence denied in totality. That the Forum have formed the documents of M/s HPL with regard to NABL accreditation, the basis of judgment and dismissed the petition of the petitioner out rightly without even providing copy of these documents to the petitioner and without providing the opportunity to the petitioner to have his submissions on these documents, which is against the principle of (audi alteram partem).



- iv) Contents of para ii) are wrong, false and denied in totality. That the respondent has admitted the averment of the petitioner that the payment as per the bill was not accepted by the respondent. The respondent has submitted copy of the bill dated 14.02.2023 with written statement which document is contrary to the bill dated 14.02.2023 submitted by petitioner before Forum and on which no objection was raised by the respondent even if the document of respondent assume to be correct, although not admitted, then also the bill due for the month of January 2023 is Rs. 44,567.00 and not Rs. 9,97,000.00 as was alleged. It is pertinent to mention that respondent generated 2 different bills for the same period, which is illegal, thus the respondent is generating/manipulating bills/document as per their requirement, hence no documents of the respondent can be relied upon.
- v) Contents of para iii) need no reply as petitioner averment is not denied and is in admitted position.
- vi) Contents of para iv) a) is admitted to the extent that the petitioner is into business of bakery product and ice cream which is having dine in and take away facilities rest of the contents are denied
- vii) viii) ix) & x) contents of para 4 b), c), d) & e) are denied in totality as the respondent never denied petitioner's submissions before Forum.
- viii) xi) Contents of para iv) f) are wrong false and denied, it is denied that shut down was taken in the presence of petitioner/its representative and that the alleged meter was tested in NABL accredited lab. It is further denied that copy of the sealing certificate was given to the petitioner which was only given along with written statement before Forum.

That it is vehemently denied that the meter was running 69.76% slow. That it is not technically possible that the meter may run slow beyond 33% if voltage of one of the phases goes 0 as alleged without prejudice to the fact that the new smart meters record energy consumption correctly in spite of various abnormalities as reported in MRI report.

Monthly consumption of the petitioner never increased by the factor 69.76% as alleged subsequent to check meter study. That no legally valid test report

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of the energy meter and the CTs was given prior to initiation of alleged check meter study and also no advance notice was given regarding check meter study.

- ix) xii) Contents of para v) is denied in totality and that the order of Forum is not speaking order and is illegal and liable to be quashed.
- x) xiii) contents of para vi) need no reply as respondent had not denied the contents.
- xi) xiv) xv) xvi) & xvii) Contents of para vii) a) b) & c) are denied in totality.
- xii) xviii) contents of para vii d) is denied in totality, that the alleged check meter study has not been done in accordance with procedure established in law. And specifically in UERC regulation 2020, hence the assessment is illegal, and liable to be quashed.
- xiii) xix) contents of para vii) e) need no reply as respondent has not denied the averments made.
- xiv) xx) contents of para vii) f) is denied in totality as it is never established beyond doubt the metering system is running slow and no financial liability can be fastened on the petitioner for violation of relevant regulations by the respondent.
- xv) xxi) Contents of para vii) G) a) (i) is denied in totality that the respondent has not submitted any documentary evidence to show that the notice /information was served for the alleged check meter study. That as per clause 5.1.1 (6) of UERC regulation, 2020 **"it shall be the responsdibility of licensee to maintain the meter and keep it in working order at all times."** Thus maintenance and upkeep of metering system is the responsibility of the respondent for which purpose the officials made visits to the premises of the petitioner as also of the other consumers on the same feeder during such visits shutdown often taken to energize the line so that work can be carried out upon them.

Further the respondent has not denied the averment of the petitioner and it is an admitted position that the legally valid test report of the energy meters and



3 number CTs installed with the energy meter was not provided before initiation of alleged check meter study, which is a violation of clause 5.1.3 (5) of UERC regulation, 2020.

Further signature of employee of the petitioner who was never authorized was taken mechanically on the sealing certificate. Thus in light of above the assessment as well as Forum's order deserves to be quashed.

- xvi) xxii) That contents of para vii) G a) (ii) is an admitted fact and the respondent has not denied the same that the test report of the energy meter and CTs (for ratio and accuracy) were not provided and the documents submitted subsequently is an afterthought and accordingly have been created to justify the illegal demand.
- xvii) xxiii) That contents of para vii) G a) (iii) is denied in totality firstly the sealing certificates were not signed by the petitioner or his authorized representative and secondly the purpose and intention of the alleged check meter study was never intimated. It is pertinent to mention that the sealing certificate nowhere mentions that the metering system is running slow by 69.76% or even slow. Further where the licensee intend to put any financial liability on the consumer the said test has to be carried out in accordance with the procedure established by law and not by any arbitrary method devised by the respondent. It is worth mentioning that UERC enclose no. 5.1.3 (testing of meters) of Supply Code regulation, 2020 have detailed out the procedure to test the metering system.
- xviii) xxiv) Contents of para vii) G b) is denied in totality. The respondent has admitted that they are government undertaking and thus have greater moral responsibility among other things to follow the relevant guidelines and regulations before raising any assessment or financial liability. While it is nobody's case that the petitioner was available or not during the period of commercial activity at his premises, the point of consideration is that the respondents are bound to give the statutory advance notice of 2 days, so that the petitioner or his authorized representative would have witnessed the alleged check meter study, which the respondent have failed to do.



- xix) contents of para vii) G c) is denied in totality. Respondent's averment that the meter was tested in a NABL accredited lab has no leg to stand as the routine test report of meter no. 5135896 submitted with written statement is neither signed by a competent authority nor is having the NABL symbol affixed on it, which is mandatory as per clause 5.1 of NABL policy. **"Use of NABL symbol is mandatory on all the test report/certificate issued by the NABL accredited lab for the parameters/test covered under NABL. Accredited scope narrative response to accredited status is in place of NABL symbol is not acceptable in test report."** Further as per clause 17 of the said document **"The test report issued under the accredited scope shall be authorized by the person who has been declared to NABL as responsible for review, report and authorizing the results."**

In absence of the aforesaid specific clauses of NABL document 133 being complied the submitted report cannot be held to be valid NABL document. Copy of NABL policy document has been attached.

That neither respondent's lab is NABL accredited nor they have availed services of any other NABL accredited lab for testing the meter as per clause 5.1.3 (1) of UERC regulations, 2020.

That para 14 (ii) (2) consumer meter of Central Electricity Authority modified regulation 23.12.2019 states **"The testing of consumer meter shall be done at site through accredited test lab least once in 5 years and recalibrated if required, provided that the licensee instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test lab provided also that the meter used for testing shall be of better accuracy class than the meter under test."**

That as per chapter 1.1 clause 1.1 (4) of UERC regulations, 2020 **"These regulations shall be interpreted and implemented in accordance with, and not at variance from CEA regulations as amended from time to time."** Hence para 14 (ii) (2) quoted above is binding on the respondent.

Further as per definition of meter CTs and PTs if installed along with the meter are to be tested along with the meter itself. Also the test meter shall be of better accuracy class, which in the instant dispute is of same class as that

of installed meter with respect to energy meter and current transformers. In view of the above clauses the respondent is not competent to carry out any test at site/consumer's premises for which a separate accreditation is required from NABL in terms of documents NABL 130.

- xx) xxvi) Contents of para G (d) need no reply and is an admitted position.
- xxi) xxvii) Contents of para vii) G e) is denied in totality and it is denied that clause 5.1.3 (11) & (12) of UERC regulation 2020 are being complied.

From the sealing certificates it is also established that the integrity of the metering system was not maintained during the alleged check meter study that some of the seals installed on the check meter and main meter found interchanged among themselves.

- xxii) xxviii) that the contents of para vii) G f) is denied in totality. The respondent had not substantiated their averment and it is an admitted fact that the sealing certificate 07/22 dated 20.12.2022 and 07/45 dated 10.01.2023 nowhere mentions that the meter was running slow.
- xxiii) xxix) that the contents of para vii) G g) is denied in totality. The respondent never established that the meter was running slow in accordance with the procedure established by law and fastned the illegal financial liability on the petitioner.
- xxiv) xxx) contents of para vii) G h) is denied in totality that the consumption pattern of the petitioner subsequent to check meter study establishes that the metering system of the petitioner cannot run 69.76% slow as alleged. Hence the assessment is liable to be quashed.
- xxv) xxxi) That the content of para viii) is denied in totality. The respondent has not brought on record any basis of denial.
- xxvi) xxxii) That the content of para ix) is denied in totality. The respondent has not produced any document/supply agreement to substantiate that they had utilized any services of M/s HPL in accordance with 5.1.3 of UERC regulation 2020. The respondent is trying to take advantage of NABL accredited lab of M/s HPL that the respondent need to check the veracity of

the energy meter along with CTs in their NABL accredited test lab and shall have required accreditation for site testing, then only compliance to the UERC regulation, 2020 can be made. That in absence of such compliance the alleged check meter study is null and void and no financial burden can be raised on the basis of such illegal study.

xxvii) xxxiii Contents of para x) is denied in totality. The respondent has not brought on record any basis of denial. Further petitioner would like to rely on para i) of this rejoinder and the content of the same has not been repeated herein for sake of brevity.

xxviii) xxxiv) That the content of para xi) is denied in totality. The respondent had not brought on record any basis, why the main meter was changed, when the matter regarding the same is sub judice at Forum. That in the instant dispute the respondent has alleged low voltage in one of the phases, whereas in this check meter study the respondent has alleged 0 current in one of the phase. That the check meter study declaring the meter running slow by 40% has been denied in totality. Copies of certificate has been attached as annexure 5. The respondent has changed the status quo of the meter case regarding which is already sub judice at Forum, hence the assessment is liable to be quashed.

xxix) xxxv) Contents of para xii) is denied in totality. The submitted case is very much similar and the Forum against the legal principle dismissed the complaint, hence interference of Hon'ble Court is warranted.

xxx) xxxvi) Contents of para xiii) is denied in totality that the respondent had not brought on record any basis of denial

xxxi) xxxvii) Content of para xiv) is denied in totality. The respondent has failed to provide necessary documents establishing their compliance with clause 5.1.3 of UERC regulation, 2020.

xxxii) xxxviii) Contents of para xv) is denied in totality. The respondent had not brought on record any basis of denial.

xxxiii) xxxix) it is a repeat ion of para xxxviii) above.



The petitioner has substantiated his averments in his rejoinder with necessary documentary evidences mentioned under the paras wherein it is referred.

6. Hearing in the case was held on pre-decided date 03.07.2023. Both parties appeared and argued their respective case. In addition to oral arguments the petitioner also submitted a written argument, wherein the petitioner has further made submissions in favour of his case based on relevant regulations, as well as case law of the Hon'ble Supreme Court and Hon'ble High Court Uttarakhand, which he had already submitted. The written argument had been taken on file on records. The arguments were concluded with mutual consent and 19.07.2023 was fixed for pronouncement of judgment in the case.
7. Forum's case file of complaint no. 183/2022 as requested for by the petitioner has also been summoned and had been gone through. The documents available on file including relevant UERC regulations, 2020, CEA regulation 2006 as amended subsequently, NABL policy 133 & 130 regarding accreditation of laboratories, Indian Electricity Rules, 1956 as quoted by the petitioner has been examined carefully.
8. The petitioner in his written arguments 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 having been 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 (Hon'ble Supreme Court judgment, Hon'ble Bombay High Court judgment and Hon'ble High Court Uttarakhand judgment). The petitioner has also referred orders passed by this court (Ombudsman) in petition no. 42/2022, 43/2022 and 03/2023. 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 mark.
9. Regarding test report of meter no. 5135896 (HPL make) the respondent has claimed that the test report has been carried out in NABL accredited lab. A copy of the test report of the aforesaid meter dated 24.10.2022 from HPL Electric and Power Ltd. has

also been submitted. This certificate does not contain NABL symbol as is mandatory under NABL policy (133/130), neither it contains test result of CTs which are an integral part of the meter, nor UPCL has executed any agreement or MOU with HPL Electric Power Ltd., as no such document has been adduced, so this test certificate does not qualify to be valid test certificate, as mandated under sub-clause 5.1.3(5) of UERC Regulation 2020.

10. 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 of relevant regulations, statutory provisions as referred in his petition, rejoinder and written argument. They have claimed that the case laws of Hon'ble Supreme Court, Hon'ble High Court Bombay and Hon'ble High Court Uttarakhand also directed that no assessment for supplementary bill can be raised on the basis of a study having not been conducted in accordance with the regulations and legal provisions and the petitioner also support their case and have therefore claimed that so called check meter study conducted by respondent from 20.12.2022 to 10.01.2023 the date of installation and finalization of check meter respectively, its results declaring the main meter running slow by 69.76% and supplementary demand amounting to Rs. 9,57,706.00 raised through an entry in the bill dated 14.02.2023 for the month of January 2023 as well as Forum's order dated 12.05.2023 passed in complaint no. 183/2022 before it, dismissing the said 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 referred by them 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.
11. On the other hand the respondent's case is that as a perusal of MRI report revealed zero voltage on B phase therefore a check meter study was conducted by installing a check meter on 20.12.2022 and finalizing it on 10.01.2023 vide sealing certificates no. 007/42 and 007/45 respectively. In the said study the main meter installed at the premises of the petitioner was found running slow by 69.76% and although the B phase voltage was missing for 318 days 22 hours 52 minutes and 49 seconds as per MRI report, the supplementary demand amounting to Rs. 9,57,706.00 was raised through bill dated 14.02.2023 for the month of January 2023 for a period of 12

months (from 11.01.2022 to 11.01.2023) in accordance with UERC regulation, 2020. As such the demand raised is genuine. The respondents 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. As such the respondents have claimed that action taken by them is in accordance with regulations and the demand raised is genuine and is payable by the petitioner.

12. A perusal of records show that the relevant UERC regulation and CEA regulation as referred by the petitioner which all are applicable in the instant case, but have in fact not been complied with in conducting the check meter study, as there is no evidence 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 HPL Electric and Power Ltd. in their NABL accredited lab. A photocopy of the test certificate has been adduced with written statement. A perusal of which suggests that it is a routine test report and no where shows that the test report is from NABL accredited lab, as it does not carry NABL's logo/ symbol as is mandatory under NABL policy. The petitioner has also submitted NABL policy documents where in it is clearly provided that a test certificate issued from NABL accredited lab shall compulsorily have NABL symbol/logo but which is not appearing on the test certificate submitted by respondent. This certificate moreover was not given to the petitioner before initialing check meter study and thus this does not fulfill the requirement of the regulations. (sub regulation 5.1.3 (1) (2) (3) (5) of UERC regulations, 2020 which are relevant in the case). The respondents have also submitted a certificate of accreditation of HPL Electric & Power Ltd. dated 26.12.2021 valid up to 26.12.2023, but the Test certificate of the Check meter adduced by the Respondent, does not qualify to be a Test certificate from a NABL accredited lab as explained here above.

It is clarified here that in the instant case the main meter is a CT connected meter and as per definition of the meter as given in UERC regulation 2020 as well as in CEA regulation, 2006 as amended and (reproduced below).



“(jj) “Meter” means a device suitable for measuring, indicating and recording conveyance of electricity, maximum demand, any other parameter or any other information related with electrical system, as may be specified by the Authority or notified by the Commission and shall include, wherever applicable, other equipment such as Current Transformer (CT) Voltage Transformer (VT) or Capacitor Voltage Transformer (CVT) necessary for such purpose and shall include net meter;”

CTs are a part of the meter and thus test certificate for a meter proposed to be installed as a check meter should be comprehensive test certificate giving the test report of the meter and CTs connected with that from a NABL accredited lab. Further the check meter as provided in CEA regulation 2006 amendment 2019 the meter used for testing shall be of better accuracy class than the meter under test. The test report of the check meter submitted by the respondents does not qualify to be a proper test certificate for the check meter apart from the shortcoming mentioned above there is no mention of testing of CTs connected with the meter and also there is no mention of its accuracy class. Hence sub regulation 5.1.3 (5) of UERC regulation 2020 has not been complied with.

13. Admittedly no test lab of UPCL has yet been accredited by NABL nor there is any mobile testing lab with UPCL for carrying out checking/testing of consumer's meter at site/at consumer premises as mandatory under NABL policy. Neither any evidence has been adduced by the respondents to show that UPCL has executed some agreement or MOU with some NABL accredited lab of some other utility or organization for getting their meters tested in such a lab till their own laboratory is not accredited by NABL. Such being the case any check meter study conducted by them as a result of which if existing meter was found running slow with reference to such a check meter shall be invalid in law and no supplementary bill can be raised on the basis of the results of such illegal study and if any such supplementary bill is raised by the respondents that shall be illegal and shall be liable to be quashed and set aside.
14. 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 69.76% slow cannot be relied upon and as the entire exercise of conducting check meter study and raising supplementary demand amounting to Rs. 9,57,706.00 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 petitions/ representations no. 42/2022, 3/2023 and 43/2022, which were decided by the Ombudsman vide orders dated 03.03.2023, 27.02.2023 and 20.02.2023 respectively, was the same i.e. non compliance of the relevant regulations and statutory provisions, as in the instant case, so adhering to the 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 also and the petition is therefore, being decided accordingly on the same ratio decidendi. The petition therefore succeeds and is allowed. Forum order is set aside. The disputed demand of Rs. 9,57,706.00.00 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). In view of the facts and merits of the case the petition is allowed. Forum order is set aside.

- 15 In the 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 committing similar or same type of mistakes in such cases again and again. An advisory to MD, UPCL was recently issued by undersigned in judgment dated 27.02.2023 in representation no. 03/2023. MD, UPCL and it 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.



I shall appreciate, if a copy of instructions issued to UPCL's field officers, as advised in this order is sent to the undersigned for perusal.

Dated: 19.07.2023


(Subhash Kumar)
Ombudsman