

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Dehradun Premier Motor Pvt.
DDPM Tower, Haridwar Bypass Road,
Dehradun, Uttarakhand

Vs

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

Representation No. 23/2023

Order

Dated: 19.07.2023

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone, (hereinafter referred to as Forum) order dated 15.05.2023 in his complaint no. 190/2022 before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (South), Uttarakhand Power Corporation Ltd., 18, EC Road, Dehradun, Uttarakhand (hereinafter referred to as respondent) M/s Dehradun Premier Motor Pvt. DDPM Tower, Haridwar Bypass Road, Dehradun, Uttarakhand (petitioner) has preferred this appeal for relief as mentioned in the petition and which shall be discussed hereunder.

2. In the instant appeal the petitioner has averred as follows:

- i) The instant appeal has been preferred against Forum's order dated 15.05.2023 in their complaint no. 190/2022 before the said Forum vide which the complaint was dismissed by the Forum out rightly without appreciating and considering the documents placed on record judiciously.
- ii) Complaint no. 190/2022 was instituted before the Forum against exorbitant bill dated 06.02.2023 for the month of January 2023 wherein high amount of Rs. 4,70,736.00 found added in addition to the regular consumption.



- iii) The petitioner is a consumer of the respondent company with connection no. SD0K00000684 for a contracted load of 50 KW at his premises and has been regularly paying the consumption charges as per demand raised by the respondent through monthly bills and there has been no default on their part since release of the connection.
- iv) That the factual matrix leading to filing the present grievance, petition are detailed as below: That: -
- a) The petitioner is a commercial unit engaged in the automobile sector located at Mathurawala Dehradun.
 - b) They are a consumer of the respondent for a contracted load of 50 KW with connection no. SD0K00000684 and had been regularly paying the consumption charges against monthly bills.
 - c) In the bill dated 06.02.2023 for the month of January 2023 they found additional amount of Rs. 4,70,736.00 added apart from regular monthly consumption. No breakup for this additional amount was provided.
 - d) They immediately visited respondent's office to enquire about the additional amount as no cogent explanation was given by the respondent, letter dated 14.03.2023 was submitted to the respondent requesting for investigation of the matter at their end.
 - e) On 15.03.2023 they received a notice dated 13.03.2023 from the respondent wherein they were asked to deposit Ra. 4,01,593.00 before 12.04.2023 threatening to initiate recovery proceedings otherwise.
 - f) AS the respondent did not do anything regarding their grievance, they instituted a complaint before the Forum where it was registered 190/2022, which was dismissed by the Forum vide order dated 15.05.2023.
- v) There was total denial of the principle of natural justice in Forum's order.
- vi) The dispute which has been raised by them in their appeal is based on Electricity Act, 2003, Indian Electricity Rules, 1956 and the CEA notification dated 17.03.2006 and UERC notification dated 29.10.2020 and it is being brought on record that the judicial discipline entails that the powers of distribution licensee (UPCL) are not unbridled but are circumscribed which

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mutatis mutandis are enshrined in Electricity Act, Rules and UERC regulations.

vii) The instant appeal is being preferred on following amongst other grounds being aggrieved with Forum order dated 15.05.2023 passed in their complaint no. 190/2022. Because : -

- A) The additional amount was added arbitrarily and secretly without any details or breakup which is against natural justice and fair business practice
- B) The impugned amount raised by the respondent has been issued in a most illegal, offscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner in clear violation of the said 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) 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 to the petitioner before raising the demand through impugned bill.
- D) As per well settled proposition of law 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 had denied that the metering system was not running slow to the tune of 27.006% and that 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 the same has not been carried out as per provisions mandated in UERC regulation, 2020
- G) The Forum did not consider and perused the following written and oral submissions made by them and dismissed the complaint. That: -
 - a.
 - i. No advance notice of the test/check meter study was served to the petitioner.
 - ii. No test report for the test/meter installed at their premises was served before initiation of test.



iii. No duly authenticated results were provided.

Whereas clause 5.1.3 (5) of UERC regulations, 2020 mandates **"The licensee shall, within 30 days of receiving the complaint, carry out testing of the meter as per the procedure specified herein and shall furnish duly authenticated test results to the consumer. The consumer shall be informed of proposed date, and time of testing at least 2 days in advance.**

Provided that where the licensee is installing a test/check meter along with the meter under test for verification of energy consumption, in such cases the licensee shall be required to provide a copy of the valid test report of such test/check meter to the consumer before initiating the testing."

No document was provided by the respondent to show the compliance of the aforesaid sub regulation without perusing this categorical fact the Forum dismissed the complaint, which is totally illegal and against established laws and regulations.

- b. Site testing has been carried out without their knowledge. The respondent without informing them of their intention, purpose and possible consequences of alleged check meter study had taken the signature of the petitioner's worker in a mechanical manner who was never authorized by them for any such purpose and which is gross violation of **section 163 (Power for Licensee to enter premises and to remove fittings or other apparatus of licensee.) of Electricity Act, 2003.**
- c. Respondent's lab is not accredited by NABL also they are not accredited by NABL for carrying out any site testing.

That as per **clause 5.1.3 (1) of UERC regulation, 2020 "The meter test lab of the Licensee shall be NABL accredited or it shall utilize the services of other accredited testing labs till its lab get NABL accredited."**

As per CEA regulation, 2006 in respect of clause 17 (2) which mandates **that the meter testing report must be issued by NABL accredited testing labs.**

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d. No reliance on the test results can be placed if such test have not been carried out in a NABL accredited lab because of the settled law as written by Hon'ble Bombay High Court judgment in the matter of **Nestle India Ltd. vs FSSAI (Writ petition (L) No. 1688 of 2015) dated 13.03.2015.**

e. The test results were not admitted and it is submitted that no opportunity was given to them to get the meter tested by Electrical Inspector or CGRF as the respondent never provided the test report. That the principles of natural justice and fair play were even not followed as no opportunity of hearing was given to them before raising the impugned bill.

That as per **clause 5.1.3 (12) of UERC Supply Code 2020** which mandates **"if the consumer or his representative disputes or refuses to sign the test report, the defective meter shall not be replaced and the matter shall be decided either a) upon the application of consumer by CGRF or Electrical Inspector or any authorized third party, who shall test the correctness of the meter and give results within one month."**

Thus any finding against the petitioner is not admitted and denied in totality.

f. As per well settled proposition of law a person cannot be penalized or asked to pay undue amount without the same actually having been fallen due and is not permissible in law.

viii) The Forum did not peruse the submissions of the petitioner made against the NABL accreditation and routine test report of the meter from M/s Schneider Electric Pvt. Ltd. before dismissing the complaint. The petitioner has submitted documentary evidences that test report submitted is a routine test report and does not qualify to be from NABL accredited lab. Thus requirement as stipulated in clause 5.1.3 of UERC regulation, 2020 was never complied that the ratio decidendi of the judgment of Forum is against established laws and hence order dated 15.05.2023 of the Forum need to be quashed.

ix) The Forum vide order dated 12.05.2023 (the correct date as per records is 15.05.2023) in complaint no. 190/2022 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 Schneider Electric Pvt. Ltd. and secondly that the sealing certificates were signed by the representative of the petitioner. Thus the Forum held that compliance of clause 5.1.3 of UERC regulation 2020 has been made. That the Forum did not apply mind that the valid test reports of meter including valid test report of energy meter and CTs installed along with it confirming the veracity of the energy meter and CT and also confirming CT ratios are to be submitted before initiation of check meter study and that the petitioner has never authorized anyone to sign the sealing certificates on their behalf. That when the Forum did not accept the application of grievance against M/s UPCL when not supported by proper authorization then how come the Forum can held that sealing certificate was signed by petitioner's representative in absence of any such authorization. That the ratio decidendi of the Forum is illegal and against legal principle of stare-decisis.

- x) It has been already established in representation no. 42/2022 dated 03.03.2023, 03/2023 dated 27.02.2023. 42/2022 dated 20.02.2023 at 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 as the said report is prepared and submitted only to fulfill the contractual obligation. The meter manufacturer having with reference to purchase order raised on themselves by the respondent. Moreover the check meter along with CT is to be checked for their veracity before being carried to the site for check meter study.

The Forum failed to peruse the fact that no supply order have been placed on M/s Schneider Electric Pvt. Ltd. or any other party by the respondent to use their NABL labs for testing of meter as provided under clause 5.1.3 of UERC regulation, 2020. 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 **BISIS14697** is mandatory. The routine test has been carried out by the meter manufacturer in compliance of the said specification and not in compliance of any UERC regulation.

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The energy meter and the CTs have to be checked in a NABL accredited lab before they are carried to the site of the consumer and the test results of both the energy meter and CT is to be shown to the consumer, then only test results, if provided to consumer can be relied upon. That for compliance with these stipulated guidelines NABL accreditation for site test at consumer's premises is must. Thus in absence of such accreditation for site test the entire check meter study is null and void.

- xi) The Forum did not peruse the submission of the petitioner that the respondent is not competent to carry out site testing and dismissed the complaint out rightly. That on the premise the meter manufacturer lab is NABL accredited complaint was dismissed illegally.

Even if it is assumed although not admitted that all the check meter in totality is tested in an NABL accredited lab then also UPCL is not competent to carry any test at consumer's premises. The petitioner would rely on **NABL document 130 "Specific criteria for site testing and site calibration laboratories."** Which among other state that the accreditation has to be obtained for site testing and calibration. That in absence of such NABL accreditation for site testing, the respondent is not competent to do any site test. Thus the check meter study carried out is not legally tenable and no financial liability can be raised based on such illegal test

- xii) In case no. 148/2022 at Forum in the matter of Hotel President vs Executive Engineer, UPCL, the Forum vide order dated 13.03.2023 held that clause 5.1.3 (Metering and billing of UERC regulation, 2020 was not followed and the veracity of the meter was not established as no NABL certified test report of the meter was submitted. Thus the check meter study establishing the main meter slow by 99.8% cannot be relied upon and the complaint was allowed in favour of petitioner. That the facts and circumstances of the case of petitioner are same with that of referred case. The Forum has dismissed the complaint without appreciating the fact that the principle of stare-desisi and ratio decidendi have not been followed and neither the referred judgment of Hon'ble Ombudsman were perused, which were binding on the Forum.



- xiii) Forum's order dated 15.05.2023 in complaint no. 190/2022 is illegal as neither the laws established by the appellate court was followed nor the law established by the Forum itself.
- xiv) As per settled law **WP 1069/2021 dated 10.06.2021 of Hon'ble High Court of Uttarakhand** whereby the Hon'ble Court has clarified that if clause **3.1.3 (Testing of meter)** of **UERC Supply Code, 2007** is not complied. No assessment/supplementary bill can be raised and if such assessment/supplementary bill 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 any assessment bill. The aforesaid clause **3.1.3 of 2007 regulation** has been replaced by **clause 5.1.3 of UERC regulation 2020**.
- xv) It is pertinent to mention that the respondent without providing the test results of alleged check meter study have replaced the meter and this action of the respondent resulted in denial of the opportunity of the petitioner to get the meter tested by the Electrical Inspector. The respondent cannot be rewarded for their gross violation of regulations, more so when the legal principle states "**ignorantia juris non excusat**". The Hon'ble Supreme Court have clearly established in the Civil Appeal no. 3615 of 1996 in the matter of **Bombay Electric Supply and Transport Undertaking (petitioner) vs Laffance (India) Pvt. Ltd. (respondent)** in para 3 of page 7 "**The most material evidence being the meter itself has been lost by the act of the petitioner in removing the incorrect meter. The petitioner 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.**"
- xvi) Under the above circumstances petitioner having left with no alternative but to approach the Hon'ble Ombudsman has preferred this appeal for necessary relief and redressal. It is humble and respectful submission that the impugned assessment is liable to be quashed and set aside by the Hon'ble Ombudsman

Prayer

In the premises aforesaid the petitioner has made the following prayers:



- i) Call for records of the case file of Forum.
- ii) Quash and set aside the additional amount on account of assessment being the same illegal, arbitrary, perverse, malafide and unjust.
- iii) Quash and set aside order dated 15.05.2023 in complaint no. 190/2022 passed by the Forum.
- iv) Issue necessary direction to UPCL/respondent not to disconnect the electricity supply of the petitioner on is being made regular consumption charges and not to take any other coercive action till final decision in the petition.
- v) Pass any other order or direction as deemed fit and proper in the interest of justice.

The petitioner has submitted documentary evidences to substantiate their averments under such paras of the petition wherever such evidences are required.

As requested for by the petitioner Forum's case file of complaint no. 190/2022 has been summoned from the Forum.

3. After perusal of records available on file and hearing arguments from both the parties the Forum was of the view that the assessment raised for the main meter running slow by 27.006% with reference to the check meter is logical and justified and in this circumstances complaint has no force and therefore liable to be dismissed. And the Forum accordingly dismissed the complaint vide their order dated 15.05.2023.

However it is pertinent to mention that the Forum in its order has turned down the opposite party's submission which was interalia made in its letter no. 468 dated 01.05.2023 that their lab at 18, EC Road has duly been accredited by NABL. However the Forum noted in its order no documentary evidence has been adduced by the opposite party to justify their claim to the fact that their 18, EC Road lab have duly been accredited by NABL, a perusal of Forum's file of complaint no. 190/2022 also confirms Forum's comments as no such documentary evidence is available on file to show that opposite party's 18, EC Road lab has duly be accredited by NABL and thus opposite party's submission that 18, EC Road lab has duly been accredited by NABL proves not to be a fact.



4. The respondent, Executive Engineer has submitted his written statement vide his letter no. 1063 dated 08.06.2023 along with an affidavit on oath, wherein he has submitted point wise reply as follows:

- i) On observing irregularity in the metering system of the petitioner in MRI study, SDO informed the petitioner vide his letter no. 924 dated 05.09.2022 that a check meter shall be installed at his premises to confirm the irregularity observed in MRI.
- ii) Check meter was installed in petitioner's premises on 07.09.2022 in accordance with UERC sub regulation 2020 sub regulation 5.1.3 (5) and signatures on the sealing certificate were got done by consumer's representative. Further he has submitted that on 07.06.2023 the AE (R) contacted Shri Ankit, who has signed the sealing certificate on mobile no. 8755037070 who claimed himself to be an employee of M/s Dehradun Premium Motor Pvt. Ltd. Quoting sub regulation 5.1.3 (5) of UERC regulation 2020, he has submitted that although there is no provision for issue a advance notice to the consumer for installing check meter in sub regulation 5.1.3 (5) of UERC regulation, 2020 but due to raising a question for not issuing advance notice to the consumer in other cases a notice was issued to the petitioner in the instant case by SDO vide his letter no. 924 dated 05.09.2022 informing the consumer for installing a check meter.
- iii) Reproducing the provisions of sub regulation 5.1.3 (1) of UERC regulations, 2020 the respondent had submitted that the check meter no. 22224746 installed at the petitioner's premises has duly been checked/tested by M/s L&T (supplier) which is duly validated (मान्यताप्राप्त) by NABL of which certificate is enclosed herewith.
- iv) He has reproduced the provisions under sub regulation 5.1.3(12) of UERC regulation 2020 and has submitted that the subject matter of the case is regarding installation of a check meter and not regarding replacement of a defective meter, so aforesaid sub regulation 5.1.3 (12) has no concern with the instant case.



Further the respondent has submitted that while installing check meter shut down of the supply to the consumer is taken because the check meter is installed in parallel with the existing main meter, so petitioner's averment that the check meter can be installed without the knowledge of the consumer is baseless and false. He has substantiated his submissions with a copy of letter no. 924 dated 05.09.2022 from SDO to the petitioner, a copy of electronic tri vector meter routine test report of meter no. 22224746 dated 23.01.202 (perhaps last digit omitted) by M/s Schneider Electric India Pvt. Ltd., a copy of AE (M) letter 334 dated 06.10.2022 addressed to Executive Engineer, EDD (South), copy of sealing certificates dated 07.09.2022 and 20.09.2022 for installation and finalization of check meter.

5. The petitioner has submitted a rejoinder dated 19.06.2023 wherein he has averred/submitted as follows and has raised a number of questions regarding violation of the provisions of UERC regulation, 2020 as well as CEA regulations, 2006 as amended up to 2019.

i) The Court is requested to decide the following substantial questions of fact and law apart from framing and dealing with any other substantial questions of fact and law which may be considered by the Hon'ble Court as valid to decide the disputed issues in accordance with the principle of natural justice and fair play.

a) Whether UPCL test laboratories (including carrying out site testing for which accreditation other than that from permanent laboratory is required) are duly accredited by NABL for testing and calibration labs (NABL) as mandated by CEA regulation 2006 and subsequent amendment 2019 in respect of clause 17 (2) and 18 (2) which mandates setting up appropriate number of accredited test labs or utilize services of other accredited test labs and if not done shall take immediate action to get its labs accredited by NABL and testing may be carried out through NABL mobile laboratory as provided under clause 17 (2) and 18 (2) respectively. Further the petitioner has stated that it is necessary also as settled law as written by Hon'ble Bombay High Court in the



judgment in case of M/s Nestle India Ltd. Vs FSSAI (WP L 1688 of 2015 dated 13.08.2015).

- b) Whether mandatory condition imposed under 5.1.3 (6) that the meter testing report should be furnished in the prescribed format in Annexure 8 and whether the calculation written by the respondent with meter sealing certificate is sustainable in law whereas the test results has to amplify that **“Consumer meter recorded... % less / more consumption”** and on the basis of such test report the respondent had to conclude **“Need replacement/results are within limit.”** Where in absence of such prescribed certificate, mere submission of meter sealing certificate (without any such prescribed calculations and results) would suffice the mandate of the requirement provided under 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) of the said regulation 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 respondents without procedurally complying to clause 5.1.3 of regulation, 2020 moreso because of the settled law WP 1069 of 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 /check meter (which shall include the test report of the CTs, PTs along with the energy meter) before initiation of test in reference to 5.1.3 (5) of regulation, 2020 and in absence of such valid test report whether the test results are valid, reliable and acceptable.
- ii) At the outset the petitioner has submitted that the 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 of the



petitioner, hence denied except to the extent, which are specifically and categorically admitted in the following paragraphs.

- iii) Contents of para i) is wrong false and hence denied in totality. That the alleged letter 924 dated 05.09.2022 of SDO was never served to the petitioner and it has been created only to escape from noncompliance of clause 5.1.3 of UERC regulation 2020. That neither such letter was submitted before the Forum and it is just an afterthought and hence cannot be relied upon.
- iv) Contents of para ii) are wrong false and denied in totality. Averments of respondent with regard to UERC regulation, 2020 clearly established beyond doubt that the respondent is very well versed with the procedure. That the test have to be witnessed by either petitioner or his authorized representative. Valid test report of the check meter need to be given to the consumer before initiation of test, it was never disputed by the respondent. Mere submission of routine test report of the meter at a later stage at Forum without prejudice to the fact that the test report of the CTs was never provided cannot be construed to be compliance of regulation 2020. In the absence of which the check meter study is null and void and cannot be used for fasten of any liability on the petitioner.
- v) The respondent has not submitted any documentary evidence to show that notice was served for the alleged check meter study. As per clause 5.1.1 (6) of UERC regulation 2020 **"It shall be the responsibility of Licensee to maintain the meter and keep it in working order at all times."** Thus maintenance and upkeep of the metering system is the responsibility of the respondent for which purpose respondent officials made visits at premises of the petitioner.

The respondent have not denied petitioner's averments and it is in admitted position that the legally valid test report of the metering equipment was not provided before initiation of alleged check meter study which is a violation of clause 5.1.3 (5) of UERC regulation, 2020.

- vi) Firstly sealing certificates were not signed by the petitioner or his authorized representative and secondly purpose and intention of the alleged check meter study was never intimated. Although the licensee has the authority to test the



metering system installed at consumer's premises but where intention of such check meter is 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. A detail procedure for such study has been given under clause 5.1.3 of UERC regulation, 2020.

- vii) The respondent through letter no. 468 dated 01.05.2023 have given misleading information with regard to NABL accreditation of their test lab. 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. 22224746 submitted at Forum is having the NABL symbol affixed to it whereas clause 5.1 of NABL policy symbol **"Use of NABL symbol is mandatory on all test reports/certificates issued by NABL accredited lab for the parameters test covered under NABL accredited scope. Narrative referee to accredited status in place of NABL symbol is not acceptable in test report. In absence of provisions of NABL 133 being complied the submitted report cannot be held to be valid NABL document, neither respondent's lab is NABL accredited nor they have availed services of any other NABL accredited lab as provided under clause 5.1.3 (1).**

Para 14 (ii) (2) (Consumer meter) of CEA regulation as amended up to 2019 states **"The testing of consumer meter shall be done at site through accredited test laboratory at 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 then the meter under test."**

As per chapter 1.1 general clause 1.1 (4) of UERC regulation 2020 **"These regulations shall be interpreted and implemented in accordance with and not in variance from CEA regulations amended from time to time."** hence para 14 (ii) (2) of CEA regulations is binding.

In nutshell the respondent is not competent to carry out any test at site/consumer premises for which a separate accreditation is required from NABL in terms of document NABL 130.



- viii) Clause 5.1.3 (11) of UERC regulation, 2020 mandates that signature of consumer or his authorized representative are to be taken on the sealing certificate. This is necessary for fulfillment of the condition of issuance of advance notice. The sealing certificate cannot be held equal to the test report to be given on annexure 8 as provided in UERC regulation, 2020.
- ix) No documentary evidence has been adduced by the respondents to show that they have utilized service of M/s Schneider Electric Pvt. Ltd. as required under clause 5.1.3 of UERC regulation 2020. The respondents are trying to take advantage of NABL accredited lab of the aforesaid company, so compliance of the said regulation has not been done. Thus in view of above submissions the petitioner has prayed that the Hon'ble Ombudsman would be pleased to take on record the rejoinder and allow them to argue the matter both on the averments made in appeal as well as countered in this rejoinder. Further, the Hon'ble Ombudsman may allow furnishing any evidence document/judgment to substantiate the pleadings.

The petitioner has substantiated his submission with documentary evidences as referred in the rejoinder and are enclosed with it.

6. Hearing in the case was held on pre-scheduled date 03.07.2023. Petitioner's authorized representative appeared for arguments. The respondent Executive Engineer appeared for arguments along with SDO and AE (R). Both parties argued their respective case. Apart from oral submissions both parties submitted written arguments also. The respondent submitted a letter no. 1435 dated 03.07.2023 which is nothing but a copy of his written statement dated 08.06.2023. So in fact it is not a written argument. The petitioner also submitted a written argument which is mainly a repetition of his submissions based on relevant UERC regulations, CEA regulations, NABL policy and case law of Hon'ble High Court Uttarakhand as well as case laws of Hon'ble Supreme Court and Hon'ble Bombay High Court which he had already submitted. So there is nothing new in this written argument, however both these documents has been taken on record. Arguments were concluded with mutual consent and 19.07.2023 was fixed for pronouncement of judgment.
7. Forum's case file of complaint no. 190/2022 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. 22224746 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 23.01.202 (perhaps last digit omitted) from M/s Schneider Electric India Pvt. 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 M/s Schneider Electric India Pvt. 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 07.09.2022 to 20.09.2022 the date of installation and finalization of check meter respectively, its results declaring the main meter running slow by 27.006% and supplementary demand amounting to Rs. 4,70,736.00 raised through an entry in the bill dated 06.02.2023 for the month of January 2023 as well as Forum's order dated 15.05.2023 passed in complaint no. 190/2022 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 on observing irregularity in the MRI report a check meter study was conducted by installing a check meter on 07.09.2022 and finalizing it on 20.09.2022 vide sealing certificates no. 19/006 and 20/006 respectively. In the said study the main meter installed at the premises of the petitioner was found running slow by 27.006% and a supplementary demand amounting to Rs. 4,70,736.00 was raised through bill dated 06.02.2023 for the month of January 2023 for a period of 12 months 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, although advance notice was given to the petitioner vide SDO letter no. 924 dated 05.09.2022 for installing check meter, but the responded has claimed that there is no provision to give advance notice to the consumer in sub regulation 5.1.3(5) of UERC Regulation 2020 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 M/s Schneider Electric India Pvt. 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).

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 27.006% slow cannot be relied upon and as the entire exercise of conducting check meter study and raising supplementary demand amounting to Rs. 4,70,736.00 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. 4,70,736.00 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