

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Hotel President  
6, Ashley Hall, Rajpur Road,  
Dehradun, Uttarakhand

Vs

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

Representation No. 24/2021

### **Order**

**Dated: 29.10.2021**

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 29.07.2021 in their complaint no. 30/2020, before the said Forum M/s Hotel President, 6, Ashley Hall, Rajpur Road, Dehradun, Uttarakhand (the petitioner) service connection no. CDOK000000058 for 110 KW contracted load has preferred this appeal against Uttarakhand Power Corporation Ltd (hereinafter referred to as UPCL) through Executive Engineer, Electricity Distribution Division (Central), Dehradun (hereinafter referred to as respondent) with the prayer that Forum's order dated 29.07.2021 in complaint no. 30/2020 be set aside, excess bill for the month of June 2020 be quashed, assessment amounting to Rs. 1,50,634.00 arbitrarily raised by the respondent be quashed, direct the respondent to revise the subsequent bills in line with UERC Regulations and to pass any other order as deemed fit.

2. The petitioner has preferred this appeal against Forum's order dated 29.07.2021 in their complaint no. 30/2020 against UPCL in which the Forum had dismissed their complaint without appreciating and considering the documents placed on records judiciously and without considering various submissions made by them. The complaint was instituted before the Forum against the respondent for raising arbitrary, illegal, unjustified and unwarranted demand of Rs. 1,07,093.00 through the bill for the month of June 2020 and subsequent high monthly demands. The UPCL subsequently

raised an assessment of Rs. 1,50,634.00 against checking vide sealing certificate number 152/44 dated 24.02.2020 for which the respondent never provided the test results. (A perusal of Annexure B referred in para 3 of the petition shows that the assessment of Rs. 1,50,634.23 was raised on the basis of check meter study conducted by installing check meter on 09.06.2020 and finalization on 24.07.2020 for the existing meter found running slow by 26.23%, although AE (M) had recommended assessment @ 37.44% on the basis of sealing certificate no. 152/44 dated 24.02.2020, as is evident from Annexure C). The petitioner has submitted the factual matrix leading to filing the present grievance petition as follows: that the appellant runs a hotel "M/s Hotel president" located at Astley Hall Rajpur Road, Dehradun. That the appellant premises is having electricity connection with no 58 for 110 KW load through meter number 330282 under category RTS-2 other non domestic above 25 KW and has been regularly paying the consumption charges as per demands being raised by the respondent through monthly bills. That bill for the month of June 2020 was received on higher side as Hotel remained closed in view of Covid-19. The appellant duly informed the respondent and deposited Rs. 35,000.00 in the month of June, however, respondent took no action and again sent the excess bill in the next month and subsequently without giving heed to the grievance raised an assessment of Rs. 1,50,634.00 without giving any details thereof to them. Therefore being aggrieved with excess bill for June 2020 and subsequent, they approached the Forum who dismissed their complaint no. 30/2020 through its order dated 29.07.2021 and aggrieved with aforesaid Forum order, the present appeal has been preferred on the following grounds.

3. Grounds of appeal:

Because the Forum has failed to appreciate that impugned bill for the month of June 2020, subsequent monthly bill and assessment bill has been raised in a most illegal obscure, erroneous, arbitrary, unwanted, perverse, irregular and unjust manner in clear violation of the settled proposition of law resulting in manifest injustice and causing serious prejudice to the complainant and hence the same deserves to be quashed and set aside. Further the Forum has failed to appreciate that action of UPCL is in clear violation or principle of natural justice, equity and good conscience in as much as no notice or opportunity of being heard was given to them before raising the impugned

demand and because the Forum has failed to appreciate that as per the sealing certificate of check meter installation and finalization have been tampered by the respondent and the Forum has also failed to appreciate that without any abnormality or defect in the meter or its accessories the meter cannot run slow was alleged by the respondent. The Forum has also failed to appreciate that no meter testing report is provided to the appellant in format annexure V as approved by the Hon'ble Commission so that appellant could have raised the dispute before the Electrical Inspector as per appropriate clause of the regulations. Further the Forum has relied on the tamper report which states the voltage failure even at many places as such the Forum had failed to appreciate that the voltage failure tamper of the MRI report does not mean that the instant value of voltage was 0 (zero) it may be likely that there was actual voltage drop in the distribution lines or one of the phase was completely missing. The Forum never provided copy of the documents submitted by respondent to it and awarded the decision in favour of respondent without giving chance to appellant to have submissions on them. Further the Forum have not considered their submissions and dismissed the complaint without pursuing the relevant details of the dispute at hand. The Forum have also failed to take into consideration the following points also:

- i) That as per page 2 of the judgment it was stated that as per letter no. 2450 dated 26.09.2020 of the respondent, their contracted load has been mentioned as 75 KW whereas as page no. 3 para 1 it is stated that 110 KW, it confirms that the respondent have submitted false statements to get the case in their favour.
- ii) As per page 2 and 3 of the judgment the respondent submitted 2 different energy consumption for the month from March 2020 to August 2020, but the Forum have not given consideration to the fact that how the respondent has calculated the different energy consumption for the same time period.
- iii) That as per para 6 page no. 3 of judgment it is stated that as per letter no. 69 dated 07.08.2020 the installed meter was running 24.23% slow whereas the test meter report states the meter running 37.44% slow. Forum failed to take note of this discrepancy.
- iv) That the same meter test report referred above states that check meter was installed on 25.01.2020 and finalized on 24.02.2021. The Forum had failed to

appreciate that this was contrary to what respondent had submitted with regard to dates of installation and finalization of check meter.

- v) The same meter test report referred above states that the sealing certificate filled at the time of check meter installation is 152/23 and at the time of finalization was 152.44 but the Forum did not take note of the fact that the sealing certificate filled at the time of installation of check meter was 152/25, it was just not an error in typing. The respondent had manipulated the official records to their advantage to extract money illegally from them.
- vi) The meter test lab of the respondent are not NABL accredited as is mandated in CEA Regulations, 2006.
- vii) The Forum had ignored the fact that the same sealing certificates referred above had been fabricated.
- viii) This discrepancies and fabrication which were done in the laboratory/test lab of the respondent, which were very well anticipated by CEA and results in insertion of clauses like 17 (2) and 18 (2) of regulation 2006. In the light of the instant case if UPCL being a public distribution undertaking can fabricate the test results and forged the documents, then the importance of the NABL accreditation of the labs becomes utmost important.

The Hon'ble High Court Bombay in its judgment dated 13.08.2015 in Writ Petition 1688 of 2015 have specifically mentioned that no reliance could be placed on the results not taken in a NABL accredited lab so because the entire alleged testing in the instant case were not done in a NABL accredited lab as required under CEA regulation, 2006 as well as UERC Supply Code Regulation 2007 and hence no reliance can be placed on the results as such the assessment is not maintainable in the eyes of law and is liable to be dismissed.

- ix) The respondent has violated the regulations and applicable laws and has not accredited their test labs. The Forum have failed to appreciate that as per legal maxim "ignorantia juries non excusat" the ignorance of law is no excuse and awarded the judgment in favour of respondent.

4. In view of their above submissions they have made the following prayers:

- i) Set aside the order dated 29.07.2021 passed in complaint case no. 30/2020 by Ld. Forum.

- ii) Quash and set aside the excess bill for the month of June 2020 and subsequent and direct the respondent to prepare the bills afresh as per the readings of the electricity meter.
  - iii) Quash the assessment of Rs. 1,50,634.00 arbitrarily raised by the respondent.
  - iv) Direct the respondent to revise all the subsequent bills in line with approved regulations of Hon'ble Commission without imposition of LPS.
  - v) Pass any order or direction or provide any other relief which the Hon'ble Ombudsman deem fit in the interest of justice.
5. The petitioner has substantiated his averments on the basis of documents as referred in the petition such as Forum's order dated 29.07.2021, calculation sheet for raising assessment of Rs. 1,50,634.23, based on check meter study conducted from 09.06.2020 to 24.07.2020 wherein existing meter was found running slow by 26.23%, another calculation sheet based on check meter study from 25.01.2020 to 24.02.2020 for raising assessment for the meter running slow by 37.44%. Sealing certificate no. 152/44 dated 24.02.2020, sealing certificate no. 156/15 dated 24.07.2020 and sealing certificate no. 152/23 dated 25.01.2020.
6. The Forum in their order dated 29.07.2021 has specifically mentioned that the complainant submitted that the Hotel President connection no. 58 had been under lockdown since 22.03.2020 due to covid-19 and finally opened its restaurant and hotel on 03.08.2020. With reference to respondent's report, the Forum has given 2 tables for comparison of the consumption for one for 75 KW contracted load and another for 110 KW contracted load for connection no. 58. After perusal of the documents placed before them and after hearing arguments from both parties, the Forum observed that a check meter was installed at the premises of the complainant on 09.06.2020 which was finalized on 24.07.2020 and in this study the old meter was found running slow by 26.23% and based on this, assessment @ 26.23% for slow running of meter was raised for a period from 09/2020 to 21.07.2020. The Forum held this assessment not logical and justified, the Forum therefore directed the opposite party to raise a revised assessment for 26.23% slow running of meter in accordance with sub regulation 3.1.3 (6) of UERC Supply Code Regulation, 2007 within a period from the date of order and without imposing any LPS.

7. The respondent Executive Engineer has submitted a written statement vide his letter no. 2324 dated 09.09.2021 with an affidavit under oath. The averment of the petitioner is not true. The Forum directed to revise the assessment in accordance with sub regulation 3.1.3 (6) of Supply Code Regulation, 2007 which had duly been complied with. All documentary evidences were provided to the complainant during the course of hearing from an analysis of MRI report of petitioner's meter number 330282, it was found that voltage on Y phase was missing since 05.04.2019, a check meter no. 7804865 was installed at petitioner's premises on 09.06.2020 which was finalized on 24.07.2020. The existing meter was found slow by 26.23% with respect to check meter, based on check meter study and load survey and based on comparative statement of consumption assessment amounting to Rs. 1,50,634.00 was raised for a period from 10/2019 to 07/2020. Sealing reports for installation and finalization of check meter were issued and all documents were submitted before the Forum at the time of arguments. The Forum directed to revise the bill as per Regulations. There are 2 connections existing in the premises of the consumer. The connection numbers differs only in last one digit due to which human mistake was committed but this did not affect the facts and the order adversely. The respondent has submitted that all test labs of UPCL are working as per UERC's regulations. Regarding the Hon'ble Bombay High Court ruling in Writ Petition no. 1688/2015 the respondent has submitted that Writ petition referred in the petitioner's appeal is not concerned with the electricity test lab but it is regarding test labs of food product. On the other points the respondent has submitted as follows:

point no. 2 उपरोक्तानुसार

4 क तथ्यात्मक कथन

4 ख सहमत

5 असहमत

6 तथ्यात्मक कथन

क ख ग घ असहमत

6 अ तकनीकी आधार पर सत्य नहीं अतः असहमत

6 ब खण्ड कार्यालय से सम्बन्धित नहीं

6 स माननीय मंच द्वारा नियामन के आधार पर बिल संशोधित करने हेतु आदेशित किया।

6 (1) टंकण में की गई मानवीय त्रुटि जिसका माननीय मंच द्वारा आदेश करने से पूर्व लिया गया।

6 (2) तुलनात्मक ऊर्जा खपत सारणबद्ध कर संलग्न

6 (4) (5) तथा (7) पैरा 3 के अनुरूप।

9 असहमत

8. The respondent has substantiated his submissions on the basis of evidences as referred in the written statement such as Forum's order dated 29.07.2021, tamper data report, TOD data report, letter no. 69 dated 07.08.2020 of AE (Meter) addressed to the respondent, sealing certificate dated 24.07.2020, 09.06.2020, consumer ledger, AE (Meter)'s letter no. 87 dated 25.09.2020 addressed to the respondent. Year wise comparative consumption statement of preceding and succeeding months, consumer consumption from 05.06.2019 to 05.08.2021, a calculation sheet for assessment amounting to Rs. 93,952.00 for slow running of meter by 26.23% based on check meter study conducted from 09/2020 to 24.07.2020. Consumer billing history, copy of Hon'ble High Court judgment in writ petition no. 1688/2015.
9. The petitioner has submitted his rejoinder dated 20.09.2021 with an affidavit under oath. At the outset it is specifically and categorically submitted that the contents of respondent's written statement are denied being devoid of merits baseless and no cogent explanation has been furnished with respect to the contentions of the appellant, hence denied except to the extent which are specifically and categorically admitted in the foregoing paragraphs. Further it is categorically and specifically submitted that contents of petition has not been repeated herein for the sake of brevity in order to avoid repetition and therefore contents of the same may be read part and partial of this rejoinder and in the given facts and circumstances the contents of the corresponding paragraphs of the petition are reiterated and reaffirmed.
10. Parawise rejoinder to the written statement

Contents of para 1, 2 need no comments since respondent had not denied the same, 3 contents of para 2 is denied in totality because the respondent neither provided any advance notice of testing nor any test report of the meter test, which is in clear violation of UERC Regulations and further in clear violation of principles of natural justice, no opportunity was given to the appellant before raising the alleged assessment. In reply to para 4 the petitioner has submitted that it needs no comments being an admitted fact, contents of para 4 c were denied in totality because no advance notice of testing was provided by the respondent and nor any test report of meter test was provided. The respondent had fabricated all the data to claim their unjustified, arbitrary and illegal demand contents of para 5 were denied in totality and that of para 6 a, b, c and d were also denied in totality. Contents of para 6 e were also denied in totality for the reason that the test results have been mentioned nowhere in the sealing certificate. It is pertinent to mention that no proper sealing was carried out during the alleged testing details of seals installed at the meter as per the sealing certificate has also been given in the following table:

|             | Details of seal as per<br>sealing certificate<br>09.06.2020 | Details of seal as per<br>sealing certificate<br>24.07.2020 | REMARK            |
|-------------|---|---|-------------------|
| Main meter  | QU012858  | QU012858  |                   |
| Check meter | UG010490, 8078858,<br>1887616, 1887615                      | UG010490, 8152103,<br>8152104                               | Mismatch in seals |

11. The petitioner has stated that it is clearly established that the respondent have carried out alleged testing without proper sealing of the meter the meter was opened as per their wish many times during testing without consumer's knowledge, as such this entire exercise is merely troubleshooting exercise of the responded and cannot be termed as check meter study. Referring Ombudsman's order in petition no. 55/2019 dated 27.12.2019 of M/s Udaan Export, the petitioner has mentioned that the said appeal was allowed by Hon'ble Ombudsman as the check meter study was not proper and in view of this the assessment was held liable to be quashed. In reply to para 6 f, g and h the contents have been totally denied. While denying all points from h1 to 9 the petitioner has submitted that reports have been fabricated to verify the arbitrary assessment. No accreditation certificates of labs from NABL has been submitted with their written statement admittedly the labs of the respondent are not working as per



UERC Regulations. Further as per established fact no reliance can be placed on test results from a lab not duly accredited by NABL and that view has also been taken by Hon'ble High Court Bombay in the referred case law. The procedure followed in the instant testing which includes manipulation of documents apart from interfering the metering system during the testing which make the NABL accreditation utmost important. So the respondent cannot be rewarded for the ignorance of law for violation of regulations carried out by them.

12. Additional points:

1. At the time when Electricity Act, 2003 came into force along with subsequent CEA Regulations, 2006, the distribution in almost all the states were carried out by public sector companies.
2. That if the competent authority have stipulated NABL accreditation mandatory for labs, it means that the competent authority do not have trust on the testing labs of the discoms in the way they were functioning hither to, however UPCL labs have still not been accredited by NABL in violation of Electricity Act, UERC Supply Code and Test results which are fabricated cannot therefore be relied upon.

13. Prayers:

As in the petition

14. Hearing in the case was fixed on 05.10.2021. Petitioner appeared himself, the respondent was represented by Assistant Engineer (Revenue). The petitioner argued his case in detail based on their averments in their petition as well as in the rejoinder and with the force of relevant regulations which have not been complied with by the respondent as also a case law of Hon'ble High Court Bombay in Writ no. 1688 of 2015. They also submitted a written argument wherein they categorically stated that no advance notice for check meter study was given neither test results were provided to them by the respondent. Meter was opened several times during testing no sealing certificate was filled in and the respondent never established that the meter was running slow as per the procedure and guidelines issued by the Hon'ble UERC and further that UPCL was not competent to carry out any site testing or any test in their premises as they have not yet accredited their labs by NABAL which was mandated

by CEA even after more than 15 years have been passed since the CEA guidelines were issued which clearly shows that the respondent is not having any intension of making the compliance to the said regulation without prejudice to the fact that the respondent being a public company owes high moral responsibility towards the regulatory compliances. In view of the premises aforesaid along with the appeal and rejoinder the impugned order of Forum along with assessment raised by the respondent is liable to be dismissed.

15. The respondent's representative was not able to reply to any questions raised by the appellant neither he offered any comment on the written argument. In fact he did not argue his case, he simply appeared physically. He was asked to tell which UERC regulation they are referring in their reply which reads as "उपाकालि में समस्त टेस्ट लैब माननीय विद्युत नियामक के नियामन अर्न्तगत संचालित की जाती हैं", he could not reply anything, however simply said SOP Regulation, further he was asked to explain the basis of impugned assessment, he replied as per AE (Meter)'s recommendations.
16. Records available on file have been perused. Arguments from both parties were also heard. It is borne out that on the basis of check meter study conducted from 09.06.2020 to 24.07.2020 by installing a check meter no. 7804865 vide sealing certificate dated 09.06.2020 and finalization sealing certificate dated 24.07.2020, an assessment for slow running of meter by 26.23% was raised for a sum of Rs. 1,50,634.00 for a period 10/2019 to 07/2020. Records available on file suggests that a check meter study was earlier conducted at the premises of petitioner's connection no. 58 for 110 KW load by installing a check meter vide sealing certificate no. 152/23 dated 25.01.2020 which was finalized vide sealing certificate no. 152/44 dated 24.02.2020 wherein the AE (Meter) in a report submitted to the respondent as available in file, the consumer's meter no. 330282 was declared slow by 37.44%. The respondent however did not raise any assessment on the basis of this check meter study on the petitioner's connection on. 58 of 110 KW load but after tampering these sealing certificates by cutting the connection no. and existing meter number to make them for connection no. 52 and meter no. 329949 for another 75 KW connection of the same consumer and on which on the basis of these tampered sealing certificates the respondent raised an assessment amounting to Rs. 1,85,607.00 on connection no. 52 of 75 KW, which case is dealt with in petition no. 23/2021 and thus this check

meter study after forging the sealing certificates have been used for raising assessment against another aforesaid connection. It is however not understood that why the respondent has committed this act of tampering the documentary evidence and utilized them for raising assessment on another aforesaid connection, where this study was not conducted. Further, respondent conducted another check meter study on the petitioner's connection no. 58 for 110 KW load (pertaining to the instant petition) by installing check meter no. 7804865 vide sealing certificate no. 156/06 dated 09.06.2020 which was finalized vide sealing certificate no. 156/15 dated 24.07.2020 as a result of this study the AE (Meter) recommended the consumer's existing meter no. 330282 running slow by 26.23% on the basis of which, impugned assessment of Rs. 1,50,634.00 was raised. It is not understood as to how the same meter was found running slow in different percentages viz 37.44% and 26.23% in two check meter studies. In their written arguments the petitioner has also submitted another set of check meter study vide sealing certificates dated 18.08.2021 for installation of check meter and dated 27.09.2021 for its finalization. As mentioned on sealing certificate dated 27.09.2021 both the check meter and existing meter were removed and another new meter was installed. The petitioner has mentioned a remark on sealing certificate dated 27.09.2021 "As the test has not been carried out as per regulation and is therefore denied." The purpose and results of this study have however not been submitted by the respondent.

17. For the aforesaid irregularities i.e. not assessing the consumer @ 37.44% based on check meter study conducted from 25.01.2020 to 24.02.2020 and using this study after tampering for raising assessment on connection no. 52 and conducting another 2 subsequent studies and further having not complied with the relevant regulations issued by the competent authorities in accordance with the powers conferred on them under Electricity Act, 2003. Such as sub regulation 3.1.1 (5) of UERC Supply Code Regulations, 2007, mandating for giving one week's prior notice of installation of meter and regarding filling of sealing certificate and also providing meter testing report on the format Annexure V, appended with the Supply Code Regulations, 2007 as also other relevant regulations applicable in the instant case. The check meter studies conducted by the respondents and the assessment raised on the basis of one of these check meter studies vide sealing certificate dated 09.06.2020 and 24.07.2020, the same studies are quashed and as also the assessments raised, which is held as null

and void and is set aside. Forum order is also set aside. The petition is allowed. Respondents are directed to withdraw the impugned assessment and make necessary corrections in consumer's ledger account. This order be complied with within 15 days from the date of issue of this order.

Dated: 29.10.2021

(Subhash Kumar)  
Ombudsman