

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Gopal Kumar Khaitan
S/o Shri Jai Krishan Khaitan
F-96, Industrial Area Bahadrabad,
Haridwar, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Jwalapur, Haridwar,
Uttarakhand

Representation No. 26/2019

Order

Dated: 31.07.2019

Shri Gopal Kumar Khaitan S/o Shri Jai Krishan Khaitan F-96, Industrial Area Bahadrabad,
Distt. Haridwar being aggrieved by the order dated 31.01.2019 of

Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in his complaint no. 168/2018 before the said Forum against the respondent Executive Engineer, Electricity Distribution Division, Jwalapur has preferred this appeal before the Ombudsman for waiver of assessment raised on him due to slow running of meter by the respondent.

2. The petitioner in his representation/appeal dated 16.05.2019 which was received in the office of Ombudsman on 22.05.2019 has submitted that a check meter was installed at his premises by the respondent on 22.02.2018 and the same was finalized after testing on 14.03.2018 based on the results of this check meter an assessment of Rs. 3,23,886.00 was raised for last one year, the same was deposited by him so that his connection may not be disconnected. He has requested that he wants to know as to on which ground this assessment has been raised upon him. He has further stated that the Forum has granted a relief of 6 months to him. He has prayed that the assessment raised be waived off. As

his appeal was filed beyond limitation period of 30 days from the date of Forum order on 16.05.2019 received on 22.05.2019 delay condonation application was also submitted by him on 29.05.2019. The delay was condoned in consideration of his application as also on the ground that the assessment had already been deposited by him with the respondent as stated in his petition and thereafter his petition was admitted on 03.06.2019 and proceedings started.

3. The Forum, in their order have mentioned that, complainant had stated that on his request a check meter was installed by the department at his connection no. 21423 (45 KW industrial), in spite of repeated requests to the department and objections against the said assessment the department did not take any action so he filed the complaint before the Forum with the request that the assessment be set aside and bill be corrected. The department considering his existing slow meter with reference to the check meter and as also the tamper report showing voltage failure at R & B phase from the month of 04/2017 till 03/2018, raised an assessment of Rs. 3,23,886.00. The Forum observed that the existing meter was found running slow by 37.41% as per check meter report. The Forum referring to sub regulation 3.1.3 (6) of UERC (The Electricity Supply Code) Regulations, 2007 have mentioned that the respondent should have complied with the aforesaid regulation but they have raised assessment for more than six months which is being inconsistent with the Regulation is liable to be set aside. The Forum have expressed their view that based on check meter report assessment only for a period of 6 months prior to 22.02.2018 would be justified and have accordingly ordered that assessment amounting to Rs. 3,23,886.00 was set aside and directed opposite party to raise assessment only for a period of 6 months prior to 22.02.2018 based on check meter report and a corrected bill be accordingly issued.
4. The respondent Executive Engineer has submitted his written statement vide his letter no. 2263 dated 21.06.2019 wherein point wise reply to the petition has been given. It is submitted by him that connection no. JW0K000021423 (45 KW) with meter no. X0060101 exists in the name of M/s Gopal Kumar Khaitan. A check meter was installed at the petitioner s premises vide sealing certificate no. 27/1137 dated 22.02.2018 which was finalized on 14.03.2018 vide sealing certificate no. 38/1137. As per the check meter finalization report the existing meter was found slow by 37.42%

with reference to the check meter. It is stated further that as per MRI tamper report of the main meter low voltage tamper was being exhibited for last 12 months.

5. Based on the above facts and slow running of meter by 37.42% assessment bill for Rs. 3,23,886.00 was raised. Being dissatisfied with the aforesaid assessment he filed a complaint no. 168/2018 before the Forum on 16.11.2018. The Forum set aside the above assessment bill vide their order dated 31.01.2019 and directed that a revised bill based on check meter report only for a period of 6 months prior to 22.02.2018 be raised and sent to the consumer. In compliance to Forum s above orders the bill was corrected to Rs. 1,27,123.00 on 19.03.2019. To substantiate his submissions he has enclosed copies of both sealing certificates, MRI tamper report assessment bill of Rs. 3,23,886.00 and the revised bill amounting to Rs. 1,27,123.00 raised in compliance to Forum s order.
6. In his rejoinder dated 02.07.2019 the petitioner has submitted that as per report the meter was found slow only for one day on 10.02.2018. As per orders of Executive Engineer the payment of the assessment bill was made in 3 installments which included late payment surcharge Rs. 17,800.72. He has demanded interest on the payments already made. He has stated that the department have assessed for 12 months but the Forum revised the assessment for 6 months only. He has requested that the complete checking of the meter be got carried out and justice be given to him. He has enclosed load survey report/voltage and copy of LPS bill, in support of his averments.
7. Arguments from both the parties were fixed for 22.07.2019. The petitioner himself and the respondent Executive Engineer appeared for arguments and submitted their case. The petitioner argued that assessment only for 1 month be raised. He has also raised objection about the correctness of the check meter and have stated that instead of my existing meter being declared slow by 37.41% with respect to the check meter, the check meter itself might not be working correctly. As regards his objection regarding the accuracy of the check meter it would be appropriate to refer to sub regulation 3.1.3 (7) of supply code regulation 2007 which is reproduced hereunder:

(7) 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, upon the application of either party, by an Electrical Inspector or any authorized third party,

who shall test the correctness of the meter and give results within one month. The decision of the Inspector or such authorized third party shall be final and binding on the Licensee as well as the consumer.

8. In view of the provisions of the aforesaid regulation the objection regarding correctness of the check meter should have been raised by the petitioner at the time of finalizing the check meter but he did not do so. The check meter installation certificate dated 22.02.2018 and its finalization sealing certificate dated 14.03.2018 both carries his signatures, which is a sufficient evidence to establish that he had no objection about correctness of the check meter and the same therefore stands final and binding on both the parties. As such his objection at this time of arguments before Ombudsman is not sustainable and is therefore overruled.
9. As regards his request for raising assessment only for one month this point was not raised by him before the Forum and as such this point cannot be raised now however the judgment shall be passed keeping in view all the documentary evidences available on file which shall be discussed in the following paragraphs of this order.
10. All the documents available on file, evidences submitted by parties have been perused and arguments from both the parties have been heard. In order to arrive at a final conclusion, it is necessary to see that whether the instant case is that of a slow running of the meter by its internal fault or less recording by the meter attributable to the external interference with the voltage input to the meter which in this case is availability of low voltage (potential) at R and B phases of the meter intermittently in different magnitudes at a number of times during the period April 2017 to March 2018 (up to 14.03.2018 till when the meter existed , where after the check meter was made the main meter) as claimed by the respondent based on the MRI tamper reports of the existing meter submitted by them with their submissions.
11. There is no doubt that the existing meter was running slow or recording lesser energy @ 37.41% as per check meter results but whether this slow running or less recording is due to an internal fault of the meter or due to non availability of full potential in 2 phases (R&B) of the meter as shown in the tamper report.

12. The extent of energy that escaped billing will definitely have to be worked out @ 37.41% as per check meter report but the period of such escaped energy will depend whether it is decided as a case of slow running of meter due to its internal fault where sub regulation 3.1.3 (6) of supply code regulation, 2007 limiting the period to six months only is applicable or the entire period of 1 year during which the tamper persisted intermittently.
13. In order to decide the issue that whether the less recording in the meter is attributable to an internal fault of the meter or it is due to low potential input to the meter tamper report was examined and such examination of the tamper report shows that the phenomenon of low potential to the meter at R&B phases did occur in the month of February 2018 and March 2018 (a period of check meter) a number of times which confirms that the less recording of energy in the meter was certainly due to the low voltage input availability to the meter as shown in the MRI tamper report during the period April 2017 to March 2018 (till 14.03.2018). Had the tamper would have not occurred during the period of installation of check meter, it would have been clear that the less recording of energy in the meter is due to its own internal fault but as this had not been the case here, it is established that the recording of energy in the meter is attributable to low voltage input to the meter and as such it is established to be a case of less recording of energy in the meter due to non availability of complete voltage input to meter and thus the less recording has been for the entire period of 1 year referred to above. Such being the facts of the case limitation of 6 months as per sub regulation 3.1.3 (6) of UERC (The Electricity Supply Code) Regulations., 2007 shall not apply in the instant case and the respondent are therefore entitled to recover the cost of energy actually consumed by the petitioner but escaped billing due to less recording of energy in the meter @ 37.41% for the entire period of 1 year during which the low voltage tamper persisted intermittently and therefore the bill amounting to Rs. 3,23,886.00 was their legitimate demand. Forum's contention and order is based on incorrect appreciation of the fact as it is not a case of slow running of meter but a case of less recording by the meter due to non availability of complete voltage input to the meter during the period under reference. So sub regulation 3.1.3 (6) is not applicable.
14. In view of above facts the Forum order is set aside and the petition is dismissed. The respondent are directed to withdraw the assessment bill for Rs. 1,27,123.00 raised in

compliance to Forum s order dated 31.01.2019 and are directed to revive the earlier assessment of Rs. 3,23,886.00 which amount is claimed to have been deposited by the petitioner in 3 installments which had not been denied by the respondent. However, the respondent may scrutinize their accounts and may correct the consumer s ledger account accordingly.

15. In past the following 3 nos. cases have been decided by the Ombudsman on the same ratio-decidenti i.e. check meter results linked with MRI tamper reports and as such all these orders of the Ombudsman including the instant case have consistency apart from being logical and justified.

- i) Order dated 14.11.2014 in case no. 09/2014 of M/s Oil and Natural Gas Corporation Ltd. (A Govt. of India Company), ONGC Colony, Tel Bhawan, Dehradun vs Managing Director, Uttarakhand Power Corporation Ltd. Urja Bhawan, Kanwali Road, Dehradun and others. (Although the Forum was of the view that assessment amounting to Rs. 48,56,499.00 based on check meter report and tamper report was justified but allowed realization by ordering to revise the assessment to Rs. 39,38,208.00 based on new meter s average consumption with mutual consent of both parties. The Ombudsman also approved this realization for the sake of amicable settlement of dispute.)
- ii) Order dated 22.06.2016 in case no. 08/2016 of M/s Devbhoomi Board Mill, Village Manakpur, Adampur (Pawnti), Distt. Haridwar vs Executive Engineer, Electricity Distribution Division (Rural), Uttarakhand Power Corporation Ltd., Civil Lines, Roorkee, Distt. Haridwar.
- iii) Order dated 14.12.2016 in case no. 23/2016 of M/s Shiv Enterprises through Shri Ankush Kumar S/o Shri Rajkumar, Khasra no. 569, Village Belda, Roorkee, Distt. Haridwar vs Executive Engineer, Electricity Distribution Division (Urban), Uttarakhand Power Corporation Ltd., Civil Lines, Roorkee, Distt. Haridwar.

(Subhash Kumar)

Dated: 31.07.2019

Ombudsman