

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Doodhadhari Burfani Ashram
Represented by Shri Rahul Behal
Bhupatwala, Haridwar, Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division (Urban),
Uttarakhand Power Corporation Ltd.
Haridwar, Uttarakhand

Representation No. 31/2017

Order

The petitioner, Shri Doodhadhari Burfani Ashram represented by Shri Rahul Behal has filed this representation against the order dated 28.08.2017 passed by the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 47/2017. In the impugned order, complaint filed by the petitioner has been partially allowed and the respondent has been directed to make assessment for a period of six months from the date of installation of check meter. This partial relief is not considered sufficient by the petitioner on the ground that the sum of Rs. 2,62,404.00 along with LPS charges of Rs 3,280.05 had been added to their current charges of Rs. 1,10,369.00 on the basis of difference found between their main meter and check meter installed outside the premises of the petitioner. Petitioner has maintained that a reply with objections to this demand notice of 29.05.2017 was filed on 28.06.2017 to which as per his statement he did not get any response (respondent have pointed out detailed reply sent on 10.07.2017, copy of which have been enclosed). Petitioner has claimed that since no electricity bill can be raised on the basis of check meter, recovery of the said amount is not covered by any provision of law. Further, petitioner has argued that the check meter was installed without giving any prior notice or information to him, the presence of petitioner recorded in the sealing certificate (order) is fraudulent and an order passed on the basis of this check meter is bad in law as well as fact. He has therefore requested that the appeal may be allowed with costs, the order dated 28.08.2017 of Forum be set aside and the

charges demanded in the notice dated 28.08.2017 be waived off while the deposited amount of Rs. 2,11,379.00 be refunded to him.

2. Forum in their order dated 28.08.2017 have reviewed the position regarding installation of check meter without intimation to the petitioner and outside his premises. After a review, Forum have come to the conclusion that installation of meter outside the premises cannot be a basis for doubting the facts of the checking report. They have also clarified that the records filed before the Forum clearly establish that sealing certificate dated 29.03.2017 and 06.05.2017 have both been signed by representative of the petitioner and therefore his claim that he was not informed about the installation of the check meter have been dismissed. However, Forum have examined the provisions of Supply Code Regulations, 2007 para 3.1.3 (6) and come to the conclusion that assessment on the basis of MRI for period prior to six months is not justified specially as petitioner had already filed objections to the assessment on 28.06.2017, However, Forum have held that while respondent have refuted petitioner's contention in his letter of 28.06.2017 vide their letter dated 10.07.2017 and the assessment was not modified as requested by the petitioner and while respondent had presented to the Forum the justification for assessment for more than six months on the ground that MRI report pointed to Y phase failure from 09.08.2016 and B phase failure from 17.10.2016 and therefore a 33.33% up to 17.10.2016 and 55.65% failure from 17.10.2016 to 06.05.2017 resulting in less recording of consumed energy, the Forum disallowed this assessment holding that the MRI report cannot be a basis for raising assessment for a period beyond six months, permitted them to raise assessment for last six months from the date of installation of check meter. Forum have also held that no LPS is payable on wrong assessment raised earlier.
3. Respondent in their written statement have contested the petitioner's claim that he remained ignorant of the installation of the check meter and its finalization and have filed copies of sealing certificates dated 28.03.2017 and 06.05.2017 on which signatures of consumer representative are available. Respondent have also enclosed copy of the reply dated 10.07.2017 given by them to the objections filed by the petitioner on 28.06.2017. Respondent have further explained the basis on which the assessment has been made, reporting that the MRI report revealed that Y phase had failed from 09.08.2016 and B phase from 17.10.2016. As such assessment @ 33.31%

for voltage failure in Y-phase for the period 09.08.2016 to 17.10.2016 and @ 55.56% for voltage failure from 17.10.2016 to 06.05.2017 in two phases Y & B resulting in slow running of meter was the basis for assessment of Rs. 2,62,404.00. Forum have however, modified the assessment to confine it to six months and revised the assessment amount to Rs. 2,11,379.00. Petitioner, of his own accord has made the payment of this amount on 04.09.2017. Respondent have therefore requested that petitioner's complaint may be dismissed, taking the Forum order as correct.

4. In his rejoinder to respondent's written statement, petitioner has further emphasized the demand raised by the respondent vide letter dated 10.07.2017 which has been levied without affording any opportunity of hearing to the petitioner and also without disposing off the objections dated 28.05.2017 (correct date being 28.06.2017) filed by the petitioner. Petitioner has also contested the claim of regulation 3.1.3 (6) being the basis for assessment for six months.
5. As such petitioner has raised objection to the assessment that he has not been informed about check meter being installed or finalized. This claim has been disproved on the basis of documentary evidences of signature of representative of petitioner in both sealing certificates dated 28.03.2017 and 06.05.2017. Forum have also held signatures of petitioner's representative as adequate proof of intimation to the petitioner. However, even if it is accepted that petitioner was not informed and even if the petitioner's claim that the signatories in the sealing certificates are not his employees is taken to be correct, it does not alter the fact that check meter was installed and the MRI has revealed slow running of the meter due to Y phase and B phase voltage failure for periods mentioned above. Petitioner's objection on the ground of not being intimated about installation of check meter cannot therefore afford him any relief. As far as his contention that billing cannot be raised on the basis of check meter, it may be clarified that the bill has been raised as per the main meter. An assessment has been done on the basis of the installed check meter. The assessment bill was raised to recover the cost of energy which was actually consumed but could not be recorded by the meter due to non availability of full voltage input during the period as mentioned above on account of voltage failure on B and Y phases continuously which is established from the MRI reports submitted by the respondents. So, in the instant case, the limitation of six months does not apply as the period of less

recording is established from MRI report and extent of less recording has been ascertained by the check meter study.

6. Petitioner has quoted 3 case laws, to buttress his case, the citations were got downloaded from internet. Two of the cases namely Tata Hydroelectric Power Vs Union of India and M/s Bhelwal Spinning Mills Ltd. vs UP State Electricity Board pertain to the period prior to the Electricity Act, 2003 came into force and are covered under section 26 (6) of the Indian Electricity Act, 1910. The third case of Smt. Amravati Devi vs Purvanchal Vidyut Vitran Nigam Ltd. although pertains to the period after the promulgation of the 2003 Act relates to offence under section 126 of the said Act as meter and seals after testing were found to have been tampered. However, the ratio dicendi of the order in the case of Tata Hydro Electric Power vs Union of India is relevant to the instant case. While in the aforesaid case law the meter was recording less not due to its own defect but due to defective CT and therefore assessment for the entire period during which CT remained defective was raised by the respondents which was not disallowed by the Umpire but he awarded a lumpsum of Rs. 4,00,00,000.00 against total assessment of Rs. 8,89,32,367.50 (from 20.10.1991 to 13.06.1993) on the grounds that the respondent took a long time in detecting the defect and setting it right and with a view to meeting the ends of natural justice, equality and fair play and properly met with, with respect to both the parties. He also awarded interest @ 12% per annum w.e.f. August 1993 till passing of the court decree. The Hon'ble Supreme Court also upheld the Umpire's decision but with a modification that interest at the same rate with effect from the date of award i.e. 30.03.1998 instead of August 1993 be allowed. As per case law no bill can be raised on the basis of check meter but bill of course can be revised/corrected to recover the cost of energy which could not be charged earlier due to non-recording of such energy. Moreover, as explained above, it is not a case of slow running of meter, but a case of less recording due to incomplete input to meter. In the instant case, the less recording during the entire period under reference was due to defect in the PT i.e. voltage failure over this period and hence for the same reason the assessment raised by the respondent for the period from 09.08.2016 to 06.05.2017 amounting to Rs. 2,62,404.00 is held to be justified.
7. After perusal of the records on file and hearing counter arguments as well as in view of the discussions mentioned in para 5 & 6 above, it has been found that Forum order

suffers from an infirmity that the cause of assessment on 29.05.2017 is due to continuous voltage failure in two phases, and not a case of slow running of meter. It is a case of less recording due to non-availability of proper/complete input to the meter, on account of voltage failure. The duration of such lesser input is established by MRI report, and extent of less recording is ascertained by check meter study. So assessment raised by the respondent is only for recovery of the cost of energy that could not be billed through monthly bills for this period and thus are their legitimate dues, which they are entitled to recover. Forum order is set aside. Petition is dismissed. The respondent are free to realize their dues as per the balance of the assessment bill dated 29.05.2017 for Rs. 2,62,404.00. LPS will be payable as per tariff provision.

Dated: 22.12.2017

(Vibha Puri Das)
Ombudsman