

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Udaan Exports  
Khasra No. 296,  
Lakeshwari Industrial Area,  
Bhagwanpur, Roorkee  
Haridwar, Uttarakhand

Vs

Executive Engineer,  
Electricity Distribution Division  
Uttarakhand Power Corporation Ltd.  
Bhagwanpur, Distt. Haridwar, Uttarakhand

Representation No. 55/2019

### Order

Date: - 27.12.2019

The petitioner M/s Udaan Exports, Lakeshwari Industrial Area, Bhagwanpur, Roorkee, Distt. Haridwar being aggrieved with the Consumer Grievance Redressal Forum's, Haridwar zone (hereinafter referred to as Forum) order dated 05.10.2019 in their complaint no. 101/2019 before the said Forum against Uttarakhand Power Corporation Ltd through its Executive Engineer, Electricity Distribution Division, Bhagwanpur (hereinafter referred to as respondent) has preferred this appeal.

2. The petitioner, a partnership firm has filed this petition through their authorized representative Shri Udit Mani Gupta for whom authorization dated 14.11.2019 is available on file. They have also engaged a legal counsel and Vakalatnama for him is also available on file.

The petitioner has stated that a complaint no. 101/2019 was lodged with the Forum which was decided by the Forum on 05/10/2019 dismissing their complaint and hence this appeal. They are consumer of UPCL with connection no. 28240 with 150 KW contracted load, under industrial category. All bills have been regularly paid and there were no outstanding dues against them and their connection is a legal one and is running as per rules, but the respondent's based on sealing certificate dated 29.04.2019 and as per respondent's letter no. 1551 dated 10.05.2019 mentioning that "Y phase

pressure wire of CT got found disconnected due to badly carbonized” which has wrongly been shown and alleging the metering system being slow have sent an assessment bill for Rs. 12,28,281.98. On receipt of the bill a protest was immediately lodged with the respondent authority but the respondent did not hear anything and the connection was disconnected on 14.08.2019 without any notice illegally thereby paralyzing the complete working of the petitioner and causing financial loss. The arbitrary assessment as aforesaid in addition to above has caused great mental physical and financial torture to the petitioner for which the respondents are responsible. The respondent vide letter dated 15.05.2019 has sent an assessment bill from 02.08.2017 to 29.04.2019 i.e. for a period of 1 year 9 months and 13 days allegedly holding the meter slow, while as per UERC rules the respondent’s are not entitled for raising assessment for not more than 3 months. Since responsibility of the lines in working order lies on the respondent so if the meter became slow due to carbon deposition on the wire the respondent themselves are responsible. As admitted by them that they take MRI every month so in case there was any carbonization causing slow running of meter which had come to their notice in the very first month they could have set the defect right then and there in the same month for which they are also responsible.

3. The petitioner stated that in their complaint to the Forum they had requested for setting aside the assessment and grant of compensation to them. The petitioner has also referred complaint no. 212/2015 of M/s Suraksha Pharma and Forum’s order dated 26.05.2018 in the said complaint as also Ombudsman’s order in appeal no. 13/2016 dated 17.01.2017 and Ombudsman order dated 18.02.2019 in another appeal no. 36/2018. The Forum did not appreciate the above case laws and have simply mentioned in their order dated 05.10.2019 that the facts of these cases are different from the instant case and hence the Forum has dismissed the appeal against the facts and without taking into consideration the circumstances and the Rules and Laws applicable so the petitioner has requested that their appeal be admitted, Forum order dated 05.10.2019 be set aside and other reliefs sought for may also be granted.
4. The Forum after perusal of records and hearing arguments by both parties on 5 nos. dates i.e. 30.08.2019, 06.09.2019, 13.09.2019, 19.09.2019 and 27.09.2019 have observed that as per MRI tamper report and phasor diagram submitted by opposite

party the CT of Y phase remained opened from 02.08.2017 so the Forum being of the opinion that in view of the facts of the case assessment for Rs. 12,28,281.98 raised by the opposite party is correct and is as per law and is payable by the complainant. The 2 case laws of Hon'ble Ombudsman case no. 36/2018 and 13/2016 in which Ombudsman passed orders on dated 18.02.2019 and 17.01.2017 respectively, the Forum observed that the nature and facts of those cases were different from the instant case and therefore Hon'ble Ombudsman's referred orders do not provide any force to the submissions of the complainant and thus the Forum dismissed the complaint.

5. The respondent Executive Engineer has submitted his written statement dated 29.11.2019 through legal counsel. They have partly admitted the contents of para 1 of the representation to the extent that a complaint no. 101/2019 was filed by the petitioner before the Forum. They have denied that a wrong bill was sent on the basis of sealing report dated 29.04.2019. They have also denied the allegation as wrong that connection was disconnected on 14.08.2019 wrongly and the petitioner suffered loss. They have also held the allegation as wrong that assessment made on the basis of Y pressure wire of CT got disconnected due to badly carbonized is wrong and arbitrary. Allegation of physical mental and financial torture to the petitioner is also denied by them. They have also denied that assessment made for the period 02.08.2017 to 29.04.2019 (for 1 year 9 months and 13 days) is incorrect and have also denied that assessment cannot be raised for more than 3 months under UERC Regulations and it is also wrong to allege that respondents are responsible for less recording of consumption in the meter. They have however admitted that a reply under affidavit dated 22.04.2019 was submitted before the Forum by the respondent.
6. **Reply to grounds of appeal:** They have denied that Forum's order dated 05.10.2019 is illegal. It is also wrong to allege that the Forum did not consider the contents of complaint and affidavit. The respondent have stated that it was wrong to allege that disconnection of CT due to Y phase pressure wire badly carbonized is wrong and it is also wrong to say that the connection was wrongly disconnected. It is wrong allegation that the connection was disconnected due to annoyance but it was disconnected due to nonpayment of dues as per UERC Regulations. It is wrong allegation that MRI was not made available in spite of requests as no such complaint was made before the Forum and it is just a afterthought in case he had not received a

copy of MRI, he could have requested for the same. No prejudice has been caused to the petitioner on this account. It is also wrong to allege that the connection remained disconnected due to carelessness of the respondent and which is deficiency in service. It is also a wrong allegation that the reply filed before Forum was against actual facts and they have submitted that the petitioner is not entitled for further relief and the representation is liable to be dismissed with costs.

**Additional pleas:** The respondent have submitted the following additional pleas. A study of the MRI phasor diagram and load survey revealed that there was no current in Y phase. The tamper report also showed that there was no current in Y phase from 02.08.2017. A check meter was installed by AE (Meter) on 12.04.2019 and the same was finalized on 29.04.2019 wherein it was discovered that meter was slow by 30.91% in KVAh and by 31.26% in KWh. After finalization of check meter the CT of Y phase was reconnected and the meter was found taking correct reading. They have also stated that the Hon'ble Ombudsman in appeal no. 36/2018 Shri Umesh Kumar vs Executive Engineer decided the case on different facts in which the assessment was not made and only the surcharge was disallowed and as such, the said decision is not applicable in the present case. It is also stated that due to one phase of the meter remaining disconnected due to which there was no full recording of the supply in the meter resulting in less billing to the consumer. A check meter was installed and the assessment is made on the basis of check meter report. It has also been stated by the respondent that in representation no. 12/2016 Hon'ble Ombudsman held the assessment based on check meter report as correct and in the present case the assessment has also been raised on the basis of check meter report (**It is clarified that this appeal was decided by Hon'ble Ombudsman vide order dated 19.07.2016, wherein no assessment based on check meter report was held correct. So it is a miss-quote**). It is further stated that no penalty has been imposed on the petitioner and neither there is any allegation of theft or unauthorized use of electricity by him. In fact the bill in question is in respect of actual energy consumed by the petitioner and the petitioner cannot be allowed to use electricity without making payment. The complainant is not liable to any relief and the complaint is liable to be dismissed with costs.

In support of their submissions the respondent have submitted the following documents:

- i) Copy of sealing certificate dated 12.04.2019 and 29.04.2019.
  - ii) Copy of assessment from 02.08.2017 to 04/2019.
  - iii) Copy of reply filed before Forum
  - iv) Copy of affidavit dated 29.06.2019
  - v) Copy of tamper report
7. The petitioner has submitted a rejoinder dated 07.12.2019, wherein they have submitted that the contents of written statement submitted by the respondent are false and different from the facts of the case. No solid reason for denying the appeal have been given. They have diligently averred that the respondent have themselves admitted in their written statement that from the MRI report it was in their notice right from 02.08.2017 that there was no current on Y phase then why they kept quite till 29.04.2019 and why they did not set right the Y phase link on 02.08.2017 itself so that assessment amounting to Rs. 12,28,281.98 for a period of 1 year 9 months and 13 days would have not been necessitated which is a clear indication of the carelessness and deficiency in service by the respondent. They have denied the check meter report. The affidavit and the documents with written statement are not acceptable to them. The petitioner has stated that reply on Ombudsman decision in appeal no. 36/2018 given by the respondent is wrong. In the end they have reiterated that the contents of their rejoinder are based on facts of the case and are correct.
8. The respondent have submitted MRI tamper report and phasor diagram of consumer's existing meter no. 8055968 vide letter no. 4465 dated 19.12.2019, during hearing of the case on 20.12.2019.
9. Hearing in the case was held on 20.12.2019. Both parties appeared along with their legal counsels and argued their respective case. At the outset it is informed that the supply was earlier disconnected due to nonpayment but was reconnected and at present the connection is live. Counsel for the respondent submitted a copy of Hon'ble Ombudsman's order dated 07.09.2017 in appeal no. 23/2017 of M/s Windlass Healthcare Pvt. Ltd. vs Executive Engineer, Electricity Distribution Division (South), Dehradun. **(It is clarified that In the said case the B phase**

**voltage to the meter was missing for 230 days as per tamper report due to which meter was recording less. The percentage of less recording in the said case was ascertained by a check meter study as 32.3% and assessment of Rs. 37.17 lakhs was raised. In view of tamper report and check meter study which established B phase voltage missing in the meter for 230 days and due to which less recording by 32.3% as per check meter study the Hon'ble Ombudsman held the assessment as genuine and rightly dismissed the appeal. But this case law does not help the respondent to justify their case, for the reasons explained herein after in this order)**

10. All documents available on file have been perused carefully, arguments from both parties have been heard. Since the tamper report after 02.8.2017 to 29.04.2019 of the existing meter as well as phasor diagrams for the above period were not available on file the Forum file was also summoned and was perused. A perusal of the MRI tamper report as well as phasor diagram show that there was no current in the Y phase of the existing meter no. 8055968 w.e.f. 02.08.2017 till 29.04.2019 continuously. This is an indication that attributable to this phenomenon the meter might have recorded less consumption than what would have actually been consumed by the petitioner during this entire period of 1 year 9 months and 13 days, but these reports do not establish the extent of such less energy escaped recording and billing through regular monthly bills and such extent or percentage of less recording can only be established through a check meter study. In the instant case the respondent have installed a check meter vide sealing certificate no. 46/10 dated 12.04.2019 and the same is finalized vide sealing certificate no. 8/14 dated 29.04.2019 and in the sealing certificate dated 29.04.2019 it is inter alia mentioned that *"the main meter found 31.26% in KWh and 30.91% slow in KVAh compared to O/D CT/PT unit meter"* Both these sealing certificates have been signed by AE (Test) and SDO (Distribution). Sealing certificate dated 12.04.2019 do carry consumer signature but sealing certificate dated 29.04.2019 do not carry consumer signature. The sealing certificate dated 12.04.2019 do not have any detail of the old meter (existing meter) and the coloumn of old meter has been left blank while details of check meter have duly been mentioned in the said sealing certificate. It is not understood as to how the respondent as mentioned in the sealing certificate dated 29.04.2019 have worked out that the main meter was found running slow by 31.26% in KVAh and 30.91% slow in KVAh in the absence of any record of

the old meter on the sealing certificate dated 12.04.2019. Since in the absence of readings and details of the old meter in the sealing certificate dated 12.04.2019 the consumption recorded by the old meter from 12.04.2019 to 29.04.2019 is not available, so the conclusion drawn by the officers in the sealing certificate dated 29.04.2019 holding old meter slow as mentioned above is not sustainable and is arbitrary and as such the check meter study has rendered nothing but a futile exercise on the basis of which no assessment can be raised. While no calculation of percentage of less recording are available on photocopy of sealing certificate dated 29.04.2019 submitted with written statement a perusal of said sealing certificate as available in Forum file shows calculations of purported percentage less recording for the period from 19.04.2019 to 29.04.2019 while the period of check meter study was from 12.04.2019 to 29.04.2019.

11. After the hearing in the case had already been concluded on 20.12.2019 and the order was reserved for 27.12.2019, the respondent at his own submitted a letter no. 4483 dated 21.12.2019 received in this office by hand on 23.12.2019 wherein by enclosing copies of sealing certificates dated 12.04.2019 and 29.04.2019 and phasor diagrams and MRI tamper reports of the old meter as well as the check meter has given his clarification/explanation for raising the assessment on the basis of readings obtaining in the MRI reports dated 19.04.2019 and 29.04.2019.
12. Since in a case as the instant one where current input to the meter in a phase was missing during the period as shown in the MRI tamper report, the assessment can be raised for the energy that escaped recording attributable to the said phenomenon could only be raised on the basis of check meter report but in the instant case as clarified above check meter study is incomplete or absurd and is a futile exercise in the absence of reading in the old meter as might have obtained at the time of installation of check meter having not been mentioned in the sealing certificate dated 12.04.2019. The percentage of less recording as mentioned in the sealing certificate dated 29.04.2019 is arbitrary and baseless and so is the assessment raised on the basis of such arbitrary report. In view of above deliberations/clarifications the check meter study is declared as null and void and so is the assessment. The assessment amounting to Rs. 12,28281.98 raised by the respondent is therefore set aside and so is the Forum order. The petition is allowed. The respondent are directed to withdraw the said

assessment. The clarification/justification submitted by the respondent executive engineer vide his letter no. 4483 dated 21.12.2019 at his own volition cannot form a part of reasonable and judicious submission firstly being time barred as submitted after the hearing was concluded and secondly not based on check meter study conducted from 12.04.2019 to 29.04.2019 which itself is incomplete and absurd for the reasons already explained above.

12. The check meter study as is evident from the sealing certificates dated 12.04.2019 and 29.04.2019 was conducted by 2 responsible officers of UPCL viz AE (Test) and SDO (Distribution) who committed a blatant mistake by not mentioning the details of the old (existing) meter in the sealing certificate dated 12.04.2019 rendering the study as a futile exercise. The UPCL management is directed to identify these two officers and take necessary administrative action against them as per their prevailing rules.

Dated: 27.12.2019

Subhash Kumar  
(Ombudsman)