

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Rakesh Kumar Saini
M/s Krishna Plastics
Khasra No. 233, Shivganga Industrial Estate,
Village Lava, Rampur,
Bhagwanpur, Uttarakhand

Vs

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

Representation No. 19/2020

Order

Dated: 27.11.2020

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone (hereinafter referred to as Forum) order dated 14.09.2020 in their complaint no. 53/2020 before the said Forum against Uttarakhand Power Corporation Ltd (hereinafter referred to as UPCL) through Executive Engineer, Electricity Distribution Division, Bhagwanpur (hereinafter referred to as respondent), M/s Krishna Plastics Khasra no. 223, Shivganga Industrial Estate, Village Lava, Rampur, Bhagwanpur, Distt. Haridwar (hereinafter referred to as petitioner) has preferred this appeal for setting aside the assessment raised by the respondent.

2. The petitioner has submitted that the respondent UPCL (Electricity Distribution Division, Bhagwanpur) had installed a check meter no. L&T-19628135 at his existing meter no. L&T 07159668 installed at his 60 KW industrial connection no. BHOK000010813 and based on the results of the check meter an assessment bill amounting to Rs. 6,11,262.00 was issued for the period 27.02.2018 to 11.03.2020 for payment within 7 days. A complaint against the disputed assessment bill was made to the Forum but the Forum had dismissed the complaint and hence being dissatisfied with Forum order, this appeal is being filed before the Hon'ble Ombudsman. He has mentioned the facts of their case as follows:

- i) A meter no. L&T07159668 is existing at their premises. Payments of the bills based on the installed meter are being made regularly and no arrears are outstanding against them.
- ii) On 04.03.2020 the department installed a check meter no. L&T 19628135 at his premises. All seals of the existing meter were intact and meter was running properly at that time in spite of that the department based on check meter and holding the existing meter slow raised an assessment bill for the period 27.02.2018 to 11.03.2020 which is completely wrong. He has further stated that a copy of the assessment sent by the respondents with their letter is too erroneous. There is a contradiction in the bills issued from 27.02.2018 to 11.03.2020 and the assessment figures do not tally. They have stated that it appears that this wrong assessment has been raised knowingly with the intention of torturing them. They have claimed that the main meter installed at their premises is working correctly and all bills issued as per this meter were being paid regularly.
- iii) There is no significance or reason for the assessment raised on the basis of check meter installed on 04.03.2020. Neither they were liable to pay such assessment because a checking of the main meter was conducted by the department about 7 months before installation of the meter when the check meter was found working correctly. As such it is established that there was no fault in the working of the main meter.
- iv) Letter no. 1780 dated 12.06.2020 sent by the department is completely false which is liable to be set aside.
- v) A letter dated 23.06.2020 (A perusal of the letter shows that its correct date is 22.06.2020, however 23.06.2020 is the date of receipt of the said letter in respondent's office) was got received in the office of executive engineer, EDD, Bhagwanpur raising objections on the assessment which has not been replied to by the Executive Engineer till date, neither any action was taken by him on his objections.
- vi) A copy of department's letter no. 1780 dated 12.06.2020 and copy of sealing certificate and assessment chart from 27.02.2018 to 11.03.2020 is enclosed.

- vii) It is requested that meanwhile till disposal of the appeal the department be asked to accept payment of current bills and ask them not to disconnect the supply till disposal of the case.
- Viii) An additional written submission was also submitted before the Forum but the Forum did not take any cognizance of that submission
- ix) They have referred sub regulation 3.1.3 (6) of Supply Code Regulations, 2007 which provides for charging the difference for a maximum period of not more than 6 months. They have also referred writ petition no. 1820 of 2010 of UPCL vs Doiwala Sugar Company vide which Hon'ble Ombudsman's order dated 07.06.2010 in representation no. 07/2009 was challenged before the Hon'ble High Court in which case the Hon'ble High Court have dismissed the petition. Having submitted as above the petitioner have requested that the assessment raised by the respondents be set aside.
3. The Forum after hearing both parties and perusal of the records have observed that the B phase voltage on the meter was abnormal from 27.02.2018 continuously due to which meter was recording less during the period for which the opposite party issued a bill of additional assessment amounting to Rs. 6,11,262.00. The complainant's claim that his existing meter was checked 7 months before installation of the check meter has not been accepted by the Forum in view of AE (Meter)'s report dated 25.08.2020 and for want of any documentary evidence by the complainant in support of their claim. Such being the case the Forum held that due to technical deficiency in the metering system the meter recorded less and to recover the cost of such less recording the department raised a bill of Rs. 6,11,262.00 which is payable by the complainant so they held that the complaint is not liable to be allowed and the same is dismissed.
4. The petitioner has submitted stay application dated 21.09.2020. In consideration of his request interim stay order was passed on 21.09.2020. Hearing for disposal of the stay application was fixed for 30.09.2020 which was subsequently re-fixed for 09.10.20 on petitioner's request. Hearing on stay application was held on 09.10.2020 when both parties appeared and submitted their arguments. **The interim stay granted on 21.09.2020 was extended till next date of hearing with the condition of payment of 20% of the assessment amount by 16.10.2020 by the petitioner.**

5. The respondent Executive Engineer has submitted a written statement dated 08.10.2020 wherein point wise reply to the petition has been submitted as follows:

- i) The petitioner have made payments of the bills in full up to March 2020 so it is a false submission by them that there were no arrears against them till date.
- ii) Petitioner's submission that all seals of the main meter installed at their premises were found intact on 04.03.2020 at the time of installation of check meter is admitted but it is wrong to say that the main meter was working correctly. From checking of the MRI report of the meter it had come to notice that voltage at the meter in B phase was low due to which it was not possible that meter was recording consumption correctly based on which a check meter was installed on the separate cubicle. At the time of finalization of the check meter it was found that the main meter was recording less by 32.35% on KWH and by 32.74% on KVAH. In order to find out the reasons for less recording in the main meter the metering chamber was opened by the AE (Meter) and it was found that PT's wire leading to meter had been carbonized due to which meter was getting lesser voltage on B phase due to which the meter was not recording energy correctly. While meter, CT and PT were working correctly but the working of the metering system was affected only due to carbonization on the wire from PT to meter terminal. Both sealing certificates for installation and finalization of check meter carries consumer's signatures and all the work was accomplished in his presence so it is their baseless submission that assessment has been wrongly raised.
- iii) Petitioner's submission that his main meter was opened by any officer of the department 7 months before from the date of installation of check meter and the fault occurred only due to that action has been denied by the respondent. He has corroborated his submission about not opening of the meter by AE (Meter)'s letter dated 25.08.2020 wherein he has certified that existing meter at petitioner's connection no. BHOK000010813 was not opened in the past neither the petitioner has adduced any documentary evidence to show that the existing meter was opened 7 months before installation of the check meter.

The respondent Executive Engineer has again reiterated vide his letter no. 5145 dated 25.11.2020, his above submission. He has corroborated his

reiteration with AE (Meter)'s letter no. 125 dated 25.11.2020 wherein he has confirmed that the meter was never opened by any officer/official as alleged by the petitioner. He has however stated that possibly the installed meter might have been opened by the outsourced agency for replacement of the SIM of modem. Explanation of both the concerned JEs has also been submitted with the aforesaid letter.

- iv) The respondent has categorically denied contents under point 4 of the petition holding that the assessment amounting to Rs. 6,11,262.00 has been raised as per rules based on check meter report, meter MRI and tamper report which has duly been upheld by the Hon'ble Forum vide their order dated 14.09.2020 passed in petitioner's complaint no. 53/2020.
- v) It is admitted that an application was received from the petitioner on 23.06.2020 where after he filed a complaint no. 53/2020 before the Hon'ble Forum.
- vi) No comments.
- vii) The respondent has stated that assessment has been raised only for the energy consumed by the petitioner and nothing extra has been charged and therefore he is liable to pay the same.
- viii) No comments.
- ix) He has referred Ombudsman's order dated 31.01.2014 in appeal no. 07/2013 of M/s US Metal Product vs EE, EDD (Rural), Haridwar in which order case law "AIR 2011 Punjab and Haryana High Court has been referred and on the basis on which the assessment raised has been upheld. Further, he has also corroborated his submission on the basis of Ombudsman's order dated 31.07.2019 in appeal no. 26/2019 of Shri Gopal Kumar Khaitan vs UPCL and order dated 14.11.2014 in appeal no. 09/2014 of M/s ONGC vs UPCL wherein the Hon'ble Ombudsman has held that limitation of 6 months as per sub regulation 3.1.3 (6) of UERC (The Electricity Supply Code) Regulations, 2007 shall not apply as it is established to be a case of less recording of energy in the meter due to non availability of complete voltage input and thus the less

recording has been for the entire period and as such ordered to charge the cost of escaped energy for the entire period.

Having submitted as above he has requested that the assessment amounting to Rs. 6,11,262.00 conveyed to the petitioner vide letter no. 1780 dated 12.06.2020 is correct as per rules which has yet not been paid in full by the petitioner and has requested that the petitioner be directed to make payment of the assessment bill in full and the stay granted on 21.09.2020 may also kindly be vacated. He had submitted a copy of the relevant documents as mentioned in the written statement in corroboration of his submissions.

6. The petitioner has submitted a detailed rejoinder dated 16.10.2020 wherein point wise reply to the written submission of the respondent has been submitted as follows:-

- (i) All Bills up to March 2020 and thereafter from April 20 have duly been paid except the assessment bill which has duly been stayed by the Hon'ble Ombudsman.
- (ii) The petitioner has stated that meter is installed by the department and maintaining the meter is their responsibility it has not been made clear that from which date the carbon was accumulated on the PT terminal and the petitioner has no interference in checking done by the department. Referring to respondent Executive Engineer's letter no. 1780 dated 12.06.2020 regarding assessment for Rs. 6,11,262.00 from 27.02.2018 to 11.03.2020 based on check meter report and MRI report he has alleged that the AE (Meter) has not clarified the period for slow running of the meter. The assessment has been raised by the respondent at their own wills while they admitted that this is a case of slow meter and not a case of tampering. Further the petitioner has stated that CT and PT being a part of the meter are required to be checked completely once in 12 months so he has challenged the respondent's submissions (Testing of the meter of the consumers of the category of petitioner is required to be checked once in 5 years in terms of Supply Code Regulations, 2007. Sub regulation 3.1.3 (1) and not in 12 months)
- (iii) Regarding respondent's denial for checking of the meter within a period of 7 months before installation of check meter, the petitioner has clarified that they have informed to the Hon'ble Court that an officer who was holding the

charge of the officer in charge in the area during that officer being on leave has checked the meter after opening the seal and had found the meter OK but has not given any document.

- (iv) The petitioner has submitted that the assessment raised by the department is wrong not being consistent with the rules.
- (v) The petitioner has denied respondent's submission that the Forum had heard the case and passed the order on merits but this submission is wrong as the Forum did not take cognizance of the Hon'ble High Court and Supreme Court case laws submitted by them. Further the Forum did not examined the MRI report and have passed orders based on check meter report only.
- (vi) As the department has not commented on point no. 6 of the petitioner it suggests that the department have no objection on this point of the petition.
- (vii) They have denied respondent's submission that the assessment has been raised only for the energy consumed by them as it is completely wrong and baseless.
- (viii) Since the respondent has not given any comment on this point of the petition so it means that they agree to that point. Further the department has accepted that Forum did not take any cognizance of the additional written submission made by them before forum.
- (ix)
 - a) The petitioner has submitted that Ombudsman's orders in case no. 07/2013 of M/s US Metal Product Haridwar vs EE, EDD (Rural), Haridwar do not apply in their case
 - b) They have submitted that Hon'ble Ombudsman's order dated 07.06.2010 in case no. 07/2009 M/s Doiwala Sugar Company Ltd. vs UPCL which has duly been upheld by the Hon'ble High Court in UPCL's writ petition no. 1820 of 2010 and further the Hon'ble Supreme Court has upheld Hon'ble High Court's order, does apply in their case. It has also been stated that a sum of Rs. 1,25,000.00 has duly been deposited by them with the respondent as a condition of the stay order, having said as above the petitioner has requested that the assessment raised by the respondent be set aside.

7. Hearing in the case was held on 09.10.2020, when both parties appeared and submitted their arguments. As counsel for the petitioner has raised a question that why the sealing certificate dated 04.03.2020 for installation of check meter does not mention the seals of the existing meter while mention of seals on the existing meter on sealing certificated date 11.03.2020 for finalization of check meter appears, therefore to answer his objection the respondent was asked to submit a copy of sealing certificate of installation of the existing meter by 16.11.2020. The respondent submitted a copy of sealing certificate no. 48/13 dated 12.08.2011 for installation of existing meter L&T-07159668, a copy of which was also sent by the respondent to the petitioner and the petitioner's advocate submitted his objections vide his letter dated 19.11.2020 pointing out discrepancy in the numbers of the seals of the old meter as mentioned on the sealing certificates dated 12.08.2011 and 11.03.2020 in order to clarify this discrepancy yet another hearing was fixed for 23.11.2020 and order date fixed for 23.11.2020 was postponed for 27.11.2020.
8. All documents available on file have been perused and arguments from both parties have been heard. Following facts of the case have been taken into account. An industrial connection of 60 KW with connection no. BHOK000010813 exists in the name of M/s Krishna Plastics with meter no. L&T 07159668. A check meter no. L&T19628135 was installed at the premises of the petitioner vide sealing certificate no. 21/01 dated 04.03.2020 to check veracity of the existing meter as name of the consumer had appeared in abnormality list. The check meter was finalized vide sealing certificate no. 24/01 dated 11.03.2020. As per check meter study the existing meter was found running slow by 32.74% in KVAH and 32.35% in KWH. Further, in order to ascertain the reasons of slow running of the meter the CT/PT chamber of the meter was opened and it was found that the lead connecting the meter to the PT has carbonized due to which voltage on B phase of the meter was low and due to this phenomenon the meter was not recording the energy correctly, while meter, CT and PT were working correctly, hence the working of the metering system was affected only due to non availability of full voltage on B phase of the meter due to carbonization resulting into less recording of energy by the meter, the extent of which was determined by check meter study as 32.74% in KVAH and 32.35% in KWH. The MRI tamper report revealed that voltage on B phase of the meter was low or missing

in varying magnitude from 27.02.2018 which phenomenon continued till 11.03.2020 when the check meter was finalized.

9. In view of facts of the case it is established to be a case of less recording of energy by the meter to the extent of 32.74% in KVAH and 32.35% in KWH as determined by check meter study attributable to non availability of full voltage at B phase of the meter due to carbonization for the period 27.02.2018 to 11.03.2020 as confirmed from MRI tamper report.
10. The respondent have accordingly raised a bill for a sum of Rs. 6,11,262.00 for a period from 27.02.2018 to 11.03.2020 for the energy that was escaped recording in the meter @ 32.74% in KVAH and 32.35% in KWH to recover the cost of energy that could not be billed through regular monthly bills due to not being recorded in the meter.
11. The petitioner disputed this bill and approached the Forum for redressal of their grievance which complaint was registered in the Forum as complaint no. 53/2020. The Forum after examination and hearing arguments dismissed the complaint and held that the assessment amounting to Rs. 6,11,262.00 raised by the opposite party is payable by the complainant. Being aggrieved with aforesaid Forum order the petitioner has filed this appeal.
12. The petitioner had submitted an application for stay and interim stay was granted on 21.09.2020 which was subsequently extended till next date of hearing on 09.10.2020 with the condition that the petitioner shall pay 20% of the assessment amount by 16.10.2020. It was confirmed by both parties that 20% of the assessment amount Rs. 1,25,000.00 was deposited by the petitioner as ordered. During the proceedings of the case the counsel for the petitioner alleged that a checking of their meter was done by some of the officers/official of UPCL who was holding the charge of the regular officer 7 months before the date of installation of check meter when their existing meter was found Ok but the said officer did not give any checking report to them so this allegation is without any evidence but they further submitted that no mention of the seals on the existing meter was made in the sealing certificate dated 04.03.2020 vide which check meter was installed but seals numbers for the existing meter were mentioned in the sealing certificate dated 11.03.2020 which were on variance except the seals on CT/PT chamber with the number of the seals mentioned in the sealing

certificate dated 12.08.2011 of the existing meter submitted by the respondent vide letter dated 16.11.2020. Due to this discrepancy in the number of seals as well as not mentioning the seals numbers of the existing meter in the sealing certificate dated 04.03.2020. They have pleaded that it is established that the meter was opened by a departmental officer 7 months before installation of check meter and was resealed and was found OK and hence they have requested that case be decided in their favour. The respondent have denied of any checking by any officer as alleged but they could not give any clarification regarding discrepancy in the numbers of seals except those on the CT/PT chamber. Regarding not mentioning the seals numbers of the old meter in the sealing certificate dated 04.03.2020 the respondent stated that since vide aforesaid sealing certificate a check meter was installed and the existing meter was not disturbed so it was not necessary to mention the seals numbers of the old meter in the sealing certificate. Regarding discrepancy in the number of seals no definite reply could be given by them also no definite reply was given by them regarding alleged checking of the old meter at a time 7 months before installation of check meter by any departmental officer/official as there was no record regarding such alleged checking but they mentioned that as the number of seals on CT/PT chamber are the same in both the sealing certificates dated 11.03.2020 and 12.08.2011 it shows that CT/PT chamber was never opened after 12.08.2011 till 11.03.2020 when the check meter was finalized. It is therefore clear that even if some alleged checking might have been done by any officer/official of the respondent 7 months before installation of check meter and discrepancy in the number of seals of old meter as mentioned in sealing certificate dated 12.08.2011 and on sealing certificate dated 11.03.2020 and having no mention of seals of old meter in sealing certificate dated 04.03.2020 does not affect the merit of the case as it is established from the number of seals on the CT/PT chamber being the same on both the sealing certificates that the CT/PT chamber was never opened after sealing on 12.08.2011 and till 04.03.2020 and as the MRI tamper report right from 27.02.2018 till 11.03.2020 shows the lesser voltage on B phase of the meter so the meter continued to record lesser energy than what was actually consumed due to the aforesaid phenomenon of low voltage and the extent of which is determined by check meter study as aforesaid and therefore ratio-dicidendi i.e. less recording due to non availability of voltage on B phase shall remain the same.

13. The petitioner has submitted a case law writ petition no. 1820/2010 of UPCL vs Doiwala Sugar Mill of the Hon'ble High Court of Nainital who has upheld that the assessment for slow running of meter can be limited for a period of 6 months in terms of regulation 3.1.3 (6) which decision was subsequently not interfered with by the Hon'ble Supreme Court. It is clarified that the said case law being distinguishable on facts do not apply in the instant case. The respondent have however referred Ombudsman order in appeal no. 07/2013 of M/s US Metal Product vs UPCL and appeal no. 26/2019 of Shri Gopal Kumar Khaitan vs UPCL and appeal no. 09/2014 of M/s ONGC vs UPCL wherein the Ombudsman has held that in cases where meter was recording less energy than actually consumed due to no availability of complete voltage input to the meter the limitation of 6 month in terms of sub regulation 3.1.3 (6) shall not be applicable and the cost of escaped energy due to the said phenomenon shall be realized for a period during which such phenomenon persisted. The respondent have also quoted a case law in AIR 2011 Punjab and Haryana High Court of Satish Kapoor vs Punjab Electricity Board wherein the Hon'ble High Court have stated *"If the electricity has been consumed by the appellant he is bound to pay for the same, it is true that there is no fault on the part of the appellant but the appellant has proceeded on a wrong belief that he is being penalized for the same, as a matter of fact he has been asked to pay for the electricity which had been consumed but could not be recorded by the meter because of wrong phase association of the meter."*
14. As deliberated above the fact of the case is that the meter did not get full voltage at B phase from 27.02.2018 till 11.03.2020 due to carbonization on the terminal feeding voltage to the meter and the extent of less recording during the entire period due to the said phenomenon was @ 32.74% in KVAH and 32.35% in KWH, as per check meter report the respondents are entitled to realize the cost of such unbilled energy which is their legitimate revenue. The assessment bill amounting to Rs. 6,11,262.00 raised by the respondent which is in fact is not an assessment but a supplementary bill for the cost of energy that escaped billing as also defined as such by the Hon'ble Punjab and Haryana Court in the aforesaid case law. So in view of facts of the case, as explained above and as also keeping in consistency with Ombudsman's earlier order in the similar cases, 2 of which have been referred by the respondent in their written statement and further keeping in view the principle of "Res-Judicata veritable habetur (an adjudicated matter shall be deemed correct), the disputed bill is payable by the

petitioner after adjustment of Rs. 1,25,000.00 already deposited by them as the condition of the stay order. The petitioner is directed to make payment of the balance amount to the respondent. However, in the event of nonpayment by the petitioner the respondent are at liberty to realize their dues by adopting such means as available to them under Act/Regulations including recovery through Dues Recovery Act, 1958. The petition is dismissed, Forum order is upheld. Stay stands vacated.

15. The UPCL management is directed to investigate as which outside agency as stated in AE (Meter) letter no. 125 dated 25.11.2020 received as enclosure to Executive Engineer's letter no. 5145 dated 25.11.2020 conducted the alleged checking whereby seals were changed and when and for what purpose such alleged checking was done and why a report of thereof was not submitted. Such agency be identified and necessary administrative action be taken after investigation.

Dated: 27.11.2020

(Subhash Kumar)
Ombudsman