

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Vivek Agarwal,
S/o Mahendra Kumar
9, Astley Hall, Dehradun, Uttarakhand

Vs

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

Representation No. 22/2020

Order

Dated: 24.11.2020

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 15.09.2020 in his complaint no. 125/2019 before the said Forum against Uttarakhand Power Corporation Ltd (hereinafter referred to as UPCL) through Executive Engineer, Electricity Distribution Division (Central Division), Dehradun (hereinafter referred to as respondent), Shri Vivek Agarwal, 9, Astley Hall, Rajpur Road, Dehradun (hereinafter referred to as petitioner) has preferred this appeal for refunding a sum of Rs. 6,15,013.00 wrongfully realized from him by the respondent, 12% interest on the said amount, a compensation of Rs. 2,00,000.00, full cost of this suite and any other relief thought fit by Ombudsman.

2. The petitioner has submitted that he is the owner of the premises 9, Astley Hall, Rajpur Road, Dehradun where he has an 8 KW domestic connection no. CD11211097082 where meter no. 355953 is installed. He has filed a complaint before the Forum on 12.12.2018 for redressal of his grievance and this appeal is being filed being aggrieved with Forum's aforesaid order. The petitioner has mentioned that:
 - a) He is the owner of the premises 9, Astley Hall, Rajpur Road, Dehradun where he has an 8 KW domestic connection no. CD11211097082 where meter no. 19869171 (this is the number of check meter which was made the main meter after finalization of check meter on 07.12.2019) is installed.

- b) he has received a notice dated 03.08.2018 from the respondent directing him to get his load enhanced from 8 KW to 27 KW
- c) The said notice was replied by him vide his letter dated 15.12.2018 mentioning that the meter and the cable connected to his connection cannot run more than 8 KWs and that they do not have residential power load more than the sanctioned load and he further prayed the respondent to get the meter checked and correct it as soon as possible.
- d) No action was however taken by the respondent on his aforesaid letter and finally after repeated prayers by him a check meter was installed by the respondent.
- e) As per sealing reports of the check meter it was concluded by the respondent that the old meter was defective and was running 6.51 times faster than the new/well functioning meter. He has mentioned that the meter installed at his premises had been defective since 2017 and being unaware of the said fact kept over paying 6.51 times the actual consumption .
- g) By the time the sealing report came he had already paid excess amount of the bills Rs. 8,07,910.00 against excess 1,42,993 units
- h) After this fact came to his knowledge he realized that he had been over billed on account of the faulty meters of the respondent.
- i) Being aggrieved with the said acts of the respondent a complaint was lodged before the Forum vide their letter dated 15.01.2020. Wherein he claimed that the whole amount wrongfully realized by the respondent on account of defective meter be got refunded.
- J) He further submitted a letter dated 24.02.2020 to the Forum regarding calculations since the meter has started over jumping from November 2017 and according to his calculations the department collected excess amount of Rs. 6,15,013.00.

- k) after admitting his complaint, the Forum directed the respondent to submit detailed report of the said defective meter along with MRI which the respondent failed to submit before the Forum despite many opportunities.
- l) the Hon'ble Court (Forum) vide order dated 15.09.2020 failed to direct the respondent to refund the amount wrongfully realized by the respondents on account of defective meter, hence this appeal. (the documents referred in his appeal from annexure 1 to annexure 6 have also been enclosed with the appeal.

3. Grounds of appeal

- a) Because the Forum despite mentioning in the order that the meter was defective and the appellant has been overcharged 6.51 times the actual bills failed to mention the refund of the said amount in the impugned order. Hence the impugned order being bad in the eyes of law needs to be set aside.
- b) Because the Forum passed the impugned order without actually looking into the relief prayed for i.e. the refund of the wrongfully realized amount. Hence needs to be set aside.
- c) Because the forum in impugned order failed to mention letter dated 24.02.2020 whereby the department and the appellant has clearly shown the complete calculation of the amount wrongfully charged by the respondent due to defective meter.
- d) Because the Forum ignored the fact that the respondent did not produce the MRI report despite numerous opportunities. Hence needs to be set aside.
- e) Because the Hon'ble Forum travelled beyond its jurisdiction while passing the impugned order. Hence the order needs to be set aside.
- f) Because the Hon'ble Forum has not followed the law laid down while passing the impugned order. Hence it needs to be set aside.

4. Having submitting as above the petitioner sought for the following reliefs:

- a) The amount of Rs. 6,15,013.00 which was wrongfully charged by the respondent due to the defective meter be refunded.

- b) That interest @ 12% per annum from the time excess bills have been paid till the said amount is refunded be given to the appellant for the loss of Bank interest.
 - c) Compensation Rs. 2,00,000.00 against the mental agony caused by respondent be granted for full cost of suite.
 - d) Any other relief deemed fit by the Hon'ble Ombudsman.
5. The Forum after hearing both parties and perusal of the file have observed that the opposite party did not submit the MRI report of the installed meter no. 355953 and also informed that the said meter could not be tested in test lab Dehradun because the 3 phase meter bench being defective in the said lab. Even after that many opportunities were provided to the opposite party for getting the MRI report made available if necessary through the manufacturing company who supplied the meter but the opposite party failed to submit the MRI report before the Forum. The complainant's main complaint is that the existing meter was running fast by 551.4% as per check meter report and in such a situation the Forum was of the view that correction of the bill in terms of sub regulation 3.1.3 (5) of UERC (The Electricity Supply Code) Regulations, 2007 shall be logical and justified. Having observed as such the Forum has ordered that bills for a period of 6 months prior to the date of installation of check meter on 11.11.2019 be revised in terms of sub regulation 3.1.3 (5) of Supply Code.
6. The respondent Executive Engineer has submitted his written statement vide letter no. 2604 dated 13.10.2020 wherein reply against point 8 c) and from 8 g) to 8 l has been submitted as शून्य, reply against other points has been submitted as below:
- 8 a) A domestic connection no. CD/7/1211/097052 for 8 KW contracted load is existing in the premises of the petitioner where meter no. 19869171 is installed.
 - 8 b) On being found demand from January 2018 to November 2018 from 23.28 KW to 39.54 KW. The then SDO issued a notice to the petitioner for getting his contracted load enhanced
 - 8 d) A check meter was installed at the premises of the petitioner on 11.11.2019.

- 8 e) The check meter was finalized on 07.12.2019 according to which the existing meter was found running fast @ 551 % with reference to check meter. he has substantiated his submissions with a copy of consumer history, copy of sealing certificates and SDO's notice to the petitioner. He has further submitted that due to non availability of MRI consumption details from the month of February 2008 to September 2020 has also been submitted.
7. At the time of hearing on 12.11.2020 the respondent's representative was asked to explain the reply शून्य on various points of the petition which he could not explain when he was asked to submit a revised written statement on these points and the same has been submitted by the respondent Executive Engineer vide his letter no. 2196 dated 12.11.2020 wherein apart from the revised written statement a checking report of the connected load has also been submitted. His replies to the points on which he has replied as शून्य in earlier ws has been submitted as follows:
- 8 c) Check meter was installed on 11.11.2019.
- 8 g) Bills have been issued as per readings.
- 8 h) Bills have been issued as per readings.
- 8 i) The petitioner had lodged a complaint no. 125/2019 before the Forum.
- 8 j) The documents mentioned have not been made available to the respondent's office.
- 8 k) As reported by AE (Meter) vide letter no. 17 dated 24.02.2020 the meter manufacturing company M/s Genus informed that it was not possible to download MRI of the meter.
- 8 l) The Hon'ble Forum has passed has passed justified order as per law and based on the evidences.
8. As per the checking report no. 01/1894 dated 12.11.2020 which bears signatures of the petitioner also the connected load at the premises was found as 4.7 KW. All seals of the meter were found OK and no unauthorized use or theft or suspected theft was found as per the said checking report.

9. The petitioner has submitted a rejoinder dated 04.11.2020, wherein he has submitted point wise reply to the written statement of the respondent as follows:
- i) Para 1 is admitted.
 - ii) Contents of para 2 are admitted as it call for no reply.
 - iii) Reply under para 3 is wrong and denied.
 - iv) As objections under para 4 does not deny the allegations made by him under para 8 (b) of the appeal so it is assumed that if admitted by the respondent, hence needs no reply.
 - v) Para 5 needs no reply as admittedly the meter was running fast by 551%.
 - vi) Reply under para 6, 7, 8, 9, 10 and 11 are wrong and denied.
 - vii) Even on the basis of documents filed by the respondent it is very clear that the meter started jumping drastically from November 2017 to January 2020 and the regular average consumption was 35.10 units per day. Hence the bills needs to be revised from November 2017 to January 2020.
 - viii) The contents of the petition which are true to the knowledge of the petitioner are reiterated and be read as part of his rejoinder.
 - ix) Intentions of the respondent from their objection are crystal clear and the interest of the petitioner needs to be protected.
 - x) The petitioner has got prima facia case and the balance of convenience is in the favour of the petitioner.
 - xi) The suite of the petitioner needs to be decreed whereas objections of the respondent needs to be dismissed.
10. A copy of consumer history from 27.05.1998 to 09.10.2020 as was submitted by the respondent with their written statement has also been adduced by the petitioner with his rejoinder.
11. Hearing in the case was held on 12.11.2020 as scheduled. Both parties appeared and argued their respective case. Hearing was concluded with mutual consent.
12. After hearing arguments from both parties and careful perusal of the documents available on file, following facts of the case have come to notice.
- i) A domestic connection for 8 KW contracted load is existing at the premises of the petitioner with connection no. CD11211097082 with meter no. 355953.

- ii) SDO concerned issued a notice dated 03.12.2018 directing the petitioner to get his contracted load upgraded to 27 KW as his demand has considerably exceeded beyond his contracted load of 8 KW.
- iii) In reply to the above notice the petitioner vide his letter dated 15.12.2018 informed the respondent that the meter and the cable connected to his connection cannot run more than 8 KW and he doesn't have his residential load more than the sanctioned load and he requested the respondent to get the meter checked and set it correct.
- iv) The respondent however did not take any action or give any reply to the petitioner till 11.11.2019 when a check meter no. 19869171 was installed at his premises vide sealing certificate no. 036/484 i.e. after about 11 months from the date of his request dated 15.12.2018 for checking the meter The check meter was finalized on 07.12.2019 vide sealing certificate no. 20/213 when the old meter was removed and the check meter was made the main consumer meter. while sealing certificate dated 07.12.2019 carries petitioner's signature that dated 11.11.2019 does not carry his signatures. According to this check meter study the existing meter was found running fast @ 551% with reference to the check meter. However there is no dispute between the parties about the check meter results and as such the same has become final.
- v) The demand and energy consumption as recorded by the existing meter were inflated varying from 23.28KW to 39.54 KW from January 2018 to November 2018 and the energy consumption from January 2018 to October 2019 varied from 4794 units to 35766 units in a billing cycle. During this period the respondent continued to issue the inflated bills without examining the performance of the meter except giving a notice dated 03.12.2018 to the petitioner asking him to get his contracted load enhanced. The petitioner also being unaware of this abnormal behavior of the existing meter continued to pay the inflated bills as received from the respondent and according to him till the time he received the sealing report he had paid an excess amount of Rs. 8,07,910.00 for 1,42,993 units excess recorded by the meter and according to him he has paid an excess amount of Rs. 6,19,013.00 and he thus lodged a complaint dated 24.02.2020 before the Forum for refunding the excess amount

of Rs. 6,15,013.00 deposited by him for the excess consumption recorded by the meter @ 551% fast running.

- vi) The Forum had asked the respondents to submit MRI report of the disputed meter but they have failed to submit the same before the Forum and simply stated before the Forum that it was not possible to take out the MRI report either at site or in their Dehradun Lab where the three phase bench was not in working order. Further, they stated that the supplier and manufacturer of the meter M/s Genus has also informed that it was not possible to take out MRI, however they informed that it may be possible to do the MRI after breaking the meter but it was not tried. The Forum has noted this adversely and as a failure of the respondent. However, they were of the view that as the old meter was found running fast @ 551% with reference to check meter, it would be logical and justified if bills were revised in accordance with sub regulation 3.1.3 (5) of UERC (The Electricity Supply Code) Regulations, 2007 and have accordingly ordered that bills for previous 6 months w.e.f. the date of installation of check meter on 11.11.2019, be corrected as per check meter report and in accordance with aforesaid UERC Regulations.
- vii) Being aggrieved with Forum's order this appeal has been preferred before undersigned for the reliefs as mentioned in his representation.
- viii) Before arriving at a conclusion and taking a decision in the case it would be necessary and appropriate to refer to the following regulations which are relevant in the case and to see as to whether the respondent have complied with such regulations or have acted in violation of these regulations.

A. Supply Code sub regulation 3.1.3 (4) *"It shall be the responsibility of Licensee to maintain the meter and keep it in working order at all times."*

A perusal of the documents shows that in spite of the existing meter having been showing abnormal behavior by recording energy consumption and demand much excess than the previous demand and energy as also the demand being much more than their contracted load they did not tried to examine the matter and simply issued a notice to the petitioner for getting his load enhanced. Even after his request dated 12.12.2018 for checking of the meter they took 11 months for installing

the check meter and as such they allowed a malfunctioning meter to continue at the premises. Thus they have violated this regulation and they also continued to issue bills for such a long period on the basis of this meter.

B. Sub regulation 3.1.3 (3) This regulation reads as follows:

“(3) The Licensee shall, within 30 days of receiving the complaint, carry out testing of the meter as per the procedure prescribed herein and shall furnish duly authenticated test results to the consumer. The consumer shall be informed of proposed date and time of testing at least 2 days in advance.”

The above sub regulation clearly provides for testing of the meter within 30 days from the date of receiving complaint from the consumer but in the instant case the respondents installed check meter on 11.11.2019, while the petitioner has requested for the same vide his letter dated 15.12.2018 so in violation of the above regulation they took 11 months for testing of the meter while the above regulation provides for testing of meter within 30 days from the date of complaint, hence the respondents committed gross violation of the aforesaid regulation.

C. Sub regulation 3.1.3 (5)

“(5) When the meter is found to be fast beyond limits specified in Rule 57 (1) of the Indian Electricity Rules, 1956, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within 15 days of testing. The Licensee shall adjust/refund the excess amount collected on account of the said defect, based on percentage error, for a maximum period of 6 months or less depending on period of installation of meter prior to the date of consumer’s complaint and up to the date on which defective meter is replaced/rectified”.

The above regulation provides that where a meter is found running fast beyond limits specified in rule 57 (1) the licensee shall adjust/refund the excess amount collected on account of the said defective meter based on percentage error for a maximum period of 6 months or less,

depending on the period of installation of meter prior to the date of consumer's complaint and up to the date on which defective meter is replaced or rectified. In the instant case as the check meter was installed after 11 months from the date of complaint in violation of above referred regulation 3.1.3 (3) which provides for checking of the meter within 30 days from the date of complaint, so they took 10 months more than admissible under the regulations for checking the meter and as such it would be appropriate that if date of installation of check meter is assumed as 10.01.2019 (30 days after the complaint of petitioner) and hence refund of the excess amount charged for the last 6 months prior to 10.01.2019 i.e. from 10.01.2019 to 11.07.2018 shall be allowed and further as the check meter was finalized on 07.12.2019 and billing on the malfunctioning meter running faster @ 551% remained continue till 07.12.2019 so refund of excess amount charged through the bills from 11.07.2018 to 07.12.2019 shall be allowed in accordance with the aforesaid regulation due to the violation committed by the respondent

13. The respondents are accordingly directed to revise the bills from 11.07.2018 to 07.12.2019 and refund the excess amount charged from the petitioner on the inflated bills issued during this period.
14. Apart from above as the respondent have violated the provisions of UERC (Standard of Performance) Regulations, 2007 in testing the meter within the specified period of 15 days from the date of complaint, compensation @ Rs. 25.00 for each day of default is also admissible to the petitioner. In the instant case complaint was made on 12.12.2018, the check meter was installed on 11.11.2019, as such the respondents took 11 months in getting the meter tested after the complaint against the permissible period of 15 days so compensation @ Rs. 25.00 per day beyond 15 days of the complaint i.e. for ten and half months in the instant case is also admissible as per 9 (4) of Schedule III of SOP Regulations, 2007. The respondents are also directed to work out the amount of compensation as aforesaid and pay the same also to the petitioner by way of adjustment.

15. Compliance of this order be ensured within 15 days from the date of this order. Petition is allowed in accordance with above referred regulations. Forum order is set aside.
16. Failure of the respondent to submit the MRI report has been viewed seriously by the undersigned.

Dated: 24.11.2020

(Subhash Kumar)
Ombudsman