

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Mahesh Babbar
11 A, Kalidas Road,
Babbar Hostel
Dehradun, Uttarakhand

Vs

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

Representation No. 04/2020

Order

Dated: 05.03.2020

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) order dated 26.11.2019 in his complaint no. 176/2018, Smt. Veena Babbar (hereinafter referred to as petitioner) through her authorized representative, Shri Mahesh Babbar has preferred this appeal/petition, against UPCL through Executive Engineer, Electricity Distribution Division (Central), , Dehradun with the prayer that Forum order dated 26.12.2019 (correct date is 26.11.2019), set aside assessment of Rs. 6,65,652.00 added in the bill for the month of February 2019, direct the respondent to revise all the subsequent bills in line with approved regulations without LPS, quash LPS wrongly charged.

2. The petitioner has stated that the Forum has dismissed his complaint out rightly without appreciating and considering the documents placed on record judiciously and without considering submissions made before them. The complaint no. 176/2018 was filed before the Forum against the arbitrary, illegal, unjustified and unwarranted demand amounting to Rs. 6,65,652.00 raised by the respondent through an entry in the bill for the month of February 2019 dated 05.03.2019 besides the regular consumption charges, which had been regularly deposited without default. He has further submitted that he is an individual and running a hostel at his residence at 11 A.

Kalidas Road, Dehradun in the name Babbar Hostel. He has a connection no. CD0K000005093 meter no. 7159275 under category RTS-2 and has been regularly paying consumption charges for the above connection as per demands being raised by the respondent through monthly bills and there has been no default on his part till the present dispute. On receipt of October 2018 bill for 11500 units he noticed that the consumption was less than that in the previous month and the same was brought to the notice of the respondent. Subsequently, November 2018 bill was received for 8620 units less than the previous month's consumption. On his repeated requests the respondent installed a check meter on 01.12.2018 which was finalized on 04.01.2019. He was shocked to note that a sum of Rs. 6,65,652.00 has been added in the bill for the month of February 2019. He repeatedly visited the respondent's office and the respondent failed to resolve the grievance. He also deposited a cheque of Rs. 1,50,000.00 on his own with the request that his supply may not be disconnected till redressal of the dispute. Deposition of cheque was also brought to the notice of the Forum. Later the respondent returned the said cheque to him. Being aggrieved with the impugned bill dated 05.03.2019 he filed a complaint before the Forum on 26.03.2019 registered as no. 176/2018 and the same was however dismissed by the Forum vide order dated 26.11.2019. Being aggrieved with the said Forum order this appeal has been preferred on the following grounds:

3. Grounds of appeal:

- a) The Forum has failed to appreciate that the impugned bill dated 05.03.2019 has been issued in a most illegal, obscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner, in clear violation of the settled proposition of law resulting in manifest of justice and causing serious prejudice to the complainant and hence the same deserves to be quashed and set aside.
- b) The Forum has failed to appreciate that the action of UPCL is in clear violation of principles of natural justice, equity and good conscience in as much as no notice or opportunity of being heard was given to the petitioner before raising the impugned bill.
- c) The Forum has failed to appreciate that action of the respondents in raising the impugned demand is otherwise illegal, arbitrary, perverse and without any cause of action and hence deserves to be quashed and set aside.

- d) The forum has failed to appreciate the fact that the petitioner himself had approached the respondent on suspecting something wrong in the meter during the month of October 2018 and November 2018, in view of recorded consumption.
 - e) The Forum failed to appreciate that as per the sealing certificate of check meter installation and finalization there was nothing wrong with the meter and the meter is working within its prescribed limit as described in Rule 57 (1) of Indian Electricity Rules, 1956.
 - f) The Forum has failed to appreciate that no abnormality in the meter was reported by the respondent in the sealing certificates.
 - g) Forum failed to appreciate that without any abnormality or defect in the meter or its accessories the meter cannot run slow as alleged by the respondent.
 - h) Forum has failed to appreciate that no meter testing report is provided to the petitioner in format Annexure v as approved by the Commission so that the petitioner could have raised the dispute before the Electrical Inspector as per relevant regulations.
 - i) Forum has relied on the tamper report which states the voltage failure event at many places. The Forum have failed to appreciate that the voltage failure tamper of the MRI report does not mean that the instant value of voltage is zero (0), it was likely that there was actual voltage drop in the distribution lines.
 - j) The Forum has stated in the order that as per tamper report there is voltage failure in Y phase for 13 and 9 units respectively on 27.05.2018 but failed to appreciate that because of some fault the voltage of that particular phase may also drop below threshold value to that recorded as tamper.
 - k) The Forum has failed to appreciate that the tamper report shows the abnormality which may have been detected by the meter and is indicative only and the tamper never meant that meter has started running outside the prescribed limit as per rule 57 (1) since with the advent of technology there are many antitampering features in the meter which either record maximum consumption or correct consumption in various tamper conditions.
4. In addition to above grounds of appeal the petitioner has also submitted the following additional points:

- i) The Forum neither award the decision nor the respondent rectify the alleged bill. In the event of non correction of the bill the same was not paid regularly. The subsequent bills after disputed bills of February 2019 were not sent to him, hence not paid. Finally he paid a sum of Rs. 5,06,575.00 through NEFT on 13.09.2019.
 - ii) When the petitioner approached the respondent office the subsequent bill from April 2019 onwards (except June 2019) were provided including the correct bill of December 2019 for a net amount of Rs., 18,85,847.00.
 - iii) The petitioner was shocked and surprised to see the amount of Rs. 18,85,847.00 in the bill of December 2019. On checking by him it was found that bills for the month of August, September and October 2019 had been raised on the assessed consumption of 22487 units and the assessed amount for these 3 months were not adjusted in the subsequent bill for November 2019 which was prepared for 47160 units. Further also the amount of Rs. 5,06,875.00 paid against the bill for September 2019 was also not adjusted.
 - iv) LPS was also found added in the electricity bills for the period prior to the disputed bill of February 2019 that the respondent is not authorized to charge LPS on the bills that have not been prepared as per UERC Supply Code Regulations, 2007.
5. Having submitted as above the petitioner has made the prayers as mentioned in para 1 above.
 6. The petitioner has substantiated his averments with various documents enclosed with the petition.
 7. The Forum have perused the documents including tamper report, Load Survey report, consumer history and heard both the parties. They observed that a perusal of the tamper report show that there was a voltage failure in the meter on Y phase on 13 minutes and 9 minutes on 27.05.2018 thereafter there had been voltage failure on the R phase for 101 days, 17 hours and 25 minutes w.e.f. 23.09.2018 and onwards. The opposite party on the basis of check meter finalization report have assessed for a period of 6 months w.e.f. check meter finalization for 56.46% slow running of meter. During hearing the respondent have revised the assessment w.e.f. the installation of check meter on 01.12.2018. In view of the Forum assessment for a period of previous

6 months w.e.f. the date of installation of check meter is justified. they have further observed that there had been voltage failure for 96 days 1 hour 54 minutes in B phase from 29.09.2018 to 03.01.2019. Prior to that also there had been a voltage failure on this phase for 34 days 12 hours and 35 minutes from 06.07.2018 to 10.08.2018. This suggests that before installation of check meter there had been voltage failure on all the three phases for different durations during the different time periods. A check meter was installed at the premises of petitioner on 01.12.2018 as a result of which meter was found running slow by 56.46%. However there had been voltage failure in the meter during different periods for a longer period before May 2018 also. The Forum have categorically mentioned that the respondent have submitted no reason for voltage failure before them, which shows that neither the opposite party have carried out any study of MRI sincerely neither they have submitted any analysis or a report regarding MRI before the forum during hearing also. Having taken this carelessness on the part of the respondent the Forum have given a warning to the respondent and directed that in future in such matters the analytic report should be placed before the Forum. They have held that the assessment raised for six months is justified in view of Supply Code, Regulations, 2007 and the complaint is liable to be dismissed.

8. Having observed as above the Forum have dismissed the complaint.
9. The respondent Executive Engineer has submitted his written statement vide his letter no. 398 dated 27.01.2020. He has submitted that the petitioner has connection no. CD0K000005093 for 50 KW. A check meter was installed at his premises on 01.12.2018 and was finalized on 04.01.2019 wherein the existing meter was found running slow by 56.46%. He has further submitted that as per tamper report the meter was found running slow w.e.f. 27.05.218 and hence assessed for Rs. 7,67,373.09 for 6 months from 01.06.2018 to 01.12.2018, which would be justified and in accordance with the rules. He has substantiated his statements with a copy of consumer billing history, copy of sealing certificates dated 01.12.2018 and 04.01.2019 as well as MRI tamper reports and calculation for the revised assessment for Rs. 7,67,373.09.
10. The petitioner has submitted a undated rejoinder which was received in this office on 04.02.2020. At the outset the petitioner has categorically and specifically denied the contents of written statement of the respondent being devoid of merits, baseless and non cogent explanation furnished by them. Further having not repeated the contents of

their appeal for the sake of brevity and in order to avoid repetition they have submitted that the same may be treated as part and partial of the rejoinder. The respondent have submitted no specific reply to the points raised in the appeal. He has submitted para wise rejoinder to the written statement on merits as follows:

11. He has submitted that contents of para 1 to 4 of the written statement need no comments since these are admitted facts, however, it is denied that the meter was found running 56.46% slow, while totally denying contents of para 4 of the written statement, the petitioner has submitted that the tamper report nowhere establishes that the meter was running slow. The tamper report is just an indicative of malfunctioning, moreover meter do have anti tampering feature which enables it to either record correctly or record at maximum value in case of any tamper.
12. Following additional points have also been submitted in the rejoinder:
 - i) The respondent in the hearing alleged that CT was changed during checking, however, they did not establish the date of change of CT. If the CT had been changed in the beginning or during the testing the entire testing process would become futile. Moreover, no documentary evidence has been provided for the same. It is pertinent to note that CT is part of meter as per CEA Meter Regulations and UERC Supply Code Regulations, 2007. It is mandatory to fill the sealing certificate at the time of initial installation and on subsequent replacement of meter. The respondent cannot be given benefit of doubt of its omissions and the Hon'ble Supreme Court in Civil Appeal No. 3615 of 1996 in the matter of Bombay Electric Supply and Transport Undertaking (petitioner) Vs Laffans (India) Pvt. Ltd. (respondent) in para 3 of page 7 have clearly established that "*The appellant cannot be permitted to take advantage of its own act and omission /026 of the Act of removing the meter and the omission to make a reference to the electrical inspector.*"
 - ii) The entire assessment raised is arbitrary on the basis of check meter and main meter readings as recorded in the sealing certificates the petitioner has claimed that the variation between main and check meter is only 1.6% which is within the prescribed limit of 3% as defined in Indian Electricity Rules, 1956.

- iii) No calculations about slow and fast running of meter has been given on the sealing certificate and therefore the respondent cannot now claim the percentage of slow running as 56.46%. Case of M/s Udaan Export (appeal no. 55/2019 decided by order dated 27.12.2019) has been referred. (This is irrelevant reference as in the said case there was no mention of the readings of the main meter at the time of installation of check meter).
- iv) Referring to sub clause 6 of clause 3.1.3 of Supply Code Regulations, 2007 regarding slow running of meter, he has mentioned that in view of the said clause the respondent are bound to replace/rectify the defective meter within 15 days and should have raised the assessment for 6 months prior to the date of defective meter has been replaced. In the instant case the main meter was not replaced and is still installed at the premises while it was alleged to be slow by 56.46% and was a basis for alleged assessment as the defective meter was never replaced in the instant case, there is no meaning of 6 months time period and the assessment is liable to be quashed.
- v) The testing report of the meter used as check meter was not provided hence this meter cannot be used as a check meter.
- vi) Giving month wise billed units from June 2018 to September 2018 and the assessed units for these months they have claimed that they have never consumed the units as assessed.
- vii) He himself contacted respondent and was agreed to pay for any consumption recorded less if calculations are made as per UERC regulations and guidelines.
- viii) Sub clause 7 of 3.1.3 of UERC Supply Code, Regulations, 2007 has not been complied with under which the dispute could have been referred to electrical inspector as no checking report on format annexure v was provided.
- ix) has claimed that the meter was not working as per specifications and hence is defective.
- x) The impugned bill for February 2019 submitted with the appeal has been prepared on the basis of check meter. Subsequent bills for March 2019 and June 2019 were not provided.

- x i) The billed units for the impugned bill of February 2019 was 519 units as per the billing history, however billed units for the month of February 2019 is 19990 units as per the billing history provided by the respondent. The change in the billing history of the appellant is not only shows malafied but also confirms that the bills have been manipulated and are not based on actual meter readings.
 - x ii) The respondent has no authority to recover any charges if the same has been calculated based on their whims and fancies as against the established regulations.
 - x iii) In view of point no. ix) as aforesaid it is a case of defective meter and the respondent should have replaced the defective meter within 7 days as per sub clause 2 of 3.1.4 of Supply Code, Regulations, 2007 and the consumer can be charged for the period of 3 months only.
13. Having submitted as above the petitioner has prayed as in his appeal
14. Hearing in the case was held on 17.02.2020. Shri Divas Joshi duly authorized appeared on behalf of the appellant, Shri Parmar AE (R) and Shri S.M. Jain Advocate appeared on behalf of the respondent. Both parties argued their case in addition to the oral submissions, both parties submitted the written arguments. While the petitioner has reiterated his averments made in appeal and rejoinder and have referred the regulations that have not been complied with by the respondent regarding their claim of less recording by the meter due to voltage failure as per MRI tamper reports, change of CT without giving any evidence for the same and non replacement of the meter even if it was found running slow by 56.46% as compared to the sealing certificate having given no test report on annexure v so that to enable them to refer the case to electrical inspector for which they are entitled to and categorically denied that the assessment raised for 6 month on the basis of check meter report for Rs. 6,65,652.00 and its proposed revision on the basis of alleged tamper report to Rs. 7,67,373.09 are arbitrary and illegal and liable to be dismissed. According to them it is neither a case of slow running of meter as per check meter report nor it's a case of less recording by the meter due to voltage failure but it is a case of defective meter and should have been dealt with accordingly and as such they have prayed that the Forum order and the impugned bill be set aside.

15. The respondent have submitted a written argument dated 14.02.2020 at the time of argument on 17.02.2020. They have reiterated that as the existing meter was found running slow by 56.46% assessment of Rs. 7,67,373.09 for 6 months have been adjusted. Further based on tamper report wherein less voltage on R and Y phases was being received since 27.05.2018 and due to this phenomenon the meter was recording less from 27.05.2018 to 04.01.2019 and as per check meter report the extent of less recording was 57.50% in KVAH so it would be justified to revise the assessment to Rs. 8,00,632.16.
16. All records available on file have been perused carefully. Relevant regulations have also been referred to. Arguments from both parties have been heard. It is borne out that on the instance of the petitioner the respondent installed a check meter on 01.12.2018 to check the veracity of the existing meter. The same was finalized on 04.01.2019 as a result of this check meter study the existing meter was found running slow by 56.46% as such the respondent assessed for last 6 months for a sum of Rs. 6,62,692.00 through an entry in the bill for the month of February 2019 issued on 05.03.2019 having found no relief from the respondent the petitioner filed a complaint before the Forum for redressal of his grievance. The Forum after perusal of the records and hearing both parties was of the opinion that the assessment raised by the respondent on the basis of check meter report wherein the meter was found running slow by 56.46% have upheld the assessment of Rs. 6,65,652.00 raised by the respondent and have dismissed the complaint. As regards the respondent's claim that as per MRI tamper report the meter was not getting full voltage input during different periods for different durations and that was the reason for less recording by the meter have disallowed the respondent's proposal for revision of the assessment for 6 months from 01.06.2018 to 01.12.2018 for Rs. 7,67,373.09 instead of already assessed Rs. 6,65,652.00. As in view of the Forum the respondent have not sincerely studied and analyzed the MRI reports and have given adverse comment about the working of the respondent officials.
17. I am in full agreement with the Forum's observations and their orders and the same is endorsed. The case of the respondent is that as per check meter study the meter was running slow by 56.46% and hence as per relevant UERC Regulations 2007 they are entitled to recover the cost of energy recorded less for a maximum period of 6 months

and they have rightly raised the bill for Rs. 6,65,652.00 which have been objected to by the petitioner on a number of grounds that have been pleaded by them in their petition, rejoinder and finally in the written arguments. However, their plea that they should be charged for only 3 months during which the meter was running slow is not acceptable as there has been no checking of the meter during the preceding 6 months or the existing meter had been in existence at the premises of the petitioner for more than preceding 6 months and hence in such a case the respondent are entitled to assess for a maximum period of 6 months on the basis of check meter report. In fact it is not an assessment but recovery of the cost of energy that escaped to be billed through regular monthly bills due to slow running of meter which have been established through the check meter study. The petitioner's allegation that meter testing report has not been given on prescribed format (annexure v) is also not acceptable because the said meter testing report in format annexure v is required to be given where testing of meter has been carried out as per sub regulation 3.1.3 (1) of Supply Code Regulations, 2007 while in the instant case a check meter study was conducted to check the veracity of the existing meter and as per this study the meter was found running slow by 56.46% so they are entitled to charge for the difference of the consumption for a maximum period of 6 months as per sub regulation 3.1.3 (6) of the aforesaid regulation.

18. The respondent's submission/proposal for revision of the assessment bill for a period of 6 months from 27.05.2018 from which date the voltage in one or the other phase was found less, termed as voltage failure, to Rs. 7,67,373.00 is not acceptable for their failure to establish their case of voltage failure on the basis of MRI tamper report as has categorically been observed and mentioned by the Forum in their order as explained above and therefore this proposal for revision of assessment is hereby turned down. They are however entitled to recover the assessment of Rs. 6,65,652.00 which is consistent with the relevant regulations. As the respondents have submitted that the meter was found slow not by 56.46% but by 57.50% in KVAH, they may check it and may correct the aforesaid assessment of Rs. 6,65,652.00 on the basis of correct percentage of slow running of meter if it is something else than 56.46%. The petition is dismissed. Forum order is upheld. Stay stands vacated.

19. As has been pointed out by the Forum in their order and has also been observed as such by the undersigned the entire procedure adopted by the concerned officials of the licensee in dealing with the instant case has been a tortuous act by the concerned officials. They have failed to examine and analyze the MRI tamper reports and once they have made a case of slow running of meter based on check meter report and have raised an assessment bill through an entry in the monthly bill of February 2019 how they can change their stand at this stage for assessing the petitioner on the basis of voltage failure i.e. less recording by the meter due to non availability of correct and full voltage input at all the times instead of their case of slow running of meter as per check meter study. The UPCL management is directed to get the matter investigated and to take necessary action for this lapse on the part of the concerned officials within three months from the date of this order.

Dated: 05.03.2020

(Subhash Kumar)
Ombudsman