

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Salim Ahmed  
S/o Shri Multan Ali  
Van Vihar, Mehuwalamaafi,  
Dehradun, Uttarakhand

Vs

The Executive Engineer,  
Electricity Distribution Division,  
Uttarakhand Power Corporation Ltd.  
Mohanpur, Premnagar,  
Dehradun, Uttarakhand

Representation No. 03/2020

### **Order**

**Dated:** 26.02.2020

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) order dated 26.12.2019 in his complaint no. 86/2019, Shri Salim Ahmed (hereinafter referred to as petitioner) has preferred this appeal/petition, against UPCL through Executive Engineer, Electricity Distribution Division, Mohanpur, Dehradun with the prayer that Forum order dated 26.12.2019 and notice dated 06.11.2019 of the respondent and respondent's challan dated 21.10.2019 are liable for dismissal and the same may therefore be quashed.

2. The petitioner has averred that he is a consumer of UPCL and has been paying the bills issued as per meter readings regularly. He has further stated that without any pre intimation they have sent a notice no. 2004 dated 06.11.2019 having alleged a case of theft of electricity. The said notice is not in accordance with electricity Act and is liable for dismissal. All receipts of the payments regularly made against the bills have duly been submitted in the office of the respondent on 16.12.2019 and nothing is outstanding against him. The respondent has never informed him about excess load drawn by him, which they should have done and they should have enhanced the load. Having not done so they have alleged a case of theft of electricity against him and as such the Forum's order dated 26.12.2019 as well as respondent's notice dated

06.11.2019 and 21.10.2019 are liable to be dismissed. He has further stated that there is a contradiction between the letter no. 2122 dated 03.12.2019 of the respondent and Forum's order dated 26.12.2019 and as such Forum's order dated 26.12.2019 and notice dated 06.11.2019 and 21.10.2019 are erroneous and liable for dismissal. He has further stated that as per respondent's record a sum of Rs. 77,697.00 shown deposited from 21.10.2018 to 21.10.2019 while a sum of Rs. 1,27,564.00 were deposited by him against electricity bills, receipts of which were submitted in the office of respondent on 16.12.2019. The respondent having ignored the above facts have leveled false allegations and issued notice as aforesaid and Forum passed order dated 26.12.2019 which is erroneous and is against provisions of Electricity Act, 2003 and is therefore liable for dismissal. The Forum in its order dated 26.12.2019 on one hand has mentioned the revised assessment as final and on the other hand have mentioned that they have no jurisdiction to hear a case under section 126 of the Act. These 2 things are contradictory as such Forum's order dated 26.12.2019 and respondent's notice dated 06.11.2019 and 21.10.2019 are liable to be dismissed. In support of his averments, the petitioner has submitted copies of various references as referred in his petition.

3. The Forum after perusal of the records and hearing both parties and having relied on the submissions of opposite party (the respondent) that being a case of unauthorized use of electricity under section 126 of Electricity Act, 2003 have raised a corrected final assessment bill of Rs. 1,20,772.00, such being the case they have held that The Forum has no jurisdiction to hear a case of assessment under section 126 in accordance with sub regulation 3.1 (4) of UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of the Grievances of the Consumers) Regulations, 2019 and have thus dismissed the complaint being out of jurisdiction.
4. The respondent, Executive Engineer has submitted a written statement dated 31.01.2020. He has held the contents of para 2, 3, 5, 6 and 8 of the petition as wrong and have denied. They have also not admitted the contents of para 1, 4 and 7 of the petition. Further the respondent have submitted that an inspection was carried out at the premises of the petitioner on 21.10.2019 in his presence, in the inspection the petitioner was found using his domestic connection for a hostel of 29 rooms known as Sapna Hostel and also in a shop for which provisional assessment cum notice dated

06.11.2019 under section 126 of Electricity Act, 2003 was sent to the petitioner. The petitioner filed his objections against the provisional assessment on 14.11.2019 on frivolous grounds and thereafter final assessment order dated 03.12.2019 was passed by the assessing authority. The petitioner's allegation that respondent has no right under Electricity Act, 2003 to send notice dated 06.11.2019, has been held as wrong by the respondent. Against petitioner's allegation under para 4 the respondent have stated that it is a wrong allegation. In fact the petitioner if he feels his load enhancement is necessary then he should have applied for the same. They have denied the allegation that it was the duty of the respondent to ask the petitioner to get his load enhanced before issuing notice dated 06.11.2019 for provisional assessment or passing the final order dated 26.11.2019 (as per records correct dated is 03.12.2019) under the Act. The respondent have further stated that should the petitioner have any grievance against the assessment he should have filed an appeal to the District Magistrate under section 127 of Electricity Act, 2003. In para 7 and 8 of their written statement they have raised objections on the authority of Ombudsman for hearing the instant case as being a case under section 126 of Electricity Act, 2003 the petition is not maintainable before Ombudsman and there is no reason why the Hon'ble Ombudsman should consider the present appeal as he has no jurisdiction to entertain the present representation. In para 9 the respondent have objected the petition having been filed in the names of the respondent which is not legally maintainable and in view of their submissions they have stated that the petitioner is not entitled to any relief and the representation is liable to be dismissed.

5. A rejoinder has been filed by the petitioner on dated 10.02.2020 while all the points of the rejoinder except points under para 9 (2) and (4) are merely repetition or reiteration of his averments made in his appeal and no fresh point has been submitted, under para 9 (2) and (4) he has submitted that Shri Sahid Ahmed, Member Technical of the Forum and Shri Sudhir Kumar Singh, Executive Engineer, EDD, Mohanpur have been made respondent's by name because they have harassed him by issuing notices etc. from time to time and hence it is maintainable.
6. The petitioner has also submitted the following case laws (i) Hon'ble Supreme Court of India judgment dated 09.10.2007 in appeal (Civil) 4734 of 2007 of Accounts Officer of Jharkhand State Electricity Board and others vs Shri Anwar Ali (ii)

Hon'ble High Court of Calcutta judgment dated 08.05.2005 in WP no. 14259 (W) of 2005 of Shri Kawsar Ali vs State of West Bengal.

A perusal of the above case laws suggests that the judgments in these case laws are distinguishable on facts and as such do not apply to the instant case.

7. All records available on file including the case laws have been carefully perused. Hearing from both the parties were held on 17.02.2020 when the petitioner himself and Shri Sudhir Kumar Singh, Executive Engineer and Shri S. M. Jain Advocate appeared on behalf of respondent. Both parties argued their respective case. The arguments were concluded with mutual consent. The interim stay granted earlier till hearing was further extended till disposal of the case.
8. Before the case is deliberated, it is clarified that the respondent's objection under para 9 of the written statement that mentioning the names of the respondents is not legally maintainable and therefore it is held sustainable and petitioner's explanation under para 9 (2) and (4) of the rejoinder giving justification for naming Shri Sahid Ahmed, Member Technical Forum and Shri Sudhir Kumar Singh, Executive Engineer as respondents by name is not acceptable and is overruled. In fact both the above officers have acted in the case in their official capacity and not as individual persons and so naming them as respondent is not acceptable. As regards respondent's objections under para 7 and 8 of their written statement regarding jurisdiction of Ombudsman in the instant case where the respondents have booked the petitioner for unauthorized use of electricity under section 126 of Electricity Act, 2003 and have raised an assessment under the same section, it is pertinent and appropriate to clarify the position in view of provisions under Electricity Act, 2003 and relevant UERC Regulations.
9. The legality and validity of the action taken by the respondent needs to be tested in accordance with the provisions of the Electricity Act 2003 and the Rules and Regulations framed there under. For this it is important to go into the factors that triggered off the respondent's actions. Inspection of the petitioner's premises u/s 126/135 of the Act as claimed by the respondent. To answer the respondent's objections and to clarify the position and authority of Ombudsman in such a case we have to peruse the following Acts, Rules and Regulations:

- (i) The Electricity Act, 2003 (hereinafter referred as Act of 2003).
  - (ii) The Electricity Rules, 2005 (hereinafter referred to as Rules 2005),
  - (iii) The Appeal to the Appellate authority Rules, 2004 (Rules framed under section 176 (2) of the Act, by the Central Government)
  - (iv) UERC (Guidelines for Appointment of Members and Procedure to be Followed by the Forum for Redressal of the Grievances of the Consumers) Regulations, 2019 (hereinafter referred to as CGRF Regulations),
  - (v) UERC (Appointment and Functioning of Ombudsman) Regulations, 2004 (hereinafter referred to as Ombudsman Regulations),
  - (vi) UERC (The Electricity Supply Code) Regulations, 2007 (hereinafter referred to as Supply Code 2007),
  - (vii) UERC (The Electricity Supply Code) (First Amendment) Regulations, 2008 (hereinafter referred to as Supply Code First Amendment).
10. That section 126 of the Act, of 2003, falls under part XII (Investigation and Enforcement), which provides Unauthorized use of Electricity, Provisional Assessment and objection thereto and Final Assessment.
11. That the matter relating to Section 126, and 135, alongwith meaning of unauthorized uses, theft and procedure came to be considered by Hon'ble Supreme Court of India in Executive Engineer and another Vs. M/s Shree Sitaram Rice Mills (Civil Appeal No. 8859/2011), reported in 2011 (Volume 12), Judgment Today (Supreme Court), Page 386. In Para – 23, it held as under:

*“Having dealt with the principle of interpretation of these provisions and the distinction between sections 126 and 135 of the 2003 Act, we shall now discuss the ambit and scope of Section 126 contemplates and following steps to be taken:*

- (i) *An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place.*

- (ii) *The formation of a conclusion that such person has indulged in unauthorized use of electricity.*
- (iii) *The assessing officer to provisionally assess to the best of his judgment the electricity charges payable by such person.*
- (iv) *The order of provisional assessment to be served upon the person concerned in the manner prescribed giving him an opportunity to file objections, if any, against the provisional assessment.*
- (v) *The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.*
- (vi) *The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.”*

12. That the aforesaid observation of Hon’ble Supreme Court appears to have been derived from Supply Code 2007 read with Supply Code First Ammendment, 2008. The regulations 5.2 of the said regulation deals with procedure for booking a case, for unauthorized use of electricity (5.2.1), submission of consumers reply assessed amount or installment thereof and the general procedure for the same. The Supply Code 2007, contained 5.2.3 (4) read with Supply Code First Amendment 2008 which is reproduced for ready reference:

*“(4) Where it is established that there is a case of UUE, the Licensee shall assess the energy consumption as per the assessment formula given in Annex X for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection and prepare final assessment bill on 2.0 times the rates as per applicable tariff and serve on the consumer under proper receipt. The consumer shall be required to make the payment within 7 working days of its proper receipt. The Licensee*

*may, taking into consideration the financial position and other conditions of the consumer, extend the last date of payment or approve the payment to be made in installments. The amount, the extended last date and/or time schedule of payment/installments should be clearly stated in the speaking order. A copy of the speaking order shall also be handed over to the consumer under proper receipt.”*

13. That Section 127 provides an appeal against the final order passed under section 126 of the Act, 2003. The Section 127 states about the appeal to the Appellate Authority by aggrieved person.
14. That the Central Government has power to make rules under Section 176 of Act, 2003. The Central Government has framed rules under Section 176, which came into force on 16.04.2004, named as “The appeal to the Appellate Authority Rules, 2004”. Rule 3 fo the said Rules, 2004 is as under:

*“3. Appellate Authority:- For the purpose of appeal under section 127, the State Government may, by notification in the Official Gazette, constitute on Appellate Authority consisting of one or more persons such that one of the persons shall have knowledge of matters related to assessment of electricity charges and none of them shall be directly related to the affairs of the territorial jurisdiction of the licensee or supplier of the electricity.”*

15. That the Government of Uttarakhand in exercise of the powers of Section 176 (2) (u) read with Rule 3 of the appeal to the Appellate Authority, Rules 2004, has notified vide Notification No. 78/1/2004-2002(3)/4/2004, Dehra Dun dated 02.11.2004, notifying that the District Magistrate / Collector of the concerned district shall be the appellate authority under section 127 of the Electricity Act, 2003. For ready reference the same is reproduced below:

*“In Exercise the powers conferred under the provisions of section 176 (2) of the Electricity Act, 2003 the Governor hereby designate the District Magistrate / Collector of the concerned district as the Appeal Authority under section 127 of the Electricity Act, 2003.”*

16. Above paras show that section 176 (2) (u) of Act No. 2003, has to be read with the rules framed of the appeal to the appellate authority rules 2004.

17. That aggrieved person has to file an appeal under section 127 of the Act, 2003, if the order is under Section 126. No irregular order can fall under Section 126, only regular, after of compliance of complete procedure, and final order shall lie under section 126, the appeal shall lie against Section 126.
18. That it cannot be ruled out that the Appellate Authority under section 127 of the Act, 2003, cannot scrutinize the irregularities, scope, procedure, principle of natural justice, while passing order under Section 127 of the Act, 2003, but the Ombudsman has equal power to scrutinize whether the impugned order is an order under Section 126 or violates the Section 126.
19. That the notification No. 77/1/2004-02 (3)/4/2004 under Section 126 of the Act 2003 dated 02.11.2004 is also reproduced below for ready reference:

*“In exercise of the powers conferred under Para (a) of explanation clause of Section 126 of the Electricity Act, 2003, the Governor hereby designate the officers of the rank of Executive Engineers or post equivalent thereto of the Uttaranchal Power Corporation Limited, which as at present the Licensee of electricity distribution in Uttaranchal, as the Chairman and Managing Director / Managing Director of the said Corporation may by order directed from time to time as Assessing Officers for concerned areas.”*

20. That for the purposes that the Ombudsman have jurisdiction to look into the scheme, whether the procedure prescribed under Section 126 has been followed or not, to place the order under Section 126. If the procedure followed is not under Section 126, the Ombudsman has full jurisdiction to deal with the order, mere mentioning of Section has no value.
21. That for the purposes, we have to place reliance upon the Electricity Act, 2003, in Section 42(6), further provides that Consumer has full power to make a representation to the Hon’ble Ombudsman for redressal of his grievances. For ready reference the said Section 42 (6) is reproduced below:

*“42 (6): Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.”*

22. That the Section 2(15) of the Act, 2003 defines the definition of the Consumer, which is reproduced below for ready reference:

*“2(15): “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected to the purpose of receiving electricity with the works of a licensee, the Government or such other person as the case may be.”*

23. That Electricity Rules, 2005 defines the powers of Ombudsman under Rule 7 (3) of the Rules. For ready reference the said Rule is reproduced below:

*“7(3) The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the rules and Regulations made hereunder or general orders to directions given by the Appropriate Government or the Appropriate Commission in this regard before setting their grievances.”*

24. That Regulation 4(1)(a) of the said Ombudsman Regulation 2004 reads as under:

*“The Ombudsman shall have following powers and duties:*

*(a) To receive*

*(i) The representation against any order of the Forum.*

*(ii) Non Redressal of Grievance by the Forum*

*(iii) And consider such representation and pass appropriate awards in accordance with the Act and Rules or Regulation made there under.”*

25. That the Regulation 3.6 of the CGRF Regulation 2019 states and defined appeal.

*“3.6 Appeal before Ombudsman*

*Any consumer aggrieved by the order of the Forum or non-disposal of his complaint by the Forum within the specified time limit may prefer an appeal to the Ombudsman appointed by the Commission under the Act, in such form and manner, as may be laid down in the Regulations of the Commission.”*

26. That the aforesaid CGRF Regulation 2019 shows that every order passed by the Forum is subject to the jurisdiction of the Ombudsman, and there are only few exceptions wherein the jurisdiction of the Hon'ble Ombudsman is impliedly barred.

27. That the aforesaid Ombudsman Regulations 2004 shows the definition of the Consumer, Electricity Service, Forum and Grievance. For ready reference the definition of Grievances mentioned in the Regulation 2 (k) of the said Regulation is mentioned below:

*“(k) “Grievance” shall mean a grievance of the Consumer arising out of the failure of the Licensee to register or redress a Complaint, and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a Complaint.”*

28. That the aforesaid Act, 2003, Rule 2005, CGRF Regulation 2019, Ombudsman Regulation 2004, clearly speaks that every order passed by the Forum is subject to the jurisdiction of the Hon'ble Ombudsman.

29. That the Hon'ble Ombudsman to maintain judicial discipline, do not decide the cases also following within the jurisdiction of Collector, Dehradun under section 126, and Section 135. Further the CGRF Regulation 1.2(1) (c) and (d) defines the definition of complaint, which forbids the Ombudsman, not to decide the appeal or representation under Section 126, 127, 135 to 140 and 161 Accident in Distribution, Recovery of any arrears where the bill amount is not disputed or any grievances pertaining to shifting of the electric lines/poles/equipments. For ready reference the said Regulation 1.2(1) (c) and (d) is reproduced below :

*“1.2 (c) “Complainant” shall include-*

- (i) A consumer as defined under subsection (15) of section 2 of the Act;*
- (ii) An applicant for new connections;*
- (iii) In case of death of a consumer, his legal heir (s) or authorized representative;*
- (iv) An authorized representative;*
- (v) Any consumer association registered under the Societies Registration Act, 1860 or under any other law for the time being in force; or*

(vi) *Any unregistered association of consumers, where the consumers have similar interest;*

(d) *“Complaint” means a letter or application filed with the Forum seeking redressal of grievances concerning the supply of electricity, new connection or the services rendered by the Distribution Licensee (s), including alteration in load/demand, meter related matters, bill related issues and cases where licensee (s) has charged price in excess of the price fixed by the Commission or has recovered the expenses incurred in excess of charges approved by the Commission in providing any electric line or electric plant or has failed to provide compensation to the consumer defined under the UERC (Standard of Performance) Regulations;”*

30. That to analyze the situation whether the blanket jurisdiction of the Ombudsman, can be taken away by Regulations, stating that jurisdiction is barred, if the order is under Section 126 and 127. The similar type of matter regarding jurisdiction of Civil Court, where jurisdiction is barred by some other statute, comes into picture, and defined in various rulings, for example in case 2008 (3) SLT page 733 of Hon’ble Supreme Court. These judgments hold that ouster of jurisdiction is not a Rule. No authority shall blindly believe that it has no jurisdiction.
31. That as stated above the Hon’ble Ombudsman have full jurisdiction over all the Forums orders passed by them, and have further jurisdiction to look to his jurisdiction by analyzing the judgment by the Forum and Section 126 and 135 of the Electricity Act, 2003. The Ombudsman has to look into, the facts, whether the judgment falls under section 126, 135 and exception contained in Regulation 1.2(1) (c) and (d) are in applicable.
32. That the Hon’ble Ombudsman Mr. Diwakar Dev, has decided, representation no. 03 of 2009, Mr. Samit Aggarwal Vs. Consumer Grievance Redressal Forum, Kumaon Region and has decided the jurisdiction of CGRF, and exclusion of his jurisdiction under Section 135 of the Act 2003, and found that the order under challenge in that case does not comply the procedure and the legal ingredients stated in Section 135 of the Act, 2003, and hence the order under challenge was beyond the scope of Section 135 and falls under any other order appealable before Hon’ble Ombudsman and set aside the order of the Forum stated to be passed under Section 135 (2) read with Section 126, and cancelled the assessment order stated to be passed under Section 126

holding that it is beyond the exception, whereby the jurisdiction is barred, hence he has jurisdiction. The defense of the Distribution Licensee was that the Hon'ble Ombudsman has no jurisdiction because the order in that case was under Section 126 and 135 (2) of the Act, 2003. The distribution licensee was disbelieved.

33. That from record it appears that distribution licensee has not challenged the order of the Hon'ble Ombudsman in the aforesaid representation No. 3 of 2009 before Hon'ble High Court of Uttarakhand at Nainital, and can be treated to be final on the subject of interpretation of "ouster of jurisdiction".
34. That as far as the present case is concerned the distribution licensee (respondent) has filed his written statement and in para 7 and 8 has taken a defense that the Ombudsman has no jurisdiction in the matter. Their objections have duly been addressed in the above clarifications.
35. That hence, in view of the above clarifications based on provisions in Electricity Act, 2003, Supply Code Regulations, 2007, Ombudsman Regulation 2004 and CGRF Regulation 2019 and Hon'ble Supreme Court's aforesaid ruling (referred in para 11 above) as also the then Ombudsman's clarification in representation no. 03/2009 referred above (in para 32) and keeping in view of the principle "res-judicata pro veritate habetur" (i.e. an adjudicated matter shall be deemed correct). I am of the definite view that Ombudsman has jurisdiction on all orders passed by the Forum except the exception contained in Regulation 1.2 (1) (c) and (d) of the CGRF Regulation 2019 and therefore further I am of the view that Ombudsman has full power to look into his own jurisdiction, by analyzing whether the ingredients contained in Hon'ble Supreme Court aforesaid Judgment has been fulfilled and the orders falls under Section 126/135 of the Act, to oust the jurisdiction. As in the instant case the respondent have violated the relevant Supply Code Regulation (sub regulation 5.2.1 from sub regulation 2 to 6) as the checking on 21.10.2019 vide checking report no. 02/52 has not been carried out by the Assessing Officer as duly designated vide Govt. of Uttarakhand notification 78/1/2004-2002(3)/4/2004, Dehra Dun dated 02.11.2004, (referred in para 19 above) but by SDO who is an officer below the rank of Executive Engineer and not the Assessing Officer in accordance with Government above referred notification dated 02.11.2004, on the basis of which the Assessing Officer has booked a case of unauthorized use of electricity under

section 126 of the Act and have raised a final assessment of Rs. 1,20,772.00 and have communicated the same to the petitioner vide his letter no. 2122 dated 03.12.2019. Such being the case the checking report dated 21.10.2019 is void in law and thus they have vitiated the whole procedure. As such the aforesaid checking report is declared as infructuous and accordingly case of unauthorized use of electricity under section 126 of the Act framed against the petitioner and consequently raising an assessment of Rs. 1,20,772.00 cannot be upheld as the entire exercise has been conducted in an arbitrary manner totally different from that prescribed under law and is therefore cannot be appreciated and approved and accordingly the demand of Rs. 1,20,772.00 raised vide letter no. 2122 dated 03.12.2019 and case of unauthorized use of electricity is hereby quashed. The Forum's order is also set aside. Petition is allowed, as far as case of unauthorized use of electricity under section 126 of the Act and consequential demand of Rs. 1,20,772.00 raised by the respondent vide letter no. 2122 dated 03.12.2019, is concerned. Stay stands vacated as the assessment has been quashed.

36. In the instant case however admittedly the petitioner was found using his domestic connection for non domestic use (for commercial use) and the respondent have already issued orders vide OM no. 2006 dated 06.11.2019 for change of tariff from RTS-1 (domestic category) to RTS-2 (commercial category) to which the petitioner has also no objection. This action of the respondent is upheld being consistent with tariff provisions. Further, the connection may be converted from domestic to commercial category with enhancement of load after completion of necessary formalities required under relevant regulations and getting deposited security etc. as required for enhanced load under commercial category.

Dated: 26.02.2020

(Subhash Kumar)  
Ombudsman