

Before

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the Matter of:**

Misc. Application filed against the shifting of High Tension Line (33 KV) in Prakash Vihar, Haridwar Road, Dehradun under section 67(4) of The Electricity Act, 2003.

**And**

**In the Matter of:**

Smt. Anita Gupta & Ors.

.....**Petitioners**

**Vs**

1. Secretary (Energy), GoU, Secretariat, Dehradun
2. Managing Director, UPCL, Dehradun
3. Sr. Superintendent of Police, Dehradun

.....**Respondents**

**Coram**

**Shri Subhash Kumar      Chairman**

**Date of Hearing: May 16, 2017**

**Date of Order: May 25, 2017**

**ORDER**

This order relates to the Petition filed by Smt. Anita Gupta & Ors. (hereinafter referred to as Petitioners), on 21.03.2017 against illegal and extremely dangerous action on the part of the Respondent no. 2 (hereinafter referred to as UPCL or licensee) of shifting of High Tension Line (33 KV) in Prakash Vihar, Haridwar Road, Dehradun under section 67(4) of The Electricity Act, 2003.

**Background**

2. The Petitioners are residents of Prakash Vihar, Dehradun, where, a 33kV High Tension (HT) line is passing and is now being shifted by UPCL to a new route where a LT line already exists. The said HT line is being shifted by UPCL on the

request submitted to it by other set of residents of the Prakash Vihar colony referring to the notification/order No. 44/I(2)/2014 dated 05.03.2014 issued by the Department of Energy, GoU in the matter of shifting of electric lines passing over the households. The proposed route on which shifting of the HT line is initiated by UPCL is protested by the Petitioners whenever UPCL attempted to commence the work of shifting the HT line.

3. Earlier, the Petitioners had approached the Civil Judge (Junior Division), Dehradun in the matter and the suit was dismissed vide its order dated 21.02.2017 on the ground of jurisdiction, referring to section 145 of The Electricity Act, 2003 (Act).
4. The Petitioners have now approached the Commission in the matter requesting to restraint UPCL from shifting the HT line and remove the poles and line erected for the said purpose and further to grant temporary injunction in the matter till the final disposal of the Petition.
5. In this regard, the Commission decided to fix a hearing on 16.05.2016 in the matter and issued notices for hearing to the parties vide its letter dated 03.05.2017.

#### **Submission of the Petitioners**

6. The Petitioners have made following submission in its Petition:-
  - (1) The Petitioners have submitted that the proposed route for shifting the HT line is a danger to the safety of the residents of the area as the proposed route of HT line has many bends and intersections and is the same as the route of existing LT line which is a potential danger and can be a cause of accidents in future.
  - (2) Further, the Petitioners have submitted that the whole exercise of shifting the lines is being done in the interest of few people who have constructed their houses under the existing route of the HT line and that if shifting is permitted, it will not only be facilitating those who have committed illegality by constructing their houses under High Tension wire but will

also put an extra financial burden by shifting of these lines.

- (3) The Petitioners highlighting the safety aspects and the behavior of UPCL towards the same has submitted in its Petition that the wires of the existing Low Tension distribution line is touching the pole erected for the new route of the HT line and so a wooden plank has been tied to avoid accidents which reflects the irresponsible and unprofessional behavior of the officer of UPCL.
- (4) The Petitioners had also enquired about the status from UPCL in the matter and it was informed by UPCL that the shifting of line is put to halt due to public outrage, however, the Petitioners have doubt that UPCL may forcibly start the work in the absence of any legal restraint.

### **Submission of the Respondent**

7. In response to the Commission's Notice dated 03.05.2017 on the issue of maintainability, UPCL vide its letter dated 15.05.2017 submitted the following reply:
  - (1) The Petition does not fall within the purview of section 67(4) of The Electricity Act, 2003 as the Petitioners have themselves stated that the Petition is against illegal and extremely dangerous action on part of the Respondent no. 2 in shifting the HT line.
  - (2) The Petitioners do not have any cause of action as the said line is not passing over the property of the Petitioners neither any pole nor equipment has been erected over the property of the Petitioners. Moreover, the Petitioners have not disclosed whether the Petitioners are owner or occupier of the property from where the line is passing or any manner in which any injury has occurred to the Petitioners.
  - (3) The other Petitioners have not signed or verified the Petition, the Petition has been signed by Smt. Anita Gupta as the sole Petitioner and has not claimed or stated in her Petition that she is authorized representative of other Petitioners which is in contravention to Regulation 8 of UERC, (The Conduct of Business) Regulations 2014.

- (4) The Petitioners have wrongly stated that the original suit before the Civil Court was dismissed on the ground of alternate remedy available.
  - (5) In the present matter there is conflicting interest of various parties i.e. one who wants to get the line shifted and others which are opposing the same, the Hon'ble Commission cannot take up the dispute between two private individual however in the present matter rights of both parties is to be decided.
8. During the scheduled date of hearing i.e. 16.05.2017, the Petitioners, Respondent no. 2 & Respondent no. 3 were present. The Commission heard the parties where Petitioners and the Respondent no. 2 reiterated their earlier submissions whereas, Respondent no. 3 requested the Commission to relieve him from further proceedings in the matter.

#### **Commission's observations, views & decision**

9. The instant Petition is filed under sub-section (4) of section 67 of The Electricity Act, 2003. Therefore, before delving into the facts & submissions of the Petitioners on the test of admissibility, the Commission shall firstly examine the Petition on its legal standing w.r.t. the provisions of 'works of licensee' enumerated under section 67 of the Act, which is being reproduced hereunder:

*"Section 67. Provisions as to opening up of streets, railways, etc: - (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as –*

- (a) *to open and break up the soil and pavement of any street, railway or tramway;*
- (b) *to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*
- (c) *to alter the position of any line or works or pipes, other than a main sewer pipe;*
- (d) *to lay down and place electric lines, electrical plant and other works;*
- (e) *to repair, alter or remove the same;*
- (f) *to do all other acts necessary for transmission or supply of electricity.*

- (2) *The Appropriate Government may, by rules made by it in this behalf, specify, -*
- (a) *the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;*
  - (b) *the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;*
  - (c) *the nature and period of notice to be given by the licensee before carrying out works;*
  - (d) *the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);*
  - (e) *the determination and payment of compensation or rent to the persons affected by works under this section;*
  - (f) *the repairs and works to be carried out when emergency exists;*
  - (g) *the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefore;*
  - (h) *the procedure for carrying out other works near sewers, pipes or other electric lines or works;*
  - (i) *the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;*
  - (j) *the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;*
  - (k) *the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;*
  - (l) *the procedure for undertaking works which are not repairable by the Appropriate Government, licensee or local authority;*
  - (m) *the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;*
  - (n) *the manner of restoration of property affected by such works and maintenance thereof;*
  - (o) *the procedure for deposit of compensation payable by the licensee and furnishing*

*of security; and*

*(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.*

*(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.*

*(4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.*

*(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section."*

10. In accordance with section 67(2) of the Act, the Central Government has prescribed The Works of Licensees Rules, 2006. The said rules elaborate upon the procedures to be followed and the requirements to be fulfilled by the licensee while executing the works. In this regard, rule 3 of the Works of Licensee Rules, 2006 which is relevant for understanding maintainability of this Petition is reproduced hereunder,

*"3. Licensee to carry out works.- (1) A licensee may –*

*(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;*

*(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:*

*Provided that in case where the owner or occupier of the building or land*

*raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:*

*Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered."*

11. Thus, from the above, it is amply clear that the owner or occupier of any building or land may raise objection if the works affect such owner or occupier.

Further, rule 2 (1) (b) of the said Rules defines the term occupier as,

*"occupier" of any building or land means a person in lawful occupation of that building or land."*

On applying the aforesaid rules to the facts of the present case, it is understood that the Petitioners are neither owners nor occupiers of any building or land on which the works relating to shifting of lines are being carried out, therefore, the said rule cannot be invoked in the matter and hence, the provisions of section 67 of the Act. Accordingly, the claim of the Petitioners to raise objection and bring up the Petition before the Commission is of no relevance.

12. As far as the apprehension of the Petitioners on the issue of safety being overlooked on account of shifting of existing HT line to a new route, section 53 of the Act stipulates the provisions relating to safety and electric supply and the Central Government Authority which is Central Electricity Authority (CEA) is empowered to specify suitable measures on the safety. Accordingly, CEA has specified Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010. Further, with regard to safety requirements for construction, operation and maintenance of electrical plants and electric lines section 73 (c) of the Act has empowered CEA to specify the safety requirements for the aforesaid activities and accordingly, CEA has specified Central Electricity

Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010.

13. The licensee is obligated to carry out such works in compliance to the above Regulations specified by CEA and also has powers of Telegraph Authority in certain cases under section 164 of the Act, wherein, the licensee engaged in the business of supplying electricity under the Act is authorized for the placing of electric lines or electrical plant for the transmission of electricity.
14. Moreover, if at all, there is any concern on electrical safety, the matter shall be brought to the knowledge of the Directorate of Electrical Safety through an Electrical Inspector who is the immediate authority in such matters under the provisions of section 161 and section 162 of the Act.
15. In light of the above, the Commission is of the view that the Petitioners have failed to establish the cause of action of their Petition including their claim over maintainability of the Petition.
16. Therefore, the Commission holds the Petition as not maintainable and decides to reject it.

Ordered accordingly.

(Subhash Kumar)  
Chairman