

## **THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

Datt Infrastructure & Services Ltd., 12 D, Race Course, Dehradun.

Vs

1. Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun
2. Director (Commercial), Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun
3. Executive Engineer, E.D.D. (Rural), UPCL, Civil Lines, Roorkee.

Representation No. 02/2008

### **Order**

Datt Infrastructure & Services Ltd. referred to hereafter as the petitioner have filed this representation under section 42 (6) of The Electricity Act 2003 (Act), as the Consumer Grievance Redressal Forum, Garhwal (Forum)'s failed to dispose off their complain even after lapse of 110 days, against the 60 days stipulated for this purpose. Accepting that non disposal of the complaint by the Forum amounts to non redressal of his grievance, the representation was admitted for hearing on 21.01.2008. The representation has been contested by the Respondent No. 1 referred to hereafter as UPCL.

2. The petitioner has developed an Industrial estate in village Bandakhedi, Roorkee. The petitioner claims that on 25.06.2005 UPCL required him to deposit the cost of constructing a 33 KV line and to construct at his own cost the 33/11 KV sub-station within the Industrial estate and the related works and for this purpose he was required to spend a sum of Rs. 179.23 Lac. The petitioner has claimed that he subsequently learnt that similar works have been done by UPCL at its own cost in some other Industrial areas/estates, whereas the above sum has been charged from him. Further that realization of such charges has not been approved by the Uttarakhand Electricity Regulatory Commission (Commission). It has been contended that section 43 of the Act places a duty on the licensee to supply power on demand. Section 45 empowers the licensee to recover charges for such supply which have to be approved by the Commission. Such charges could include a fixed charge, charge for the electricity actually supplied and rent or other charges in respect of any electricity meter or electrical plant provided by the distribution licensee. Such being the case the capital cost realized from the petitioner was actually to be met by UPCL and recovered in

accordance with provisions of this section and only to the extent and in a manner approved by the Commission. This not having been done, the petitioner has requested that the entire amount of Rs. 179.23 Lac paid by him in this connection should be got refunded to him along with interest there on.

3. The representation has been opposed by the UPCL on the ground that the petitioner is not a consumer of UPCL as defined in the Act, but is a developer. He is also not a complainant as defined in Uttaranchal Electricity Regulatory Commission (Appointment & Functioning of Ombudsman) Regulations, 2004. Accordingly the representation before the undersigned is not maintainable. Further that Electricity Supply (Consumer) Regulations, 1984, were framed under the Electricity Supply Act 1948 and as per section 185 (2) (a) of the Act these regulations not being inconsistent with the Act continue to be valid. As per these regulations these cost were payable by the petitioner. The petitioner has already recovered the cost of the Sub-station from the plot owners in the Industrial Area. It has been claimed on behalf of the UPCL that the petitioner has not constructed residential quarters with the Sub-station that he had undertaken to and has also not paid survey and supervision charges.
4. The above pleadings have been further amplified / supplemented by the two parties through their rejoinders and affidavits filed subsequently. Based on the pleadings of the two parties following issues for decision have been framed on 15.04.2008.
  - i. Whether as per provision of the Electricity Act 2003 the petitioner was liable to construct the sub-station in his industrial estate at his own cost & meet the cost of related 33 KV works.
  - ii. Are all industrial area/estate developers developing similar facilities required to meet these costs as per law and practice.
  - iii. As per prevailing regulation is the petitioner required to pay supervision charges on the material cost also or only on labour & transportation.
  - iv. Whether UPCL had required the petitioner to construct such sub-station and 11 KV lines at developers cost or he did so on his own.
  - v. Whether the petitioner is a consumer or can he have a grievance against the licensee as provided in the Electricity Act 2003 or the Regulations framed by UERC.
  - vi. Whether this representation is legally maintainable.
  - vii. Whether the representation is barred by principles of estoppels and acquiescence.
  - viii. Whether granting relief sought by the petitioner is within the jurisdiction of this court.

- ix. Whether the representation is not maintainable for not impleading the necessary parties.
5. Of these issues No. v & viii pertaining to maintainability of this representation are legal in nature and it was therefore agreed by both the parties that these should be decided before the remaining issues which relate to facts of this individual case can be taken up. Accordingly both the parties were allowed opportunity to make their written and oral submissions on these issues. Arguments of both the parties were focused on issue No. 5 namely whether the petitioner is a consumer and can have a grievance against the licensee under the Act. Issue no. 8 flows primarily from the decision that may be taken on this point.
6. In this connection it has been argued that Datt Infrastructure & Services Ltd., the petitioner, is a registered company which had taken up development of the above Industrial Area on land owned by the company. For development of this Industrial Area the petitioner company had taken a temporary connection from UPCL and now has a permanent connection required for providing common services like water supply, street lightning etc. in the Industrial Area; that the Industrial units have been allotted plots by the company on long term lease basis, but the petitioner company continues to be the legal owner of these plots and realises annual lease rent from these lessees. Further that these Industrial units are being supplied power by UPCL through the Sub-station constructed by the petitioner and the same is connected to UPCL's network. Accordingly the petitioner fulfils both the conditions stipulated under section 2 (15) of the Act which defines the term "Consumer" as used in the Act, and UPCL's objection that the petitioner is not a consumer and hence his grievance cannot be considered by the Forum under section 42 (5) or by the undersigned under section 42 (6) is without basis and should be rejected. In support of this contention the petitioner has referred to CMD, UPCL's order dated 19.02.2005, Annexure VI of the representation and Executive Engineer's communication dated 25.06.2005, Annexure VIII of the representation. Both these communications pertain to a total load of 10 MVA allocated to the petitioner for the Industrial Area. It has further been argued that as per Office Order No 7425 dated 13.06.2005 a load of 35 KVA was sanctioned to the petitioner company for meeting the electricity requirements of water supply, street lights and guard room. This load was changed to 40 KW vide Executive Engineer's Order no. 9657 dated 24.08.2006. Requisite charges for this load was deposited and UPCL has been supplying electricity to the petitioner, raising bills for such supplies and the same are being paid by the petitioner. It has been pointed out by the petitioner that he was sanctioned a load of 35 KVA for development of the Industrial Area on 13.06.2005, on 25.06.2005 he was required to deposit a sum of Rs. 69.23 Lac. Again he was sanctioned a regular load of 40 KW on 24.08.2006, for which an amount of Rs. 34,488.00 was required to be deposited, which was done on 11.09.2006. Accordingly the petitioner is being supplied electricity by UPCL right from June 2005 and this

supply is separate from the supply to the individual Industrial Units in the Area. Even with respect to supply to such units, it has been argued that since the petitioner company continues to be the legal owner of their plots and therefore the petitioner's premises are connected to UPCL's works for the purpose of receiving electricity, as stipulated in section 2(15). The petitioner therefore meets both the conditions stated in the definition of "consumer" given in the Act.

7. On UPCL's behalf it has been argued that the representation has been filed by Datt Infrastructure & Services Ltd., 12-D, Race Course, Dehradun whereas the supply has been made to Datt Infrastructure & Services Ltd. Bandakhedi. These are different entities and therefore the petitioner carrying the address of Race Course Road cannot claim to be UPCL's consumer. Further that no connection has been sought or given in the name of the petitioner. Even with respect to Datt Infrastructure & Services Ltd., Bandakhedi, no supply was made by UPCL before 20.09.2006 hence there is no question of their being UPCL's consumer before such date. It has also been argued that in a letter addressed to The Infrastructure Development Commissioner on 30.08.2006 a copy of which is annexure X of the representation, it has been stated by the petitioner himself that the petitioner is not a consumer of UPCL and hence he cannot now claim to be a consumer in this representation. Further that the petitioner is a developer and the dispute between him and UPCL does not merit consideration by the Forum u/s 42 (5) of the Act or by the undersigned u/s 42 (6).
8. I have carefully gone through the record and have heard the arguments presented by the two sides in support of their contentions. These have been dealt with hereafter:
  - a) Meaning of the term Consumer for the purposes of the Electricity Act 2003 is to be derived not from the general understanding or usage but from its definition given in section 2 (15). A reading of the section makes it clear that any person (which includes a company) when supplied electricity for his use becomes a consumer. The definition further stipulates that if a person's premises are connected with the licensee's works for the purposes of receiving electricity, he too would be a consumer. In the first case the two essential ingredients are supply of electricity and the same should be for the person's own use. In the second case even if supply has not taken place but the premises are connected, such person would also be a consumer. This section does not talk of the use that the electricity so supplied has been put to. Whether a person uses electricity to meet his domestic requirements or for manufacturing goods in a factory or a running a tube-well or any other machinery or for climate control, cooking, providing a service or any other activity, the person so using electricity will be a consumer. Similar would be the case of a person engaged in construction or building activities. The act makes no distinction between a person using electricity for any of these activities on commercial basis or one doing it for free and therefore the argument that the petitioner's enterprise is for earning profit is quite

irrelevant. The fact that the petitioner had undertaken development of an industrial estate does not by itself deny him the status of a consumer, as long as the conditions stipulated in section 2 (15) are fulfilled. Similarly the status of a corporate consumer is not altered by it being owned wholly by private parties or jointly with SIDCUL/Govt or wholly by Govt. or any of its organizations.

- b) UPCL has accepted that the petitioner is being supplied electricity w.e.f. 20.09.2006 but has denied any such supply having been sought or made prior to this date. However, UPCL's own documents filed on behalf of the petitioner do not support this contention. Annexure VIII of the petitioner is a copy of the demand dated 25.06.2005 for the service connection charge of Rs. 69.23 Lac for releasing power for development of the industrial area. It has not been denied that this amount has been made by the petitioner. Executive Engineer, Roorkee's office order no. 9657 dated 24.08.2006 clearly states that the petitioner was sanctioned a load of 35 KVA vide order no. 7425 dated 13.06.2005, which has been changed to 40 KW by the order dated 24.08.2006. It is clear from these documents that load has been sanctioned to the petitioner in the year 2005 itself and based on the estimates prepared by UPCL connection charges have been paid and necessary works have been done (whether directly by UPCL or on its behalf by the petitioner). The estimate dated 25.06.2005 states that the load has been sanctioned on 19.02.2005 for the purposes of development of the industrial area. The office order dated 24.08.2006 clearly states that the load sanctioned on 13.06.2005 was for street lights/guard room and tube-well. Thus load for development for the industrial area was sanctioned on 19.02.2005 and for the limited purposes of street lights/guard room etc. on 13.06.2005. Such being the case the load having been sanctioned on 19.02.2005 itself, estimates having been prepared, connection charges having been paid and necessary works having been done, by the virtue of second portion of the definition given in section 2 (15), the petitioner is a consumer even if actual supply of electricity has not been made before 20.09.2006 as claimed by UPCL. This is supported by clause 2 (g) (ii) of Uttaranchal Electricity Regulatory Commission (Appointment & Functioning of Ombudsman) Regulations, 2004. As per this an applicant for a new connection would be deemed to be a consumer. I am therefore unable to accept UPCL's contention that the petitioner is not their consumer and therefore cannot seek redressal u/s 42 (5) & (6) of the Act.
- c) It has been argued on behalf of UPCL that the petitioner i.e., Datt Infrastructure & Services Ltd. is different from the company that undertook development of the industrial area at Bandakhedi as the address given in the representation is 12-D, Race Course, Dehradun, while the load sanctioned on 19.02.2005 was in favour of Datt Infrastructure & Services Ltd.,

Bandakhedi. The petitioner has argued that Datt Infrastructure & Services Ltd. is a registered company having its Regd. Office in Delhi. This representation is been handled by the company's office in Dehradun, while the site address for this particular project is of village Bandakhedi. Further the company being a registered company has one single entity irrespective of number of its offices or addresses used for correspondence and other similar purposes. The address given in the representation is of Dehradun where this case is being handled and this does not alter in any manner the company's entity. I find force in the petitioner's above arguments and am unable to accept UPCL's misconceived contention in this regard.

- d) It has also been argued on behalf of UPCL that in their letter placed at annexure X of the representation, the petitioner himself has stated that he is not a consumer. Such being the case he cannot now claim to be a consumer for seeking relief u/s 42 (5) & (6) of the Act. While deciding whether the petitioner qualifies to approach the forum u/s 42 (5) or the undersigned u/s 42 (6) of the Act, we have to be guided by the provisions of the Electricity Act 2003 only. Even if the validity and relevance of petitioner's contention in the letter at annexure X was to be accepted, the petitioner could be faulted for being unethical or having made a false statement but the same does not alter the provisions of the Act. The relevant provisions of the Act have already been dealt with in this order earlier. An unethical or wrong statement made by the petitioner to a third party is therefore not relevant to the matter under consideration.
- e) UPCL is the sole distribution & supply licensee in the state. Clause 5.2 (b) of UPCL's Licence stipulates that;

*“.....without the general or special approval of the commission..... the licensee shall not sell or otherwise dispose of electricity to any person, other than pursuant to this Licence,.....”*

Further clause 5.3 provides that;

*“.....Save as in the case of the consumers of the Licence and persons authorised by the Commission, the Licence shall not commence any new provision of services to any Person for the conveyance of electricity through the Licensee's Distribution System, **except with the general or special approval of the Commission.....**”*

If UPCL's contention that the petitioner is not a consumer was to be accepted, the question that will demand an answer is whether UPCL's actions reflected in their own documents and discussed above are in violation of these unambiguous provisions of the Licence held by them, as

no special approval of the Commission has been produced. If such is not the case, it logically follows that these actions have been taken by Licensee only because it has considered and treated the petitioner as its consumer.

9. For reasons given above I have come to the conclusion that the petitioner, irrespective of the nature of its business and activities, is a consumer of UPCL. The objection in this regard is misplaced and without merit and stands rejected.
10. This brings us to the second issue whether the relief sought by the petitioner can be granted by the undersigned or not. This matter has been clearly decided by The Hon'ble Supreme Court of India in Civil Appeal No. 3551 of 2006, The Maharashtra State Electricity Distribution Company Limited Vs. The Lloyds Steel Industries Limited, reported in 2007(7) Supreme, Page No. 152 has held:

*“As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42 (5) of the Act and according to sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as “2003 Regulations”) and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in the cases of Suresh Jindal Vs. BSES Rajdhani Power Ltd. & Ors., reported in 132 (2006) DLT 339 (DB) and Dheeraj Singh Vs. BSES Yamuna Power Ltd., and we approve of these decisions. It has been held in these decisions that the Forum and Ombudsman have power to grant interim orders. Thus complete machinery has been provided in Section 42 (5) and 42 (6) for redressal of grievances of individual consumers. Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances.”*

11. The above finding of the Hon'ble Supreme Court leaves no room for doubt on whether the petitioner's grievance can be and indeed has to be considered and decided upon only by the undersigned or the Forum. Accordingly both issues nos. 5 & 8 are decided in favour of the petitioner. UPCL's objections on this account are found to be without basis and hereby rejected.
12. Now the remaining issues which are reproduced below need to be addressed:

- i. Whether as per provision of the Electricity Act 2003 the petitioner was liable to construct the sub-station in his industrial estate at his own cost & meet the cost of related 33 KV works.
  - ii. Are all industrial area/estate developers developing similar facilities required to meet these costs as per law and practice.
  - iii. As per prevailing regulation is the petitioner required to pay supervision charges on the material cost also or only on labour & transportation.
  - iv. Whether UPCL had required the petitioner to construct such sub-station and 11 KV lines at developers cost or he did so on his own.
  - vi. Whether this representation is legally maintainable.
  - vii. Whether the representation is barred by principles of estoppels and acquiescence.
  - ix. Whether the representation is not maintainable for not impleading the necessary parties.
13. The law points having been considered and decided upon, the above issues are now to be decided on the basis of facts as reflected in the documentary evidence produced by the two parties, relevant provisions of the Electricity Act 2003 and relevant orders and regulations issued by the Uttarakhand Electricity Regulatory Commission in exercise of its powers under the Act. For doing so the matter is hereby remanded back to Consumers Grievance Redressal Forum, Garhwal Zone. The said Forum will consider the submission of the two parties on each of the above remaining issues after taking to account all the aspects listed above and dispose off the representation on merits and in accordance with the provisions of the Act and the rules and regulations framed there-under, within a period of 45 days from receipt of this order.

Date: 13.08.2008

Divakar Dev  
Ombudsman