

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Badri Vishal Associates,
192, Main Saharanpur Road,
Patel Nagar, Dehradun, Uttarakhand.

Vs

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

Representation No. 06/2012

Order

The petitioner, M/s Badri Vishal Associates approached the Ombudsman on 01.04.2013 with a complaint against the order of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 17.11.2012. The petitioner claimed that the Forum had not passed a proper order regarding charges demanded from the petitioner by the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent).

2. The petitioner claimed that the Forum has passed the order without reading the complaint properly as was obvious from the fact that the various points in the consumer's complaint dated 02.09.2012 had not been decided in the Forum order dated 17.11.2012. The petitioner informed that he had applied for an increase in load which was to be given from the existing LT feeder within 200 meters of the petitioner's premises. The respondent demanded development charges, which as per the petitioner, were not chargeable. However, under protest, the petitioner deposited Rs. 50,000.00 for the development charge. The petitioner requested that the order of the Forum upholding the development charge and the fixed charges be set aside. He requested that the record of the Forum be called. As there had been a delay in filing the petition before the Ombudsman, the petitioner requested that the delay be condoned.

3. The first hearing was held on 16.04.2013. The delay was condoned and the petition was admitted. During the hearing the petitioner requested that the respondent be asked to release the connection for enhanced load as ordered by the Forum since the petitioner had fulfilled the conditions. The same was accepted and the respondent was ordered vide letter dated 18.04.2013 to ensure the same.
4. In the petition dated 02.09.2012 originally filed before the Forum the petitioner had informed that he had a 10 KW 3 phase commercial connection in the name of M/s Badri Vishal Associates with connection no. 14841. On 11.05.2012 the local SDO of the respondent had checked their load and found a connected load of 29.946 KW. A show cause notice was issued on 14.05.2012 demanding payment of Rs. 14,400.00 for excess load. In a reply sent by the petitioner dated 30.05.2012 the petitioner informed the respondent that they had a sanctioned load of 10 KW 3 phase. 3 phase 10 KW load corresponding to 30 KW on single phase consumption basis as they had distributed the load by putting lighting on one phase and other gadgets on the other two phases. The petitioner, however, was willing to increase the load by another 5 KW thus making the sanctioned load 15 KW on three phase basis. The petitioner requested the respondent to intimate to them the money to be deposited for the same. The petitioner claims that no reply was given by the respondent and instead on 09.07.2012 their supply was disconnected and a total of Rs. 23,400.00 (14,400 + 9,000) was got deposited by the staff of the petitioner.
5. The petitioner claims that on 20.07.2012 he received a demand notice to deposit Rs. 70,000.00 for increasing the load from 10 KW to 25 KW. The petitioner made a demand draft of Rs. 20,000.00 which he claimed was the correct amount to be deposited and sent it with a covering letter dated 21.07.2012 to the Executive Director, Commercial. In his letter the petitioner informed that the demand notice was in violation of LT Supply Regulations 2007 as the petitioner's premises were within 200 meters of existing connections and hence no development charges were payable by the petitioner. The petitioner explained that therefore the demand draft of Rs. 20,000.00 (security deposit Rs. 15,000.00 and connection charges Rs. 5,000.00) was being sent. The petitioner requested that the concerned unit of the respondent be asked to amend the notice.

6. The petitioner also lodged a complaint with the General Manager, Distribution vide his letter dated 21.07.2012 informing him of the sequence of events. In his letter the petitioner stated that he had come to know that the respondent's staff was not entitled to check the appliance load as they had done on 14.05.2012 and the same had been done illegally to harass the petitioner. He also informed that the notice issued by the respondent dated 14.05.2012 was illegal as was the arbitrary disconnection of the load on 09.07.2012. The petitioner requested the GM, Distribution to investigate the matter and take action against the guilty staff as well as refund the money (Rs. 23,400.00) illegally recovered from the petitioner.
7. The petitioner claims that no action was taken by either of the two officials and instead he received a letter from Executive Engineer Distribution (South) dated 28.08.2012 reiterating a demand for Rs. 70,000.00 to enhance the load from 10 KW to 25 KW. The petitioner claims that the Executive Engineer continued to make a demand for Rs. 50,000.00 towards development charges. Reiterating that the SDO/JE were not empowered to check his load or to raise a demand and get deposited Rs. 23,400.00, the petitioner states that they should have informed him of the maximum demand as per his meter and as per rules. He claims that he should have been billed for the increased demand from 11.05.2012 onwards. Petitioner states that the MDI as per the respondent's report is 21 but they continue to insist that the load be increased to 30 KW.
8. The petitioner claims that no development charges are payable by him as per regulations for LT connections notified by Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC). The petitioner states that his connection is not in a 'left out pocket' nor is he setting up a complex or colony and neither is he a developer. His connection is on LT supply and the tariff for LT supply is higher than HT supply. If any transformer is to be augmented it is the respondent's duty to do so at their own cost. The UERC regulations do not allow the respondent to make the demands that they had made on him. The petitioner in his complaint to the Forum requested notices be issued to the officials to the respondent and his grievances redressed. Action be taken against errant staff who disconnected his connection twice. Rs. 23,400.00 got deposited illegally be refunded. The load applied for (25 KW) be released without payment of any development charges.

9. The Forum in their order felt that the definition of 'left out pocket' subsumes the development charges as laid down in LT regulations 2 (b). Hence development charges can be charged or imposed. They, therefore, ordered that the petitioner to deposit the amount of Rs. 70,000.00 demanded by the respondent. The respondent was directed to release the connection forthwith on compliance with the conditions stipulated under the regulations.
10. The respondent claimed that the original connection was given to the petitioner from 11/0.4 to 250 KVA transformer. The total capacity of the transformer did not exceed 332.5 Amp. Hence, the respondent prepared an estimate of Rs. 2,33,236.00 for additional transformer for release of additional load to the petitioner. The petitioner was not charged any development charges at the time he got the load of 10 KW but was charged development charges for the additional load of 15 KW. For a total of 25 KW the petitioner was only charged Rs. 50,000.00. The present transformer installed at the site did not have enough load capacity to bear the additional load asked for by the petitioner. It was wrong to allege that the increase in load was to be catered from the existing LT supply and no development charges were payable as there was a huge increase in the load of the petitioner which could not be met by the existing system.
11. The respondent claimed that the huge enhancement of the load was for the development of the area and for commercial use in a commercial complex. The distribution mains which includes the existing transformer did not have the capacity required to meet such enhancement in load and hence the development charge had to be realized from the petitioner. In the checking on 13.07.2011 it was found that the petitioner was using more load than sanctioned and hence the petitioner was asked vide letter dated 16.07.2011 to get his load enhanced, but the petitioner deliberately did not apply for the enhancement of load. As the petitioner was using enhanced load, he was asked to pay fixed charges vide letter dated 30.07.2011 and also told that if he had any objection he may file the same otherwise the connection would be disconnected within 30 days without any notice. The petitioner did not deposit the amount of fixed charges of Rs. 9000.00. In a second checking on 11.05.2012, the petitioner was found to be using 20 KW load in excess to the sanctioned load. On 14.05.2012 he was sent another letter to get his load enhanced and pay the fixed charges for the excess load. The petitioner again gave no application for

enhancement of load nor did he deposit the amount of fixed charges of Rs. 14,400.00. (this is incorrect as the petitioner did send a letter dated 30.05.2012 asking for enhancement of load not by 15KW but by 5 KW). The respondent maintains that due to this default of the petitioner the connection was disconnected. The petitioner applied for enhancement of load on 19.07.2012. The additional load of 15 KW was sanctioned on 20.07.2012 and petitioner was asked to deposit the amount of Rs. 70,000.00 vide letter dated 20.07.2012 (service connection charges for line Rs. 5000.00, development charges Rs. 50,000.00, security Rs. 25,000.00, less Rs. 10,000.00 (security already paid) total Rs. 70,000.00). The respondent further states that the load was enhanced from 10 to 25 KW vide sealing certificate dated 13.03.2013.

12. The respondent also raised the point that one Smt. Mamta Rani alleging herself to be the authorized signatory originally applied for load for the commercial complex for M/s Badri Vishal Associates. Thereafter one Smt. Monica applied for enhancement of load on 19.07.2012. The respondent claimed that neither Smt. Monica nor Smt. Mamta Rani have disclosed their relation or status with reference to M/s Badri Vishal Associates and, therefore, the complaint was unauthorized. The respondent also felt that the delay in filing petition before the Ombudsman should not be condoned as no reasonable explanation for the same had been given by the petitioner.
13. Before discussing the other issues raised by the petitioner the two related points (a) condoning delay and (b) the status of the petitioner Smt. Monica Gupta may be examined. It has been seen numerous times that petitioners are not made aware of their right to represent against the orders of the Forum before the Ombudsman and hence there is delay in their filing of petitions before the Ombudsman. Therefore, the delay was condoned at the first hearing on 16.04.2013. Regarding the status of the petitioner, it may be mentioned that the same petitioner had filed the complaint before the Forum and no objection was raised by the respondent on this point there. In fact the respondent never objected when the application for enhancement for load was received from Smt. Monica Gupta in 07/2012 and in fact issued the OM dated 20.07.2012 for enhancement of load in the name of Smt. Monica Gupta as proprietor of M/s Badri Vishal Associates. Regarding the status of the petitioner, the petitioner has filed Deed of Dissolution of Partnership dated 31.03.2012 whereby it is recorded that Smt. Mamta Rani had decided to retire from

the firm w.e.f. 31.03.2012 and that the business of M/s Badri Vishal Associates shall be carried on from 01.04.2012 as a going concern by Smt. Monica Gupta. Thus, the two above stated objections raised by the respondent are devoid of merit.

14. Brief facts of the case are that the petitioner took a connection on 21.07.2010 for 10 KW. On 13.07.2011 when checking was done at the premises of the petitioner, the petitioner was found using 15 KW load more than the sanctioned load of 10 KW i.e. a total load of 25 KW. The petitioner was informed of this transgression by the respondent vide his letter of 16.07.2011 and asked to pay fixed charges of Rs. 9,000.00 vide respondent's letter dated 30.07.2011. He was also informed that if they had any objection, they may bring it to the notice of the respondent. The petitioner took no action on this, neither paying the fixed charges nor appealing against the decision or asking for enhancement of load.
15. A second inspection was done on 11.05.2012 which showed that the amount of load had increased from 25 KW to 29.946 KW. Again, the respondent served notice dated 14.05.2012 for fixed charges and asked the petitioner to get the load enhanced to 25 KW. The petitioner wrote to the respondent asking for the load to be increased by 5 KW and not 15 KW. The respondent did not reply and instead disconnected the connection on 09.07.2012. The petitioner paid up the combined fixed charges of Rs. 23,400.00. He also applied for enhancement of load to 25 KW on 19.07.2012. On receipt of the demand note dated 20.07.2012 for Rs. 70,000.00, the petitioner objected to the fixed charges and the demand of Rs. 50,000.00 for development charges vide his letters dated 21.07.2012 sent to the Executive Director, Commercial and General Manager, Distribution.
16. On receiving no reply from the senior officials of the respondent and instead getting another demand notice dated 28.08.2012, the petitioner approached the Forum on 02.09.2012.
17. During arguments, the respondent claimed that development charges were demanded as the petitioner had taken the enhancement of load for development of the area for commercial use and in a commercial complex. Even if it was not a commercial complex it was a commercial area covered under the definition of 'developer' as per clause 2 (1) of the UERC (Release of New LT Connections, Enhancement and Reduction of Loads)

Regulations, 2007. Further, the petitioner's case did not fall under clause 2(3)(a) but under clause 2(3)(b) of the above Regulations. The existing distribution mains did not have the capacity to meet such enhancement of load. The respondent has placed great store on the fact that the petitioner had initially in July 2010 taken a 10 KW load for the complex at 192 Patel Nagar, Saharanpur Road and a short while later in July 2012 got the load enhanced by 25 KW as proof that the petitioner was developing the area as a shopping complex. However this explanation of the respondent does not appear to be correct as the petitioner took the enhanced load for the same shop from where he is running a store. Moreover, the petitioner has claimed that he did not have a commercial complex and was running one single departmental store. A 10 KW connection was already running which was to be enhanced to 25 KW. There was no new connection, the requirement was for enhancement of already existing connection. How could this lead to development charges being levied against the petitioner.

18. The petitioner also objected to the inspection done by the officials of the respondent to check the maximum demand by checking the gadgets connected to the power supply whether working or not. They have claimed that the MDI report is sufficient to inform the total load drawn at any point of time.
19. The petitioner in their statement dated 07.06.2013 claimed that even till that date the new transformer and cable had not been connected to his meter. The load of the petitioner was still being catered from the old transformer and existing cable which showed no augmentation was really required. At the hearing on 10.07.2013 a spot inspection was ordered to be conducted in the presence of the consumer representative and the Executive Engineer, UPCL. Following this, the petitioner gave a written statement dated 11.07.2013 and enclosed photographs taken by the petitioner on the spot. The photographs showed that the linesman of the respondent alerted by the senior staff had rushed to the spot on that date (10.07.2013) to make the attachments to the new transformer so that it could be shown as attached to the petitioner's premises. The petitioner maintained that this proved their contention that the sealing certificate dated 13.03.2013 produced by the respondent was a back dated document. In fact this is also clear from the fact that if the load had been enhanced on 13.03.2013, there was no need for the petitioner to request during the first hearing on 16.04.2013 that the respondent be asked to release the enhanced load.

The sealing certificate issued by the respondent on 14.08.2013 showing 'meter installed outside of premises and supply connected through new 63 KVA T/F shows that the 13.03.2013 sealing certificate was not genuine.

20. The respondent in their statement of 30.07.2013 claimed that the additional transformer had to be installed to protect the existing system and give requisite supply to the consumer. The respondent stated that the concerned JE had been directed to connect the cable but it appears that he did not do so at that time and it was found during inspection on 10.07.2013 that the petitioner was not being supplied energy from the new transformer and hence an effort was made to connect it but the petitioner did not allow the same. The non connection of the new transformer is of little consequence so far as the requirement of the new transformer is concerned.
21. After hearing all arguments, the main points to be decided are whether (a) the respondent staff could go into the premises of the petitioner for checking and evaluate the load connected by checking gadgets attached whether in use or not; (b) the fixed charges demanded by the respondent were correct or not and; (c) the respondent was correct in his demand for development charges of Rs. 50,000.00 from the petitioner.
22. On the subject of fixed charges the two parties decided the same by mutual consent and as per the letter of the respondent dated 29.08.2013 the amount was reduced from Rs. 23,400.00 to Rs. 16,678.00 to the satisfaction of petitioner.
23. On the question whether the respondent staff could go into the premises of the petitioner and evaluate the load connected by checking gadgets, the rules are very clear on this subject as brought out in section 163 of the Electricity Act, 2003.

“Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

163.

- 1. A licensee or any person duly authorised by a licence may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over,*

along, across, in or upon which the electric supply-lines or other works have been lawfully placed by him for the purpose of

- a. inspecting, testing, repairing or altering the electric supply lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee; or*
- b. ascertaining the amount of electricity supplied or the electrical quantity contained in the supply;”*

24. Thus it is clear that the staff of the respondent could enter the premises to evaluate the load. It also follows that after evaluating the load and finding that the petitioner was using more load than the sanctioned load, they were within their rights to demand fixed charges for the excess load. Regarding the amount of fixed charges, the matter has already been mutually agreed upon between the two parties as mentioned above in para 22.

25. The petitioner has also objected to the disconnection carried out by the respondent on 09.07.2012. This is part of the procedure as laid down by the regulations which maintain that the consumer should be given a warning regarding use of excess power beyond sanctioned load and in case he has any objections the same may be brought to the notice of the respondent. If the consumer does not raise any objection, he has to pay the amount or the licensee can disconnect his connection.

In the case of the petitioner, his premises were inspected twice, once on 13.07.2011 and then again on 11.05.2012. After the first checking, a notice was served on the petitioner dated 30.07.2011 for payment of Rs. 9,000.00 as fixed charges on account of excess load. The petitioner did not send any response. After the second checking, he was again served a notice dated 14.05.2012. He wrote to the Executive Engineer, Distribution (South) that he was willing to get his load increased by another 5 KW. The respondent however did not send any response to this letter and disconnected his connection on 09.07.2012. After payment of Rs. 23,400.00, fixed charges + Rs. 200 reconnection charges his connection was restored. Subsequent to this the petitioner took up the matter with the different

officials of the respondent. In this case the respondent was wrong in disconnecting the petitioner's connection instead of responding to his letter of 30.05.2012.

26. On the question of demand for development charges while increasing the load from 10 KW to 25 KW, the respondent has placed great emphasis on the fact that the petitioner is a developer and, hence, as a developer, is to be charged development charges under clause 6 (2) of the UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007.

These regulations provide definition of developer as under:

"2. Definitions

In these Regulations, unless the context otherwise requires:

(1) "Developer" means a person or company or organization or authority that undertakes development of an area for residential, commercial or industrial use and includes development agencies (like MDDA etc.), colonizers, builders, cooperative group housing societies, associations etc."

Further section 2(3) of the regulations provide:

"Left out Pockets: would mean any area within an Electrified Area:

(a) where the licensee has not laid any distribution mains and the nearest existing distribution mains are at a distance of 201 meters or more.

(b) a residential or commercial colony/complex developed or being developed by any developer, in which distribution mains within such colony/complex have not been laid at all or do not have the capacity required to meet the likely load of such colony/complex or is of such sub-standard quality that it does not conform to the safety norms stipulated in the Indian Electricity Rules 1956 endangering life and property."

27. From a perusal of the papers submitted by the petitioner, it appears that he is running a departmental store selling different articles, all operating out of the same premises and belonging to the petitioner. It cannot be treated as a shopping complex where several shops owned by different people operate out of the premises. The petitioner is running his

shop in one building and has taken one connection for that entire building. Hence it fulfills the requirements of premises as defined in the regulations section 1.2 (ii)

“ii) “Premises” for the purpose of these Regulations means land or building or part or combination thereof in respect of which a separate meter or metering arrangement have been made by Licensee for supply of electricity; “

28. The respondent has insisted that as the petitioner is a developer of a shopping complex hence section 2(3)(b) of the regulations would apply. However if that were so then distribution mains would have been laid within the complex/building by the licensee. There is no distribution mains within the building/premises of the petitioner. In the case of a shopping complex, a separate building/room would be set aside for the setting up of distribution mains and the meters of all the different units within the shopping complex. As this is not the case here, clause 2 (3)(a) or (b) of the Regulations as a case of ‘left out pocket’ do not apply. The petitioner’s premises cannot be treated as a ‘left out pocket’. The area where the shop of the petitioner is situated is already electrified as is seen by the fact that the petitioner has been sanctioned a 10 KW load which was functioning since July 2010.
29. There is no new connection required here it is only enhancement of load. It is for the licensee to decide whether the existing transformer can take the load or another transformer is required to cope with the increase in demand. The respondent has claimed development charges on the ground that they had to install a new transformer to cope with the enhanced requirement and for this purpose they had prepared an estimate of Rs. 2,33,236.00 as per OM dated 05.04.2007 which mentions that ‘load of more than 20 KW shall be released by installing new transformers of appropriate capacity for which estimates shall be prepared accordingly.’ This OM does not mention anywhere that development charges are to be taken for the installation of new transformers.
30. In fact the respondent in his statement dated 13.08.2013 maintained ‘it is not the concern of the petitioner if the load has been enhanced without connecting it to the new transformer. That is the internal matter of the respondent who is responsible for maintenance of the system.’ Thus, the respondent himself admits that the new transformer was not necessarily installed to cope with the additional load of the

petitioner. Moreover, the respondent showed that the load was enhanced from 10 KW to 25 KW vide sealing certificate dated 12.03.2013. However the petitioner's connection to the new transformer was made only on 14.08.2013, hence the load if it had been enhanced had been done on the connection with the old transformer itself and was working without any problems from then on. In fact even earlier the old transformer was taking the load of 25 KW as shown by the inspection reports of the respondent of 13.07.2011 and 11.05.2012. It is therefore very clear that the installation of the new transformer has little or no relevance to the enhancement of load of the petitioner.

31. Clause 6 of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 clearly states "*If a new connection is required in a 'left out pocket' which requires the Licensee to extend its distribution mains or to lay new distribution mains or to commission a new substation,... the applicants will be required to deposit ... one time development charges...*". In this case, while giving the original connection of 10 KW to the petitioner, the respondent has not deemed the area as 'left out pocket' and had not demanded any development charges. The respondent is unable to explain that how could they now claim that the area fell within the definition of 'left out pocket' and hence the petitioner had to pay development charges.
32. The main grounds given by the respondent for demanding development charges from the petitioner (a) that he is a developer and (b) he is situated in a left out pocket, have both been found to be incorrect. There is no ground for the demand of development charge on the petitioner. The order of the Forum is set aside and the respondent is advised to refund the money taken as development charges from the petitioner.

Dated: 12.12.2013

(Renuka Muttoo)
Ombudsman