

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Datt Infrastructure & Services Ltd.
Khasra No. 6, Brahmanwala,
Sahastradhara Road, Dehradun, Uttarakhand.

Vs

The Managing Director,
Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road, Dehradun, Uttarakhand.

Representation No. 25/2012

Order

The petitioner, M/s Datt Infrastructure & Services Ltd. approached the office of Ombudsman on 11.10.2012 against the order of Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 11.09.2012 in his complaint no. 79/10 against Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent/UPCL).

2. Originally the petitioner had filed two complaints before the Forum in 2007. One complaint related to refund of excess amount taken by UPCL for construction of the 33 KV line and the second complaint related to refund of the amount (Rs. 179.23 lacs) spent by him for construction of 33 KV line to his industrial estate at village Bandakhedi, Roorkee and 33/11 KV substation within this industrial estate. As the Forum had delayed the disposal of the complaints, the petitioner approached the office of Ombudsman in January 2008 and both representations were admitted in this office. In the meanwhile, the Forum gave their judgment in the complaint relating to excess amount taken by the respondent for construction of the 33 KV line.
3. The petitioner came back to the Ombudsman on 25.01.2008 against the decision of the Forum in the first case i.e. refund of excess amount taken by the respondent for construction of the 33 KV line. The order of the Ombudsman in that case was given on 09.05.2012. In that case it was decided that the petitioner had paid an excess amount of Rs. 8,12,574.00 towards construction of 33 KV line which was refundable to him, however as it was held that the petitioner owed the respondent 15%

supervision charges for construction of the substation, relief sought by him could not be granted. The order of the Ombudsman has been challenged before the Hon'ble High Court which has stayed, vide its order dated 03.09.2012, the operation of the adverse portion of the Ombudsman order.

4. In the second complaint no. 79/10 relating to refund of the amount (Rs. 179.23 lacs) spent by him for construction of 33 KV line and 33/11 KV substation within his industrial estate, the Ombudsman drew up 9 points for decision based on the pleadings of the two parties. Of those 9 points the Ombudsman gave his order on two points (1) 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. (2) Whether granting relief sought by the petitioner is within the jurisdiction of this court. On both these issues the Ombudsman decided in favour of the petitioner. The respondent had approached the Hon'ble High Court of Uttarakhand vide writ petition no. 1580 of 2008 (MS) and writ petition no. 1582 of 2008 (MS) against the order of the Ombudsman declaring the petitioner a consumer. In both petitions the Hon'ble High Court had declared that as only preliminary issue had been decided by the Ombudsman, the matter should proceed before the Ombudsman on merit. The writ petitions were dismissed with the UPCL being at liberty to challenge the order of the Ombudsman on this matter after the final decision of the Ombudsman on the case. The other 7 issues listed below were remanded back to the Forum vide Ombudsman order dated 13.08.2008.

- 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 this representation is legally maintainable.
- vi. Whether the representation is barred by principles of estoppels and acquiescence.

vii. Whether the representation is not maintainable for not impleading the necessary parties.

5. In the present case filed before the Ombudsman on 11.10.2012, the petitioner maintains that the order of the Forum appears to be backdated. Background to this complaint is that objection was filed by the petitioner in the office of Ombudsman on 14.09.2012 against the Forum for not giving a decision on a complaint made by the petitioner before the Forum originally on 16.09.2007. The last date of hearing in the case 79/10 before the Forum, was 02.12.2011. Immediately after the filing of the complaint against delay by the Forum, the Forum issued their order dated 11.09.2012 with a covering letter of 14.09.2012 dispatched on 15.09.2012. The petitioner maintains that no date was given for pronouncement of order by the Forum and the order dated 11.09.2012 was backdated as he had made a complaint before the Ombudsman regarding the delay in pronouncing the order by the Forum. Further the petitioner maintains that there is a legal infirmity in the order of the Forum as it takes cognizance of the order of the Ombudsman dated 09.05.2012 in another case. He states that the order of the Ombudsman was given much after the last date of hearing (02.12.2011) in his case before the Forum. As this order of the Ombudsman was given much after the last date of hearing the Forum could not take cognizance of the order. The decision dated 09.05.2012 of the Ombudsman related to refund of excess charges got deposited from the petitioner for construction of 33 KV line from 132 KV substation Roorkee to 33 KV Bandakhedi substation in the petitioner's industrial estate. The complaint no 79/10 before the Forum was different as it related to 7 issues referred back to the Forum by Ombudsman order dated 13.08.2008. Thus the issues to be decided by the Forum were different from the issues decided by the Ombudsman vide order dated 09.05.2012. The petitioner has maintained that the order given by the Forum was without application of mind and has therefore, requested that the order of Forum be set aside.
6. He has also raised objection that the Forum has given a combined order on two complaints (a) complaint no. 79/10 which arose out of remanded petition by Ombudsman and (b) complaint no. 111 A (2011) arising out of misc. petition dated 18.04.2011 filed by the petitioner before Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC) on the same matters as given in his two petitions originally filed. UERC vide their letter dated 04.07.2011 addressed to

the petitioner referred the matter to the Forum. In the miscellaneous petition 111A/11 before UERC the petitioner has asked for (a) recovery of Rs. 179 lacs from the respondent along with 15% interest per annum thereon from 20.06.2005 till date of actual receipt by the petitioner; or alternatively (b) recovery of vacant and physical of 33/11 KV substation constructed by the petitioner on his own land at village Bandakhedi together with damages @ 50,000.00 per month from the date of illegal occupation by the respondent till the date of vacation by them and refund of Rs. 69.23 lacs illegally and wrongfully charged by the respondent, for construction of 33 KV line, from the petitioner along with interest @ 15% per annum from 25.06.2005 till date of actual receipt.

7. As mentioned above in para 3 the Forum was to decide on 7 issues framed by the Ombudsman in his order dated 13.08.2008. The Forum in their order dated 11.09.2012 have stated that the petitioner has tried to file a plethora of cases before the Forum and Ombudsman on the same matter simultaneously in the garb of allegedly different facts. The Forum held that all issues in complaint no. 79/10 and misc petition 111A/11 had been decided vide the order of the Ombudsman dated 09.05.2012 and since the Ombudsman was the appellate authority the order was binding on the Forum.
8. What the Forum has failed to realize is that the petitioner originally filed two petitions before the Ombudsman in 2008. While one related to refund of the expenditure carried out by him in constructing the substation and the 11 KV LT lines. The second case dealt with refund of excess money taken by the respondent from the petitioner for construction of the 33 KV line. The issues remanded back to the Forum related to the first matter. The decision given by the Ombudsman vide order dated 09.05.2012 related to the second matter. Hence the decision in this case could not have been applied to the issues raised in the first case.
9. In his petition of 2007 before the Forum, the petitioner had stated that he developed an industrial estate in village Bandakhedi, Roorkee. The petitioner claimed that he was directed by the respondent to set up a 33/11 KV substation within the estate from his own resources as UPCL policy laid down that 33/11 KV substation has to be set up by the developer at his own cost. The petitioner deposited Rs. 69.23 lacs pursuant to a demand notice of UPCL dated 25.06.2005 and constructed a 33/11 KV substation

at his own cost on land provided by him for Rs. 110 lacs approximately. The petitioner claimed that he subsequently learnt that similar works had 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 UERC. The petitioner claims that section 43 of the Electricity Act, 2003 places a duty on the licensee to supply power on demand and Section 45 empowers the licensee to recover charges for such supply which have to be approved by UERC. 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 UERC. This not having been done, the petitioner requested that the entire amount of Rs. 179.23 lacs spent by him on the electrical infrastructure to the industrial estate should be got refunded to him along with interest there on.

10. The respondent denied the allegation of the petitioner that respondent had carried out similar work for other private industrial estates at their own cost and had asked the petitioner to carry out the work relating to power supply to his industrial estate at his own cost. They have claimed that the substation was constructed by the petitioner on his own wish and for his own benefit and supervision charges were payable by him as per the applicable rules and regulations. The terms and conditions of the respondent had been accepted by the petitioner. The respondent has drawn attention to the letter dated 04.11.2004 of the petitioner informing the respondent that he proposes to construct a 33 KV feeder from Ramnagar, Roorkee to his estate and proposes 2x5 MVA, 33/11 KV transformer and one 11 KV/440 Volts transformer. He also requested that official of the respondent be deputed to survey the site and for drawing the estimate for this work. The petitioner had constructed the substation of his own volition to market the plots developed in his industrial estate. The cost of erecting the service line, substation and other charges had been included by him in the cost at which he had sold the plots and had thus been recovered from the prospective buyers and maintenance charges were being recovered by him from the occupants of the industrial estate. The petitioner was now trying to recover the price again from the respondent. The respondent stated that provisions of section 42 to 46 of the Electricity Act, 2003 and clauses 18 to 21 of distribution license were not applicable in the case.

11. Brief facts of the case are that the petitioner developed an industrial estate in the joint/assisted sector in village Bandakhedi of Roorkee, as approved by Government of Uttarakhand, Department of Industrial Development vide their DO dated 26.12.2003. The Government of Uttarakhand in view of their policy of Industrial Development in the State and to cater to the anticipated need of new entrepreneurs decided to get certain industrial estates developed at various places both in public as well as private sector/joint ventures. One of them was that of M/s Datt Infrastructure & Services Ltd. to be developed at Bandakhedi, Roorkee. The Department of Industries, Government of Uttarakhand vide their letter dated 26.12.2003 directed UPCL to make necessary power allocation for these industrial estates as mentioned in the letter.
12. In pursuance of this, the petitioner wrote to CMD and Director (Operation), UPCL on 05.04.2004 and 05.05.2004 requesting for power to be allocated for his industrial estate as directed by the Government. He was informed by Director (Operation), UPCL vide letter dated 17.05.2004 that as per policy of UPCL entire cost of construction of transmission/distribution lines/substations and associated equipments for the industrial estate and cost of increasing capacity of associate primary substation, if needed, will be borne by the petitioner as is being done in the case of UPSIDC and SIDCUL etc. A copy of this letter was also endorsed to the Government. Hence it is clear that it was made known to the petitioner as well as to the Government in the very beginning that the cost of all the electrical infrastructures shall be borne by the petitioner.
13. Subsequently the petitioner wrote to the respondent (04.11.2004 & 14.02.2005) informing of his purpose to construct a 33 KV feeder from Ramnagar, Roorkee to his estate and proposed 2/5 MW 33/11 KV transformer and 1 no. 11KV/440 volts or 33 KV/440 volts transformer and requested the respondent to depute someone to survey the site and draw up the estimate for the work. In the second letter the petitioner mentioned that they wish to construct the substation and staff quarters themselves at their own cost, as was the practice in industrial estates setup by UPSIDC etc. He further added that they would be using all UPCL approved equipments and materials for this works. The entire facility would be handed over to UPCL after it was ready, for commissioning by UPCL.

14. Following the instructions of the CMD, UPCL, GM Garhwal Zone accorded approval (24.05.2005) for construction of 10 MVA capacity 33/11 KV substation in compliance with the CMD's letter dated 19.02.2005 and in accordance with existing rules and regulations. The Executive Engineer (Distribution) Roorkee issued a letter dated 25.06.2005 to the petitioner, for depositing Rs. 69,23,592.00 towards the cost of 33 KV Line to be constructed by UPCL from 132 KV substation up to the petitioner's industrial estate. The petitioner deposited the amounts Rs 19,45,680.00 on 04.07.2005 and Rs. 49,77,609.00 on 17.12.2005. Thereafter the line was constructed by UPCL through their contractor.
15. The work for setting up the substation and installing the connecting line was completed and on 22.08.2006. The petitioner wrote to the Chairman/CMD UPCL vide letter dated 30.08.2006 that they had setup the 33/11 KV distribution substation at their own cost even though the responsibility of putting up the substation was of UPCL since *neither he was a power consumer* nor was he taking any single point connection as the units coming up in the estate were consumers of the UPCL. He also stated that the UPCL was now demanding 15% supervision charges on the cost of the 33 KV substation setup by the petitioner and refusing to release connections to different applicants within the industrial estate from this substation. Stating that they agreed to abide by whatever decision was taken by UERC regarding applicability and payment of supervision charges, the petitioner requested for the issues to be resolved.
16. The matter relating to supervision charges was dealt with in the judgment dated 09.05.2012. The only question to be decided now is whether the expense relating to electrical infrastructure to the industrial estate was to be borne by the respondent or by the petitioner.
17. Since the case under adjudication before the Ombudsman has arisen against the judgment of the Forum on the 7 connected issues referred to them vide Ombudsman order dated 13.08.2008, we shall deal with these issues first.
 - 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 this representation is legally maintainable.
 - vi. Whether the representation is barred by principles of estoppels and acquiescence.
 - vii. Whether the representation is not maintainable for not impleading the necessary parties.
18. Issue no. 1 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.

Correct position

The Electricity Act, 2003 does not give any clarification on the point raised here. The petitioner has time and again made reference to section 42 - 46 of the Electricity Act, 2003. Section 42 which deals with **duties of distribution licensee and open access** states “*It shall be the duty of a distribution licensee to develop and maintain an efficient coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*”

19. Section 43 deals with **duty to supply on request**, it provides that “*the distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of the application requiring such supply...*”
20. Section 44 deals with **exceptions from duty to supply electricity** provides exceptions given to the distribution licensee from fulfilling his duty as provided in section 43 above in case of natural calamities like cyclone, floods etc. Section 45, **power to recover charges** deals with the prices to be charged by the distribution licensee for the supply of electricity provided by him in pursuance of section 43 above. Section 46, **power to recover expenditure** provides that the State Commission may by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses

reasonable incurred in providing any electrical line or electrical plant used for the purpose of giving that supply.

21. The provisions of the Electricity Act referred to by the petitioner are not relevant to the case under discussion as they do not deal with provision of power supply to an industrial estate. The question is whether the cost for the same would be borne by the distribution licensee i.e. the respondent or the developer of the estate.
22. After the formation of the State of Uttarakhand on 09.11.2000, the Government of Uttarakhand issued a notification Adoption and Modification Order 2001 of the UP Electricity Reforms Act, 1999. An MOU was also signed between Govt. of Uttarakhand and Govt. of India on 30.03.2001 confirming the application of the UP Electricity Reforms Act, 1999 in the State. The same was adopted by UPCL on 4.1.2002. UERC was established in the new State on 05.09.2002. Till issuance of Supply Code by UERC, the Regulations adopted by UPCL prevailed. UERC issued the first Supply Code Regulations in 2007.

The action in the present case started in 2003 with the letter of the Uttarakhand department of Industries letter dated 26.12.2003 and was completed in 2006 when work of construction on 33 KV substation, connected 33 KV, 11 KV and LT lines was completed. Hence during the period, provisions of UP Electricity Supply Code 2002 and 2005 are relevant in this case.

23. UP Supply Code 2002 provides in 4.5 (a); *“responsibility of construction of the required distribution network in case of a new residential, commercial or an industrial complex with load exceeding 25 KW shall be that of the body or the agency (public or private) that constructs such complex”*

UP Supply Code 2005, 4.9 provides; *“Electricity Connection in the Multistorey Buildings / Multiplex/ Marriage Halls/Colonies to be developed by Development Authorities and /or Private Builders/Promoters/Colonizer.*

(a) The responsibility of construction of the required distribution network in case of a new residential, commercial or an industrial complex with load exceeding 25 KW (calculated on the basis of area constructed as per norms given in annexure 4.6) shall be that of the body or the agency (Authority/Promoter/Builder/Colonizer) that

constructs such complex. The single point supply shall be provided by the licensee. As far as possible, HVDS system shall be used by the Authority/Builder/Colonizer....

(d) Authority/Promoter/Builder/Colonizer shall bear the cost of the distribution system including the cost of transformer and/or Sub-Station wherever required) on the basis of sanctioned load in the following manner: -...

- *Above 2550 KW up to 8500 KW (10,000 KVA): 33KV feeder from 33 KV or 132 KV sub station... ”*

24. Further in case the applicant carried out the work himself, the UP Supply Code 2002, section 4.45 provides *“If the work is to be done by the applicant, Licensee shall charge 15% of the estimate as supervision charges that shall need to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant, has deposited the full amount of the estimate.”* Similarly UP Supply Code 2005 section 4.6 (d) provides: *“If the work is to be done by the developer/ applicant, Licensee shall charge 15% of the normative estimate as supervision charges that shall be deposited with the licensee before work begins. In other cases, Licensee shall commence the work after the applicant, has deposited the full amount of the estimate. The supervision charges shall be levied on estimated material cost and shall also include the estimated labour cost, and shall not include the establishment costs.”*

It is clear from the provisions of the UP Supply Code 2002 and 2005 that the entire cost of construction of infrastructure in the petitioner’s industrial estate was to be borne by the petitioner.

25. Issue no. (ii) Are all industrial area/estate developers developing similar facilities required to meet these costs as per law and practice.

Correct position

At the time i.e. 2003, no regulation had been issued by UERC and hence the matter was covered by the UP Supply Code 2002 and 2005. From examination of the provisions of the Supply Code it is clear that the cost was to be met by the petitioner. The petitioner claimed that the UPCL has borne the cost of infrastructures created in other private industrial estates and protested at the UPCL forcing him to bear the cost. He has however not produced any evidence to substantiate his claim. The respondent

has denied this claim of the petitioner and has submitted that a similar policy had been adopted in all similar cases.

26. Issue no. (iii) As per prevailing regulation is the petitioner required to pay supervision charges on the material cost also or only on labour & transportation.

Correct position

As per relevant clauses of the aforesaid UP Supply Code 2002/2005 which were applicable in the present case, supervision charges were leviable from the petitioner on the cost of material cost also.

27. Issue no. (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.

Correct position

The petitioner was informed by the respondent vide his letter dated 17.05.2004 that as per policy of UPCL the entire cost of construction of transmission/distribution lines/substations and associated equipments for the industrial estate and cost of increasing capacity of associate primary substation, if needed, would be borne by the petitioner as is being done in the case of UPSIDC and SIDCUL etc. In response the petitioner informed the respondent vide his letter dated 04.11.2004 that he proposed to construct a 33 KV feeder from Ramnagar, Roorkee to his estate and proposes 2x5 MVA, 33/11 KV transformer and one 11 KV/440 Volts transformer. He also requested that official of the respondent be deputed to survey the site and for drawing the estimate for this work. Vide his letter dated 14.02.2005, the petitioner further informed that he wished to construct the substation and staff quarters himself at his own cost as is the practice in industrial estates setup by UPSIDC, HSIDC, Punjab etc. He stated that they would be using all UPCL approved equipment and materials for this works. The entire facility would be handed over to UPCL after it was ready, for commission by UPCL.

28. Issue no. (vi) Whether this representation is legally maintainable.

Correct position

Yes. Section 42 (6) of Electricity Act, 2003 provides as follows:

“(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.”

In view of above legal provision the representation has rightly been admitted and heard by the Ombudsman.

29. Issue no. (vii) Whether representation is barred by principle of estoppels and acquiescence.

Correct position

Yes. Right in the beginning the respondent (UPCL) vide their letter dated 17.05.2004 had made it clear to the petitioner that entire cost of the works shall be borne by the petitioner. The works shall be carried out as per the design and norms of UPCL and supervision charges shall also be paid by the petitioner to the respondent as applicable. This was also communicated to Govt. of Uttarakhand. The petitioner did not make any protest at the time and instead informed the respondent that he would be constructing the various components for power supply to his industrial estate and carried out the works of construction of 33 KV substation and connected 11 KV and LT lines in his industrial estate himself. Such being the case the representation is barred by principle of estoppels and acquiescence.

30. Issue no. (ix) Whether the representation is not maintainable for not impleading the necessary parties: -

Correct position

No. There is no other party to this representation except the petitioner. The petitioner has tried to implead SIDCUL as an associated party. The petitioner developed the industrial estate in the Joint/Assisted sector as specified by the Department of Industrial Development, Govt. of Uttaranchal in their letter to the CMD, UPCL dated 26.12.2003. As per the petitioner's own statement, SIDCUL was to provide facilitation only for which it would be provided free equity to the tune of 11% of the total equity capital. The approval letter for layout for industrial estates issued by SIDCUL to the petitioner (21.01.2006) for industrial estate at village BandaKhedi, Roorkee states in para 2 “the provision of infrastructure indicated in the plan is the

sole responsibility of the developer.” Hence it is felt that SIDCUL is not a necessary party.

31. Besides the above points, the petitioner has also raised his rights under article 14 of the Constitution of India i.e. “Right to equality before law”. He has claimed that 33/11 KV substation at 4 other private industrial areas have been set up by the respondent from its own funds whereas the petitioner was asked to set up the substation from his own funds. The respondent has denied this accusation and in the absence of any evidence to sustain the argument of the petitioner, this claim of the petitioner is dismissed.
32. The petitioner has also raised his rights under article 300 A of the Constitution of India viz. “Right to Property”. The petitioner has claimed that the land and building and equipment of the 33/11 KV substation at Bandakhedi belong to and are owned by the petitioner. The respondent cannot derive benefits by using this property owned by the petitioner without giving any remuneration rent or charges and instead deriving income from this property (substation) by supply power to different consumers. This is not within the scope of the Ombudsman remit which is limited to grievances relating to electricity supply and not ownership of underlying assets.
33. Lastly the petitioner has drawn attention to clause 16 of UERC (Tariff and other Terms for Supply of Electricity from Nonconventional and Renewable Energy Sources) Regulation, 2010 wherein it is provided that UPCL should buy out the transmission lines and substation if they had been setup by the generating company otherwise UPCL should pay 5 paise per unit as usage charges to generating companies who are owner of transmission lines and substations. Clause 16 of UERC Regulation has been wrongly quoted by the petitioner in this case as this relates to power supplied by nonconventional and renewable energy sources. In this case there is no such supply of energy. This case is covered by UP Supply Code 2002 and 2005.
34. The UP Supply Code 2002 and 2005 provide that “*the responsibility of construction of the required Distribution Network in case of a new residential, commercial or an industrial complex with load exceeding 25 KW shall be that of the agency (... promoter...) that constructs such complex*”. Hence the petitioner as the promoter/developer of the industrial estate was bound to provide the facility for the distribution network. Further notification (no. 1891/CU-II-C4) dated July 10, 1984 of

the UPSEB, section 7 dealing with 'ownership use and maintenance of service lines' provides *"notwithstanding the payments for the whole or part of the cost of any service line (including the HT line) by the consumer, the service line shall remain the property of the supplier who shall maintain the same. The supplier shall also have the right to use it for supply of energy to any other person and to extend, alter to replace the service line to suit its requirements."* This makes it clear that the respondent has full rights to use the facilities prepared by the petitioner for providing power to the industrial estate consumers.

35. Further, the question is who is the end user of this power supply. In his order dated 13.08.2008, the Ombudsman has declared that the petitioner is a consumer and hence we will not comment on this issue. The petitioner being a businessman and a developer, it is a reasonable conclusion that the entrepreneurs who purchased the plots in his industrial estate would have paid for the plots and the infrastructure developments done by the developer. Independent connections have been given by the respondent to these individual consumers and not the petitioner. It is these consumers who are being billed by the respondent for consumption of electricity. The respondent is also maintaining the electrical infrastructure to ensure proper supply to the consumers.
36. The petitioner has claimed that the Forum was wrong in dealing with his complaint 79/10 and misc. petition 111A/11 together. The subject matter of both the complaints being similar, there is no purpose in dealing with the two as separate entities and hence the decision given would be valid for both.
37. After listening to the arguments from both sides and examining all the papers, rules and regulations, it is clear that in the absence of any regulations by UERC at the time, the rules of UP Supply Code 2002 and 2005 and other rules and regulations of UPPCL which were in force during that period, and were not inconsistent with the Supply Code rules, would apply in this matter. As has been brought out, as per these rules, the developer of the industrial estate was to bear the cost of construction of facilities relating to power supply to the industrial estate. The rules provide that the construction can be carried out by the respondent or by the developer at the cost of the developer, in this case the petitioner. In case the construction is carried out by the developer, supervision charges on the estimated cost are to be paid by the developer

and the entire infrastructure is to be handed over to the respondent on completion for operation and maintenance. In the present case, this has been agreed to by the petitioner in his letter dated 14.02.2005 where he clearly states “the entire facility will be handed over to UPCL after it is ready, for commissioning by UPCL”. Having agreed to the terms and conditions specified by the respondent vide Director (Operation) letter dated 17.05.2004, the petitioner cannot now claim that he was wrongly charged with the cost and the same be refunded to him, as it would be against the principle of acquiescence and estoppels as well as in violation of the relevant regulations. The reasoning of the Forum in dismissing the case is erroneous, however the decision to dismiss the complaint was correct. The petition is dismissed.

(Renuka Muttoo)
Ombudsman

Dated: 25.10.2013