

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Representation No. 17/2015

1. Smt. Lalkeshwari Devi
W/o Shri Pavitra Sahani,
Aazad Colony, Govindgarh,
Dehradun, Uttarakhand

Representation No. 18/2015

2. Shri Shiku Yadav
S/o Shri Ram Khilavan Yadav,
Aazad Colony, Govindgarh,
Dehradun, Uttarakhand

Representation No. 19/2015

3. Shri Rudal Sharma
S/o Shri Darshan Sharma,
Aazad Colony, Govindgarh,
Dehradun, Uttarakhand

Representation No. 20/2015

4. Shri Dilip Thakur
S/o Shri Neersu Thakur,
Aazad Colony, Govindgarh,
Dehradun, Uttarakhand

Representation No. 21/2015

5. Smt. Manju Devi
W/o Late Shri Satya Narayan,
Aazad Colony, Govindgarh,
Dehradun, Uttarakhand

Petitioners

Vs

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

Respondent

Order

Aggrieved with the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) order dated 22.06.2015 in their respective complaints the aforesaid 5 number petitioners have filed their petitions (representations) before the Ombudsman.

2. Whereas subject matter, facts and circumstances of all these cases are similar and whereas the Forum has passed a common order dated 22.06.2015 in all these cases and whereas it will be in the fitness of things if all these cases are clubbed and dealt with in a common order here. So now therefore these are being dealt with in this common order as follows.
3. In brief the case is that all of the above petitioners have applied on prescribed format for electricity connections under domestic category for their residences (the premises being occupied by them) but the Licensee UPCL (respondent) had refused to give connections to them for the reasons which shall be mentioned hereafter. So they lodged complaint before the Forum who through their order dated 22.06.2015 dismissed their complaints and hence these petitions before the Ombudsman.
4. The petitioners have submitted that the Forum in their order has mentioned that their premises are in river Bindal which is wrong and confusing. The fact is that the respondent in their report, on the applications, reported ambiguously that the premises are on river bank or in the river. They have further submitted that in a RTI reply regarding connections in unauthorized colonies the respondent have already informed that no information was available in Bindal subdivision office.
5. The petitioners have alleged malafide intentions of the present SDO/JE in not giving connections to them. They have alleged that the Forum has decided the case against them which appears to be unjustified. The submission of the respondent as mentioned in Forum's order that all the residences are beneath 11 KV feeder, all are located outside Guru Ram Rai college boundary towards the river Bindal hence illegal and appears to be unsafe, and construction of LT line by erecting poles in the river area appears to be unsafe, are completely confusing, against justice and hence the cases have been dismissed on wrong facts. The Forum have wrongly mentioned that none of the documents as required under Regulations have been submitted whereas the fact is

that the necessary documents as required such as Aadhar card, voter ID were submitted along with the application forms as identity proofs as required under 4 (b) of LT Regulations. Further, they have also proposed that they were ready to deposit 3 times security as per proviso of 4 (a) of the Regulations, if it was at all required. Even after that the complaints have been dismissed. They have prayed that their petitions be admitted, Forum's order dated 22.06.2015 be set aside and order for giving connections be passed even with the condition of depositing 3 times security, if so required.

6. The respondent submitted their written statement dated 31.08.2015. They held it irrelevant that several thousand connections are given in the houses constructed on the land of Bindal river in past. They held that the petitioners are neither owner nor the legal possessors of the land nor have any right to possession of the land. It is also wrong to allege that the Ld. Forum had held that intention of JE/SDO of Bindal sub division was wrong and hence the connections were not given. It is also wrong to allege that Forum had dismissed the complaints without considering interest of the guardians of children in educating the children in national interest. The respondent has also held wrong the allegations of the petitioners that the Forum findings were out of context and misleading. The petitioners could not submit any documentary evidence to establish that they are the legal owners/occupiers of the premises. The documents such as Adhaar, Voter ID, Ration card submitted by the petitioners have no relevance to establish the legal possession and they have pleaded that for the reasons stated, the petitions are liable to be dismissed with costs.
7. The Forum has passed a common order dated 22.06.2015 in respect of all these 5 complaints. The Forum took cognizance of the report of respondents wherein they have given their own reasons for refusal of connection viz all these residences are under 11 KV feeder, 132 KV Bindal Majra line is passing nearby, and all these residences are situated outside Shri Guru Ram Rai college boundary towards Bindal river, hence unauthorized. Further, respondents had also stated it would be unsafe to construct LT line by erecting poles in river Bindal and further gave reference of sub Regulation 4 (a) of Uttarakhand Electricity Regulatory Commission (Release of new LT line, enhancement and Reduction of Load) Regulation, 2013. Also in view of the fact that during hearing, the parties could not submit any document to establish their

ownership of the land on which their residences were constructed, where they have applied for the connection. They have categorically accepted that they do not have any such documents. Further they also informed that neither they have purchased this land from anybody nor this land was ever allotted to them by any authority. They also informed that no map for construction of houses on these lands were approved by any authority. Keeping in view the aforesaid submissions of the respondents and the petitioners, the Forum concluded that the complainants are not the legal occupants of these premises so benefit of the proviso of Sub Regulation 4 (a) of LT Regulations, 2013 cannot also be given to them. The Forum therefore dismissed their complaints.

8. In their rebuttal to the written statement before Ombudsman the petitioners have contradicted respondent's submissions. They have submitted that respondent's denial of relevance of guardians concerned for the education of their children, is denial of fundamental rights guaranteed under Article 14 of Constitution of India. Further, the respondent has already agreed to their submissions vide SDO's reply dated 07.05.2015 under RTI. The respondent's official wrongly reported on the applications that "The houses are situated in the river" which shows their malafide intention to deny the connections, while the fact is that the residences are situated along the boundary wall of Guru Ram Rai college. They are also not located beneath the 11KV feeder nor in the river. They have also claimed that denial of connections tantamount to curtailing the noble state policy under Right to Education Act. They have also challenged that the issue of legality or the scrutiny of the houses was not respondent's concern. Respondent's submission that laying LT lines for giving these connections would not be safe being in river is also false as the LT line is already existing there, through which so many connections are visible. It has also been submitted by them that DM, Dehradun's letter no. 297 dated 08.12.2014 has not been rightly interpreted by the respondent wherein the DM after having come to know the provisions of Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC) order for release of connection on depositing three times security in the absence of any documentary evidence of ownership of land/building has finally directed to have an affidavit from such consumers to rule out any possibility of claiming the right on property based on electricity connections or bills and nothing else/or did he not prevent the respondent to give connection.

9. They have offered in their petitions that if necessary condition of LT Regulations is fulfilled by depositing 3 times the security in the absence of any documents as required under 4 (a). They are willing to deposit the same. They have also submitted the documents i.e. voter ID card, Ration card as required under 4 (b) of the said Regulation as proof of identity. They have held that judgment of the Forum was based on the submission of respondent, surmises, conjectures and without proper scrutiny of the facts and was thus arbitrary and not sustainable.
10. They have requested that keeping in view the facts submitted by them in their rebuttal, the Forum order be set aside and the respondent be directed to give them the connections applied for.
11. Having gone through all documents on file and after hearing arguments of both parties I find that apart from considering the submissions of both the parties made in their petitions and written submission supported by their respective logics and documents, the case needs to be examined in view of section 43 and 44 of Electricity Act, 2003, Rule 79 and 80 of Electricity Rules, 1956, LT Regulations 2013, RTI reply given by respondent as also DM, Dehradun letters dated 30.10.2014 and 08.12.2014 and these are being discussed here under one by one.

A) **Section 43 of Electricity Act, 2003**

“43. Duty to supply on request.- (1) Save as otherwise provided in this Act, every 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:

***PROVIDED that** where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*

***PROVIDED FURTHER that** in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may*

extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.-*For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances*

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

PROVIDED that *no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price determined by the Appropriate Commission.*

(3) If a distribution licensee fails to supply the electricity within a period specified in subsection (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

Duty of respondent (Licensee) to supply on request. This section has made it mandatory on the licensee to supply electricity connection to a applicant who applies for the same on the prescribed format under the heading comments, Grant of electricity supply case law Rajesh Kumar Gupta vs State of UP 2005. "25 AIR 392 The word occupier has been defined which reads as follows:

"Grant of electricity supply: The electricity connection can be granted to an owner or occupier of the premises. The word "occupier" has been defined to mean the owner or person in occupation of the premises."

The word occupier has also been defined under 1.2 (gg) of Supply Code Regulations, 2007 as follows:

"(gg) "Occupier" means the owner or person in occupation of the premises where energy is used or proposed to be used;"

Under this section the Licensee is duty bound to give connection within the specified period or such extended period as prescribed therein:

- B) ***“44. Exceptions from duty to supply electricity.- Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control....***

This section provides that the Licensee may not give electricity to any premises if prevented from doing so by any natural calamity beyond his control.”

As none of such conditions have arisen in these cases which may prevent the licensee from giving connections to these petitioners so under this proviso of the aforesaid section of the Act, Licensee’s refusal to give connections to these petitioners on the grounds mentioned in their written statement is not sustainable.

- C) Electricity Rules 1956 (Rule 79 & 80), which are reproduced below provide for clearance of overhead lines from buildings.

“79. Clearances from buildings of low and medium voltage lines and service lines.—

(1) Where a low or medium voltage, overhead line passes above or adjacent to or terminates on any building, the following minimum clearances from any accessible point, on the basis of maximum sag, shall be observed:—

(a) for any flat roof, open balcony, verandah roof and lean-to-roof—

(i) when the line passes above the building a vertical clearance of 2.5 metres from the highest point, and

(ii) when the line passes adjacent to the building a horizontal clearance of 1.2 metres from the nearest point, and

(b) for pitched roof—

(i) when the line passes above the building a vertical clearance of 2.5 metres immediately under the lines, and

(ii) when the line passes adjacent to the building a horizontal clearance of 1.2 metres.

- (2) Any conductor so situated as to have a clearance less than that specified in sub-rule (1) shall be adequately insulated and shall be attached at suitable intervals to a bare earthed bearer wire having a breaking strength of not less than 350 kg.*
- (3) The horizontal clearance shall be measured when the line is at a maximum deflection from the vertical due to wind pressure. 1[Explanation.—For the purpose of this rule, expression “building” shall be deemed to include any structure, whether permanent or temporary.]*

Section 80 in The Indian Electricity Rules, 1956

80. Clearances from buildings of high and extra-high voltage lines.—

- (1) Where a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than—*
- (a) for high voltage lines upto and including 33,000 volts 3.7 metres*
 - (b) for extra-high voltage lines 3.7 metres plus 0.30 metre for every additional 33,000 volts or part thereof.*
- (2) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than—*
- (a) for high voltage lines upto and including 11,000 volts 1.2 metres*
 - (b) for high voltage lines above 11,000 volts and up to and including 33,000 volts 2.0 metres*
 - (c) for extra-high voltage lines 2.0 metres plus 0.3 metre for every additional 33,000 volts for part thereof. 1[Explanation.—For the purpose of this rule expression “building” shall be deemed to include any structure, whether permanent or temporary.]”*

The Licensee’s stand for denial of connections on the apprehension that 11 KV/132KV lines are passing nearby or above the buildings may not be acceptable unless they have examined them in view of the aforesaid Electricity Rules and found the clearances are not in conformity with these Rules. In fact before refusing connections on these grounds, they should have measured the

clearances and if they were not found in accordance with these Rules then and only then they could have been justified for refusal to give these connections, on such grounds.

- D) Under the RTI reply given vide letter dated 07.05.2015 the respondent has agreed that about 900 connections have been given in Khurbura Mohalla under Bindal area no F.I.R. has since been lodged, no information regarding unauthorized colonies was available in the sub-division. No connection was disconnected under DM's order dated 30.10.2014 and no action was taken on aforesaid order as new order dated 08.12.2014 was received from DM, Dehradun.
- E) Regarding DM, Dehradun's letters. The DM vide his letter dated 30.10.2014 had directed that in the past a number of connections had been given in the unauthorized residences and such connections are later on used to establish ownership on such unauthorized residences. Hence he directed that before connections released to such residences, ownership of such residences be got verified from revenue/land records. The DM, Dehradun vide his letter no. 297 dated 08.12.2014 had modified his directions given in letter dated 30.10.2014 and directed that, in order to prevent the tendency of using electricity bills as evidence of ownership of land/building, before release of connection in residences for which ownership/title papers are not available, an affidavit on Rs. 10.00 stamp paper from the applicant be taken to the effect that he shall not use the electricity connection to claim his ownership on such land/building. He further directed that such instructions may also be got printed on electricity bills.
12. It is clear that the only relevance of DM's instructions is simply to obtain an affidavit from the applicant in such cases, as aforesaid
13. The Forum's conclusion that benefit of proviso of sub regulation 4 (a) of LT Regulations, 2013 cannot be given to these petitioners is not maintainable. Firstly because the said Sub Regulation nowhere provides that proviso shall be applicable to the legal occupants of the premises. It is applicable if an applicant is unable to submit any of the documents from sr. no. (i) to (v) as proof of ownership or occupancy.

Secondly the occupier has duly been defined in Supply Code, Regulation 2007 as mentioned above.

14. In view of the aforesaid Rules/Regulations and Section of the Electricity Act, 2003 the refusal of connection to these petitioners by respondent, without examining these cases in the light of aforesaid legal provisions, is not justified.
15. The respondent is therefore directed to consider applications of petitioners for electricity connection, in the light of the above analysis and sanction and release connections to all these five petitioners if clearances of lines (LT, HT & EHT) from their houses are found to be in conformity with Rule 79 & 80 of Electricity Rules 1956 and after getting 3 times the security deposited by them and submission of affidavit on Rs. 10 stamp paper as aforesaid.
16. The petitions are allowed and Forum common order in the complaints is set aside. Copy of this order be placed in files pertaining to representation no. 18/2015, 19/2015, 20/2015 and 21/2015.

Dated: 21.12.2015

(Vibha Puri Das)
Ombudsman