

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Harish Chandra Upadhyay
Gandhi Ashram Road, Fatehpur,
Haldwani, Distt. Nainital, Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division (Rural),
Uttarakhand Power Corporation Ltd.
79, Hira Nagar, Near Utthan Manch,
Haldwani, Distt. Nainital, Uttarakhand

Representation No. 37/2017

Order

Aggrieved by the non implementation of the order dated 17.11.2016 of the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) in complaint no.84/2016, the petitioner, Shri Harish Chandra Upadhyay has filed this petition. Petitioner was aggrieved that the land he purchased in 2004 for construction of house after retirement has now a pole and electricity line which was not there at the time of purchase nor up to 2009 while he was posted in Haldwani. Subsequently department have installed an electric line and pole in his land without his permission. Since this is completely unjust and improper, petitioner filed a complaint with the Forum. Respondent Executive Engineer contested his complaint in the reply filed on 04.05.2016. Petitioner claims that while Forum have allowed his complaint and given directions for compliance of the provisions of Government order no. 441/I(2)/2014-08/4/2008 dated 05.03.2014 and thereby removing the electricity pole and line in question from the land of the complainant, petitioner's request to the respondent for compliance of the Forum order was not heeded and order of the Forum dated 17.11.2016 remains unimplemented. Petitioner has therefore requested for implementation of the above order and for costs of the representation to be awarded to the petitioner.

2. Forum in their order dated 17.11.2016 have recorded that petitioner purchased the land in 2004 and the tube well for which the line is passing through his land was built

in 2009. Therefore it is clear that the line was not present when the petitioner bought the land. In defense of the respondent it has been stated that since the plot was used as a thorough fare, respondent were led to believe that this was public land and hence did not take permission. Respondent have further offered that to resolve the issue they can place the line underground and remove it from above ground but for this purpose petitioner will have to give 4 ft wide strip of land. However, petitioner has expressed his inability to give that much land as it will leave him with only 19 ft wide plot. Having heard all arguments, Forum concluded that for removal of the overhead line and diversion through the route of RK Tent Road to tube well, a sum of Rs. 4,29,316.00 will be required and this shifting of line can be done only as per deposit works. Forum have therefore directed that in accordance with provisions of GO dated 05.03.2014 respondent may take action to shift the line and submit compliance report by 31.03.2017.

3. The respondent in their written statement have stated that respondent has powers of Telegraph Authority and as per Regulations can lay down electricity lines. The only right of the petitioner is to get compensation determined from the District Magistrate in case he suffered any loss when the line was laid. Further, respondent have also informed that they had replied to representation of the petitioner by their letter dated 10.03.2017 a copy of which has been enclosed, vide which they have requested petitioner to make available funds for shifting of line as provided under the GO referred in the order of the Forum dated 17.11.2016. As per this order, 30% of the estimated amount has to be obtained from MP/MLA local area development fund and petitioner was requested to inform the availability of this amount so that UPCL could take further steps to give their own share as well as get the share of State Government. Respondent have maintained that the responsibility of action now lies with the petitioner.
4. In their rejoinder, petitioner have contested the respondent's argument that the liability for bringing the amount from MP/MLA local area development fund rests with the petitioner which is neither just nor proper and is also bad in the eye of law. Petitioner has alleged that while fixing this liability on the petitioner, respondent is seeking to evade their own liability to arrange funds in compliance with the order of the Forum and therefore petitioner has requested for directions to the respondent to ensure compliance of the order of the Forum.

5. Arguments from both parties have been heard and documents available on file have been perused. Forum have allowed the complaint and ordered shifting of pole and line from the land of the petitioner and financing for shifting of the line in accordance with provisions of GO dated 05.03.2014.
6. Before venturing into the merits of the Forum, order it is necessary to examine whether the application made by the petitioner before the Forum is covered under the definition of complaint as laid down in the relevant UERC Regulations.

Complaint has been defined in regulation 2 (d) of UERC (Appointment and Functioning of the Forum for Redressal of Grievances of Consumers) Regulations 2007:

“(d) “Complaint” means the letter or application filed with the Forum seeking redressal of grievances concerning the supply of electricity, new connection or the services rendered by the Distribution Licensee, including alteration in load/demand, meters related matters, bill related issue and cases where licensee has charged price in excess of the price fixed by the Commission or has recovered the expenses incurred in excess of charges approved by the Commission in providing any electric line or electric plant.”

Present complaint does not appear to be covered under the definition of complaint.

6. Further, under Works of Licensee Rule, 2006 framed by the Govt. of India the District Magistrate or the Police Commissioner or any other officer designated for that purpose, as the case may be, has been empowered to allow or disallow shifting of an existing line. In view of these statutory provisions, the case does not come in the purview of Forum and Ombudsman mechanism. As such, the Forum is not empowered to pass any order in the case. Hence the Forum order is set aside. The petitioner, if he so desires, may approach the District Magistrate concerned with the request for shifting of the line passing through his land and the DM concerned may pass any order in the case as deemed fit in exercise of powers conferred on him in the aforesaid GOI Rules 2006. Petition is dismissed. No order as to costs.

Dated: 20.02.2018

(Vibha Puri Das)
Ombudsman