

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Sanjay Saini  
S/o Late Shri Ramanand Saini  
73, Govindpuri Colony,  
Haridwar, Uttarakhand.

Vs

Executive Engineer,  
Electricity Distribution Division,  
Uttarakhand Power Corporation Ltd.  
Jwalapur, Haridwar, Uttarakhand

Representation No. 22/2018

### Order

Date: - 05.10.2018

The petitioner, Shri Sanjay Saini aggrieved with the order dated 06.06.2018 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 49/2018, has filed this petition.

2. Petitioner's case is that he purchased a plot of land at 26, Narsingh Vihar colony, Village Jagjitpur on which he had requested on 25.01.2016 for a temporary electricity connection (his application before the Forum elaborates that while he had wished to take a temporary connection for the purpose of construction he was advised by the clerical staff in the SDO office to apply for a domestic connection) on the basis of which connection no. JW2/1420/151885 was released on 03.02.2016 (the date as per sealing certificate is 08.02.2016). He has reiterated his claim in his rejoinder dated 21.09.2018, filed in reply to respondent's letter dated 14.09.2018. For 21 months thereafter, while construction was going on, on the site readings were constantly being taken and bills presented, which the petitioner was regularly paying. After 21 months, a fine of Rs. 67,757.00 was imposed and he was served a bill of Rs. 72,381.00. Petitioner said that he had clearly requested for a connection for construction on his plot and in case commercial rates are chargeable to him the same may be taken but his request was not heard by the department or by the Forum. He has therefore requested that he be heard since the Forum has denied him the

opportunity of being heard and also that he be relieved from the responsibility of paying assessed fine of Rs. 67,757.00 as he has been consistently paying his dues.

3. Forum, in their order, dated 06.06.2018, heard both parties over four hearings and mentioned that since as per submission by respondent before Forum, the connection had been taken in the domestic category while it has been used for construction of a building of nearly 3000 sq. feet in which 6 flats are being constructed and the present reading is 4459 KWh, the case comes under the category of theft under section 135 and therefore the assessment of Rs. 67,757.00 u/s 126 of the Electricity Act, 2003 has been made. Accordingly Forum observed that this case pertains to section 126 of Electricity Act, 2003 and therefore held that this was outside the jurisdiction of the Forum and therefore disallowed the petition.
4. The respondent in their written statement dated 16.08.2018 have stated that while petitioner had requested for a permanent domestic connection on 25.01.2016 which was given on 08.02.2016 on the basis of one constructed residential room on the said plot of land. Having received the connection, petitioner went on to construct building regarding which there has been no intimation to the department and it is only on 23.11.2017 that checking team inspected the premises of the petitioner and found that a domestic connection is being used for construction of a new building and the checking report by the SDO was forwarded to the office of the division. In the inspection report no. 42/36 it has been explained that the consumer has constructed in a commercial way 6 flats while he is using electricity sanctioned under the domestic category which is a violation of LT Regulations. Accordingly, assessment of Rs. 67,757.00 was made out on the basis of this inspection report and incorporated in the connection no. JW21420151885 as per RTS-1. Respondent have further argued that since the above matter falls within section 126 of the Electricity Act 2003, jurisdiction of civil courts except appeal authority specifically authorized under this Act have been barred and therefore Forum is not entitled to hear this petition. The implication being that Ombudsman is also not entitled to hear this case.
5. Both parties have been heard and documents available on file have been perused. The basic questions to be addressed are

- i) With a domestic connection was consumer entitled to undertake construction of roughly 3000 sq. ft. as alleged in the inspection report.
- ii) Whether the inspection report dated 23.11.2017 is a valid report as per the provisions of sub regulation 5.2 of UERC (The Electricity Supply Code) Regulations, 2007, as quoted below: -

***“5.2 Unauthorised Use of Electricity (UUE)***

***5.2.1 Procedure for booking a case for Unauthorised Use of Electricity***

*...(2) An Assessing Officer under Section 126 of the Act, suo moto or on receipt of reliable information regarding UUE shall promptly conduct inspection of such premises.*

*(4) The Assessing Officer shall prepare a report giving details such as connected load, condition of seals, working of meter and mention any irregularity noticed (such as, artificial means adopted for UUE) as per format given in Annex IX.*

*(6) The report shall be signed by the Assessing Officer and each member of the inspection team and the same must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post.”*

and if so

- iii) whether this case pertains to section 126 of the Electricity Act, 2003 regarding unauthorized use of electricity and hence is beyond the jurisdiction of the Forum/Ombudsman as has been alleged by the respondents and so held by the Forum.

6. Regarding point no. i) petitioner has stated that he had wanted a temporary connection for construction since he had purchased a plot of land on 02.01.2016 and had applied for a connection on 25.01.2016. He has argued that it is not possible for him to have constructed a room within this period. The application for domestic connection has been found acceptable by the JE in his inspection report dated 01.02.2016 which also mentions no defect in the wiring and records that earthing is complete and insulation

resistance between phase and earth is 1 mega Ohms. Without going into the merits of existence of constructed space justifying a domestic connection and on the basis of JE report we accept for the sake of argument that such a construction existed when the electricity connection was released on 08.02.2016. We have now to assess whether this power drawn by domestic connection could be used for the purpose of construction. For this following provisions of tariff have been perused: -

*RTS-10: Temporary connection*

*(B) Temporary Supply for Other Purposes*

*1. Applicability*

*(ii) ... However, use of electricity through a permanent connection sanctioned for premises owned by the consumer for construction, repair or renovation of existing building, shall not be considered as unauthorised use of electricity as long as the intended purpose/use of the building/appurtenants being constructed is same/permissible in the sanctioned category of the connection.*

7. It is clear therefore that as per Tariff conditions petitioner was well within his rights to engage in construction using the domestic connection taken by him on 08.02.2016. As far as intended purpose/use of the building appurtenants is concerned, while the department has alleged that petitioner is engaged in construction of six flats and petitioner has not denied the same, the question remains whether even this constitutes a violation of domestic connection conditions. At the present moment the construction activity is consistent with provisions of tariff quoted above, hence cannot justify the tag of unauthorized use of electricity by the petitioner. The connected load on site has been reported as 0.6 KW against contracted load of 2 KW and no other irregularity or tampering the meter has been recorded in the inspection report.
8. As far as the inspection report dated 23.11.2017 being a valid report as per regulations, it bears repetition that checking and inspection report for unauthorized use of electricity as per section 126 of the Electricity Act, 2003 has to be inscribed by the Assessing Officer. As is evident from the provisional assessment letter issued on 29.11.2017, the Assessing Officer duly authorized by the Uttarakhand Government as per the provisions of the Electricity Act, 2003 is the Executive Engineer. The

inspection report dated 23.11.2017 is however executed by the SDO, who is not the Assessing Officer. Provisions of subsection 2, 4 and 6 of regulation 5.2.1 of UERC (The Electricity Supply Code) Regulations, 2007 as quoted above have not been complied with. As such the inspection report dated 23.11.2017 of SDO on the basis of which a case of unauthorized use of electricity under section 126 of Electricity Act, 2003 has been framed and penalty has been imposed, cannot be held to be a duly authorized inspection report.

9. As is evident from the finding in respect of 1 and 2 above, the case cannot be held to be of unauthorized use of electricity since use and intended use at present continue to be domestic, and the inspection report is executed by the SDO who is not the Assessing Officer. This checking report, being deficient in Authority, is infructuous and as such, no case under section 126 of the Electricity Act, 2003 (unauthorized use of electricity) can be booked on the basis of this report. The provisions of regulations appear not to have been followed. As such the finding and order of the Forum that the case lies beyond their jurisdiction, as it pertains to unauthorized use of electricity cannot be held as justified. Respondent assertion that the case being of unauthorized use of electricity of section 126 of the Electricity Act, 2003 and therefore beyond the jurisdiction of the Forum (and by implication of the Ombudsman) fails as per tests applied above. The petition before the Ombudsman is a valid complaint in terms of sub regulation 2 d) of UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievances of the Consumers) Regulations, 2007. Further, not being a case of unauthorized use of electricity under section 126 of the Electricity Act, 2003, as explained above, the Ombudsman is well within its jurisdiction to admit, hear and decide the case and pass orders on merits.
10. The assessment of Rs. 67,757.00 raised by the respondent on account of alleged unauthorized use of electricity under section 126 by the petitioner is an invalid assessment as it is executed on the basis of the report by officer not authorized in this behalf. Forum order indicating that the case lies beyond their jurisdiction as it is a case of unauthorized use of electricity under section 126 of Electricity Act, 2003 appears to have been passed by them without referring to the relevant Regulations and tariff and is therefore set aside. The petition is allowed. The respondent are directed to withdraw the assessment of Rs. 67,757.00. They are however at liberty to proceed

against the petitioner as per provisions of relevant regulations in case petitioner is found to be in violation of the said regulations at any time in future.

11. It may also be mentioned for the record that respondent, executive engineer has in his letter no. 4710 dated 14.09.2018 misquoted Ombudsman's directions regarding constitution of a committee to conduct joint inspection of the premises. Correct position has already been indicated in this office letter no. 234 dated 14.09.2018.

Dated: 05.10.2018

(Vibha Puri Das)  
Ombudsman