

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Sutish Gupta
Flat No. 5, First Floor,
Gayatri Sadan, Phase 2, Hanumantpuram,
Gali No. 8, Ganga Nagar, Rishikesh,
Distt. Dehradun, Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Shail Vihar, Rishikesh, Distt. Dehradun, Uttarakhand

Representation No. 35/2017

Order

The petitioner, Shri Sutish Gupta aggrieved by the order dated 18.09.2017 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) has filed this petition. The case in brief is that the petitioner having purchased a new flat in May 2013 in Rishikesh sought electricity connection for the same and deposited the required money demanded officially through receipt no. 3486327081301010004 on the basis of his registered application no. 863240813023. He was also allotted service connection no. RK25228085429. He therefore became a consumer of UPCL. It has been alleged in the petition that when the employee of Nagar Palika Sub Station Shri Basant Gupta came to energize the new connection he demanded a bribe from his sons whom he first met in addition to having already demanded Rs. 3000.00 as bribe from the petitioner earlier. On one pretext and another he refused to install and energize the connection and when the petitioner confronted him that it is because he is not being paid that he is not installing the connection, he allegedly became violent with his two sons and threatened that from now on nobody from the department will install your connection. The connection was not energized for 5 months despite many calls and visits to the concerned authority and in violation of UERC Regulations 2013. Petitioner was therefore forced to leave the said premises and applied for refund of security deposit since department had deprived him of essential services like electricity. Petitioner has also said that the most tragic part was

that they took one year to return the money without paying any interest or compensation asked from them. The three issues that he had raised before the Forum were a) non installation of electric connection for 5 months and more b) delay in process of disconnection and c) delay in providing refund and that too without interest and compensation. Petitioner has raised the same issues before the Ombudsman because he feels that the Forum have failed to act judicially in determining the said issues. Petitioner has also made allegations that legal points and arguments advanced by him were not perused by the Forum under the influence of defense lawyer, who illegally presented the case since legal counsel are not permitted to respondent. The petitioner has therefore requested that the Forum order be set aside and the reliefs sought from the Forum as above, be provided.

2. The Forum in their order dated 18.09.2017 have dwelt at length on the definition of consumer in the Electricity Act, 2013 (correct date being 2003) and the definition of complaint as per UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievances of the Consumers) Regulations 2007. Agreeing with the argument raised by the respondent that petitioner is not a consumer since he has sold the flat and purchased another in the same building and the quarrel between the petitioner and the UPCL employee who had gone to give the connection is under adjudication in a criminal Court, Forum dismissed the complaint. While stating that the reasons for delay in providing electricity connection in the first flat have been differently stated by the two parties however, since the case is before a criminal Court, Forum have said that they will refrain from making any comment on the same. They have also said that on this basis they will not be able to provide any compensation however because fundamentally petitioner is ineligible to approach the Forum as a consumer. Forum have given the finding that petitioner does not qualify as a consumer under the Electricity Act, 2003 for his particular connection. He has also approached the Forum roughly three and half years after surrendering the connection without giving any reasonable ground for the delay and his complaint does not fulfill the requirements of a complaint as defined in the UERC (Guidelines for appointment of members and procedure to be followed by the Forum for redressal of grievances of the consumer), Regulations, 2007 sub-Regulation 2. 1. (d) and therefore no powers to hear his complaint lie with Forum. Accordingly they have dismissed the complaint.

3. The respondent in their written statement dated 20.11.2017 have contested the position that there was delay in installation of connection or delay in process of disconnection as alleged. They have also stated that it is wrong to allege that the electric connection was not installed for more than 150 days for which the petitioner is entitled for any compensation or interest. Even for the refund, respondent have stated that petitioner applied for a refund after a very long time and then respondent had to complete many formalities after which amount was refunded. Respondent have also maintained that petitioner was himself not interested in getting electricity connection for the said flat since he had returned the same to the builder and bought another flat in the same building. Further, respondent are of the view that petitioner is not a consumer under the provisions of section 2 a (d) of Consumer Protection Act and they have contested petitioner's contention that Forum have erred in not reading section 173 of the Electricity Act, 2003 whereby Consumer Protection Act provisions have overriding effect. They have also claimed that claim for compensation is barred by the law of limitation since the petitioner's application has been filed more than 3 years after the surrendering the connection. Respondent have further claimed that present proceedings have been started by the petitioner merely to earn money and not for redressal of any genuine grievance.
4. Both parties were heard for 02.01.2018 and again on 16.01.2018. The petitioner brought citations to show that provisions of Consumer Protection Act, 1986 have overriding effect over the Electricity Act, 2003 and Forum have erred in disregarding his petition as a complaint and him as a consumer under the relevant provisions of Regulations/Law. He has also sought information under the Right to Information Act through an appeal to the Chief Information Commissioner, from SEWA (Service Empowerment Welfare Accountability) through request no. PG0020812013 dated 01.09.2013 as also from the UERC) and sought to prove how the respondent have given misleading and incorrect information before the Forum and Ombudsman whereas they have accepted their default before the UERC and committed to providing connection in response to SEWA. The basic issue before the Ombudsman is to assess if there is any inconsistency or lack of application of mind, as alleged, in the order of the Forum whereby their order needs to be modified or set aside. As explained above, Forum have relied on definition of the consumer and the complaint to determine whether application can be entertained in the Forum and have concluded

that this petition is outside their remit. It is clear from the sequence of events related by the two parties before the Forum and before the Ombudsman that the release of connection has been delayed by more than 150 days against the provision of 30 days in the Regulations as applicable in this case. However, the petitioner has not approached the Forum for release of connection or even for surrendering the connection or for refund of security. He has approached the Forum and subsequently the Ombudsman for non installation of electric connection, the issue of non processing the disconnection in time and nonpayment of interest and compensation on refund of security deposit. The first two reliefs namely non installation of electric connection and the issue of non processing the disconnection in time are an irrelevant/redundant prayer because he has already surrendered the connection on 28.01.2014 long before approaching the Forum on 27.06.2017. Petitioner has not approached the Forum/Ombudsman for deficiency in service as a consumer of electricity (even though such deficiency is evident by the delay in release of connection and through the reply given by UPCL before the UERC) but for payment of compensation and interest on security which was released after more than a year of request. The petitioner is not approaching the grievance redressal mechanism of Forum and Ombudsman for remedying the deficiency in service as a consumer but for seeking compensation and interest for delay in refund of security. As Forum have observed in their order, such a purpose does not qualify as a complaint under the relevant Regulations. Three and half years after having surrendered his connection and having received the refund of the security deposit petitioner's complaint is not covered by the definition of the complaint under the said Regulation. Neither can he be considered as a consumer as per definition of consumer provided in the Electricity Act, 2003. Citation given by the respondent in the case of Supreme Court of India Civil Appeal 5466 of 2012 arising out of SLP (C) no. 35906 of 2011 UP Power Corporation vs Anis Ahmed and others, para 47 states that "In case of inconsistency between Electricity Act, 2003 and Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but *ipso facto* it will not vest the consumer forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined under section 2 (1) (o) or "complaint" as defined under section 2.1. (c) of the Consumer Protection Act, 1986." Forum order is therefore consistent with provisions of Regulations and the Law and there is no need to interfere with the same.

5. As regards objection of petitioner against granting of counsel to the respondent, it is clarified that UERC (Appointment and Functioning of Ombudsman) Regulations, 2004 provide as follows under sub regulation 5.1.

“Provided that in any hearing, the Distribution Licensee, shall not be represented by professional Counsel, Attorney or Advocate, unless the Ombudsman so permits. However, where the consumer chooses to be represented by Counsel, Attorney or Advocate, then the Distribution licensee shall be granted a similar privilege.”

Such permission had been sought by the respondent and granted after due consideration while giving petitioner the option to similarly engage counsel.

6. Petition is disallowed. Forum order is upheld.

Dated: 19.01.2018

(Vibha Puri Das)
Ombudsman