

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Rishipal  
S/o Shri Ilam Chand  
Village Alawalpur, Tehsil Bhagwanpur,  
Distt. Haridwar, Uttarakhand

Vs

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

Representation No. 28/2018

### Order

Date: 26.11.2018

The petitioner Shri Rishipal S/o Shri Ilam Chand aggrieved with the order dated 13.07.2018 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) has filed this appeal before the Ombudsman.

2. The case in brief as per petitioner is that the petitioner's connection no. 2334 supports an Aata Chakki which is lying permanently closed since 20.03.2017. He had paid the amount of the bill due against the connection to one Shri Raj Singh (Rajkumar) S/o Shri Jamram Verma about 20 months ago for the purpose of depositing the money. This information was also given to the departmental officers however no receipt regarding payment of the money was given. Petitioner alleges that the day he complained to the Executive Engineer regarding the Lineman having taken the above money and not depositing the same, he (Executive Engineer) implicated him in the theft case, without taking any action against the lineman. Petitioner also alleges that he has given a voice recording of the lineman where he has confessed about the sequence of events. Petitioner has requested that fine of Rs. 2,92,000.00 imposed on him, be waived and the bill be got deposited by the lineman and corrective action taken.

3. Forum, in their order dated 13.07.2018, have pointed out that according to the report of the Executive Engineer, the vigilance team of the electricity department filed a checking report no. 12272 vide which a theft case was lodged in respect of the petitioner's premises. In this context, the divisional office through their letter no 1010 dated 06.04.2018 had proceeded against the petitioner under section 126 of the Electricity Act, 2003 while imposing an assessment of Rs. 2,93,518.00. Forum concluded that they lack jurisdiction over cases under section 126 of the Electricity Act, 2003 and dismissed the complaint.
4. Respondent UPCL, in their written statement, have disputed all the averments in the petition regarding payments to the lineman, that the Chakki of the petitioner is lying closed since 20.03.2017, that receipts of payments of the bill were not given to the petitioner, that while nobody was present at the time of checking the petitioner's premises, the allegations in this regard made by petitioner are not admitted and they have also disputed petitioner's contention that the Executive Engineer made up this theft case and there is no voice recording available with the confession of the lineman. Respondent have therefore argued that there is no merit in the petition and have further stated that being a case under section 126 of the Electricity Act, 2003 since the vigilance team of the UPCL had found a connected load of 5.222 KW at the Chakki of the petitioner by laying cable for taking direct supply, which had been seized on the spot and hence there is no ground for the representation to challenge the judgment of the Forum since the provisional assessment of Rs. 2,93,518.00 under section 126 of the Electricity Act, 2003 had been issued on 06.04.2018 asking petitioner to show cause why this assessment may not be made final. They have finally stated that both the Forum and the Ombudsman lack jurisdiction in this case and therefore the same may not be heard.
5. Both parties have been heard and the record available has been perused. The report of AE (Vigilance) dated 04.04.2018 indicates clearly that the case is of theft and not either suspected theft or unauthorized use. The report clearly states that while the service connection had been disconnected for nonpayment, at the time of inspection petitioner was found to be running the Aata chakki through a direct cable drawing 5.222 KW. The cable has accordingly been seized and given in the custody of SDO Shri Hatwal for lodging F.I.R. It is evident therefore that the case of theft has been

made out under section 135 of the Electricity Act, 2003 and not of UUE (unauthorized use of electricity) under section 126 as claimed by the respondent in their written statement or held by the Forum in their order. In the course of the hearing respondent were asked to clarify whether the case had been filed under section 126 or 135 and if the latter, whether an FIR had been filed. They were also requested to file the original checking report dated 04.04.2018 as well as indicate whether the LT line from which petitioner was allegedly tapping electricity was on bare conductor or on insulated cable. Respondent explained that it was a case of theft under section 135 and FIR has indeed been filed. A copy of FIR has been submitted along with carbon copy of original checking report and information that the LT line was on insulated conductor has also been filed. Despite prompting, no amendment in the written statement has been preferred by the respondent.

6. In the light of the above, despite petitioner's claims to the contrary, and evident deficiencies in checking report, since the report of the Vigilance team states categorically that it is a case of theft and therefore beyond the jurisdiction of Ombudsman as per the provisions of sub regulation 2 (1) (f) (ii) of UERC (Appointment and Functioning of Ombudsman) Regulation, 2004, no order can therefore be passed on merits in the case. Forum have erred in holding the case to be under section 126 and dismissing the same despite holding it to be beyond jurisdiction. The Forum while holding it a case of section 126 and not section 135 of Electricity Act, 2003 have dismissed the complaint which is neither technically correct nor consistent with the relevant Regulations i.e. UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievance of the Consumers) Regulation, 2007 and as such Forum order is beyond jurisdiction and is set aside.
7. Being a case of theft under section 135 the case is beyond jurisdiction and is therefore disposed off without passing any order.

Dated: 26.11.2018

(Vibha Puri Das)  
Ombudsman