

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Sunil Sharma
Gali No. 2, Indira Colony,
Sector 4, Katghariya, Haldwani,
Distt. Nainital, Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division (Rural),
Uttarakhand Power Corporation Ltd.
Hiranagar, Haldwani,
Distt. Nainital, Uttarakhand

Representation No. 12/2019

Order

Date: - 30.05.2019

The petitioner, Shri Sunil Sharma on behalf of residents of Gali no. 2, Sector 4, Indira Colony, Katghariya, Haldwani has filed this complaint for wrongful shifting of 11 KV line in a narrow lane which is only 12 feet wide and as a result of installation of iron pole for the shifting of the line, the lane has been narrowed down further to only 8 feet. Petitioner alleges that this has been done at the behest of two residents namely Shri Kishan Singh Bisht and Shri R. B. Bhatt who had wrongfully built a house abutting the 11 KV line. In reply to an RTI query, department have claimed that they have complied with the provisions of Rules 79-80 of Electricity Rules, 1956 but this information is wrong since the houses have been built later and the line had been laid earlier. Petitioner is aggrieved that while the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) did find the work of the department wrong and ordered stopping of the work by SDO but finally did not give any order on the grounds that the matter is not in their jurisdiction. Petitioner has also submitted a photograph of the pole and how it is obstructing the road. Petitioner has therefore requested that further necessary action may be taken against the wrong doers and in the public interest.

2. Forum, in their order, dated 12.02.2019 have observed that despite the objection of the entire colony and an initial notice dated 06.09.2016 from the concerned JE against Shri Revadar Bhatt, regarding wrongful construction of his house close to the 11 KV line, the request of the said owner for shifting the line was acted on promptly by the department, estimate prepared and sanctioned. Under the provisions of GO no. 441 dated 09.03.2014 a sum of Rs. 40,000.00 was allotted to department from Vidhayak Nidhi on 17.08.2017. The pole had earlier been erected inside the boundary of the said house which is now being shifted outside The road outside the house is 12 feet wide and technically there is no other location on which the said pole can be erected. After observing all this, Forum have, on hearing both parties concluded that in view of the order dated 20.02.2018 of the Ombudsman in the matter of Shri Harish Chand Upadhyay vs Executive Engineer in representation no. 37/2017, the Forum lacks jurisdiction to hear this complaint and the complaint may be heard under the provisions of Works of Licensee Rules, 2006 by the District Magistrate or the Police Commissioner as may be appropriate. Accordingly Forum dismissed the complaint.
3. The respondent in their written statement dated 05.04.2019 have reiterated the same points that they have stated before the Forum, that Shri Revadar Bhatt has constructed his house close to the 11 KV line against which the concerned JE issued a notice dated 06.09.2016 after which the house owner requested for shifting of the 11 KV line and for which an estimate of Rs. 1,32,258.00 was approved, against which funds under the Vidhayak Nidhi were allotted to the department on 17.08.2017. As per the report of the SDO, the width of the lane near the boundary wall of Shri Revadar Bhatt is 12 feet and the work was being conducted as per the safety standards of the department but the work was stopped in terms of the stay application dated 31.12.2018 received through the Forum while they were hearing the complaint of Shri Sunil Sharma.
4. In his rejoinder, petitioner, Shri Sunil Sharma has detailed out the manner in which clauses 77, 78 and 80 of Indian Electricity Rules, 1956 have been violated with regard to clearance of conductor above ground. He has also sought to bring attention to the fact that this breach can be penalized under clause 140 (a) of the Indian Electricity Rules, 1956.

5. With respect to the Work of Licensees Rules, 2006 quoted by the Forum in their order, petitioner has stated that these regulations speak of work to be done where there was no electric line lawfully laid when Licensee shall obtain permission in writing from the District Magistrate and others. Petitioner has sought to explain that in the instant case the 11 KV line had been commissioned since long and the whole colony objects to its shifting. UPCL has still shown reluctance in taking permission from the competent authority.
6. With respect to the specific replies to Executive Engineer's point petitioner has highlighted that Executive Engineer has accepted that the line shifting is because of construction works by Shri Revadar Bhatt which violated the provisions of the Indian Electricity Rules, 1956. Petitioner states that such shifting has to be done prior to construction of the house and all expenditure has to be taken care of by the consumer as per clause 82 of the Indian Electricity Rules, 1956. Petitioner has also taken exception to the use of MLA fund for the benefit of individual and requested Ombudsman to raise this matter before appropriate level so that action against erring officials can be initiated. Petitioner has also highlighted that Executive Engineer is only covering their wrong doing when a house being non compliant with Indian Electricity Rules, 1956 and UERC Regulations was allowed service connection illegally, bypassing notice given by their own employee. Petitioner has further stated that Forum have wrongly dismissed the complaint as it is very much within the definition (of complaint) as approved by UERC in the Regulations. He has therefore requested that illegal shifting and realignment to benefit the individual who should be punished as per provisions detailed above, should be stopped and action taken against official who did not act as per provisions of Indian Electricity Rules, 1956, who provided service connection illegally and to discontinue the supply to the individual as it poses great risk to safety not only of the individual but also detrimental to men and material nearby. He has finally requested that the individual should be changed in order to comply with UERC Regulation and the provisions of the Indian Electricity Rules, 1956.
7. On behalf of respondent while Executive Engineer requested vide his letter no. 2597 dated 13.05.2019 for adjournment and for permission to engage counsel, Senior Law Officer present during the proceedings mentioned that he is willing to argue the case

and that no adjournment may be necessary. In the event both parties were heard and the record available has been perused. Subsequently the respondent Executive Engineer vide his letter no. 2831 dated 24.05.2019 has submitted that since SLO, UPCL had already argued the case before the Hon'ble Ombudsman on 13.05.2019 his office letter dated 13.05.2019 may be cancelled. Forum in their order dated 12.02.2019 relied on the order of the Ombudsman in petition no. 37/2017 to conclude that the complaint in the instant case does not qualify as a complaint under Regulation 2 d) of UERC (Guidelines for Appointment of Members and Procedure for CGRF) Regulations, 2007 (the correct relevant regulation is 2 (1) (d)). They have further observed that since the Forum is not empowered to pass any order in such a case and the authority under the Works of Licensee Rules, 2006 framed by the Govt. of India lies with the District Magistrate or the Police Commissioner as the case may be, the petitioner may, if he so desires, approach the District Magistrate against shifting of the Line passing through premises of Shri Revadar Bhatt on public road.

8. It may be relevant to point out that while Forum passed their order dismissing the complaint since the matter is beyond their jurisdiction, jurisdiction of the Forum have come to be even more clearly defined in the UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievance of the Consumers) Regulations, 2019 notified on 22.01.2019 and which have come into effect from 02.02.2019 which is prior to the date of the order of the Forum. It is clear therefore that the matter of shifting of line is clearly beyond the jurisdiction of the Forum and Ombudsman mechanism. However the case does not merit dismissal as observed by the Forum and the case can only be disposed off in terms of the provisions of the Regulations. Forum observation calling the complaint beyond jurisdiction is correct and confirmed however their order dismissing the complaint is set aside. Petition is disposed off without passing any order on merits.
9. In view of submission of respondent in their written statement dated 05.04.2019, that the work of shifting of the pole is held up due to stay application dated 31.12.2018 submitted by the petitioner before the Forum and due to dispute arising at site, respondent are advised to approach the District Magistrate in keeping with provisions of the Indian Electricity Rules, 1956 as well as the Works of Licensee Rules, 2006.

Dated: 30.05.2019

(Vibha Puri Das)
Ombudsman