

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Subhash Chandra Agarwal
S/o Shri Budh Prakash
236, Ganeshpur, Roorkee,
Distt. Haridwar, Uttarakhand.

Vs

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

Representation No. 01/2019

Order

Date: - 28.03.2019

The petitioner, Shri Subhash Chandra Agarwal aggrieved with the order dated 26.12.2018 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 155/2018 has preferred this representation.

2. Petitioner's case in brief is that while he has a tubewell connection for which he has obtained the electricity cable line after paying the respondent as per the estimate prepared and for which he is paying the bills regularly, petitioner has alleged deficiency in service on the part of the respondent through their illegal action of giving a connection to Farik Samim and Wasim sons of Shri Tufail, residents of village Kamelpur, from above his fields and from his connection whereas his NOC was also not taken. Petitioner has been making complaints in writing to the respondent from 26.07.2018 demanding that this illegal connection be removed. He has also given a notice dated 30.07.2018 but since the respondent did not take any action, he filed a complaint before the Forum. He had requested the Forum for the relief of removing this illegal connection and giving him a compensation of Rs. 20,000.00 and legal expenses of Rs. 10,000.00. However, Forum in their order dated 26.12.2018, did not give a legal analysis for the case before them but relied entirely on the arguments placed before them by the respondent and rejected his petition. Petitioner has therefore argued that the Forum order is against law and deserves to be

set aside. The Forum order is neither logical nor has evidence adduced by the petitioner been examined. Petitioner alleges that the connection that has been joined from above petitioner's fields was first given in 2011 at some other location and then through an unethical alliance between respondent and the opposite parties this connection was brought at the present location where it is traversing petitioner's fields before reaching the opposite party's factory. Petitioner has also alleged what while an electricity pole exists close to where the factory is, respondent did not give connection from that pole but from the petitioner's connection. Forum have not paid heed to these facts also brought to their notice in the written arguments placed before them. On these grounds petitioner has alleged that the order of the Forum is illegal and deserves to be set aside.

3. Forum, in their order dated 26.12.2018, have elaborated that the case was heard over 7 dates between 22nd October and 14th December. Line diagram of electricity line and photographs of the disputed sites submitted by the petitioner were also examined. Forum have further stated that in the letter no. 3902 dated 29.10.2018 the concerned Executive Engineer has informed the Forum that an electricity connection was given to Shri Farik Samim and Shri Wasim sons of Shri Tufail from the LT pole rather than from the cable of the petitioner. Since the electricity line is a public line and not of any individual, the connection given from this pole within a distance of 40 meters are as per Regulations, and respondent are not expected to install another pole for this purpose. The Executive Engineer has maintained that the electricity connection given to Shri Farik Samim and Shri Wasim sons of Tufail is as per rules and petitioner's complaint is not maintainable. It has also been stated that from an earlier pole no. 4 prior to this pole a 5 KW connection has also been given via cable to a School. Forum accordingly dismissed the complaint and disposed off the complaint.
4. Respondent UPCL, in their written statement dated 24.01.2019, have disputed the petitioner's allegation that the connection has been illegally given from above his fields and have stated that there is no need to take the consent of the petitioner for the connection that has been given to Shri Farik Samim and Shri Wasim. The written statement also asserts that the impugned connection has not been given by service line but from LT line and the details of this connection have been given in the written statement filed before the Forum, a copy of which has been enclosed with this written

statement, with the request that it may be read as part of this written statement. In the written statement before the Forum, respondent have clarified that the pole from which the tubewell of the petitioner has been energized, from that same pole and through a single phase LT cable of 4 KW, commercial connection no. BH6P261108510 has been given to Shri Hasin S/o Shri Tufail Ahmed on 15.04.2011 in accordance with UERC Regulations. Therefore this connection cannot be disconnected. A line diagram indicating the connections given has also been included as part of the written statement. Respondent have asserted that it is wrong to say that the connection has been given from petitioner's line leading to a deficiency in service. Respondent have also asserted their right to give connection from LT line to any consumer according to rules and they disputed that the impugned connection causes any loss to the petitioner in any way. The consumer history of Shri Hasin S/o Tufail Ahmed for the period 16.12.2013 to 26.10.2018 has also been given.

5. Petitioner in his rejoinder dated 31.01.2019 has disputed all statements of the respondent made in their written statement and has reiterated his contention that the connection given to Shri Hasin in respect of whom, the site plan and consumer history have been submitted by the respondent in their written statement, was released in 2011 but was transferred to the present location of the factory which was established only 8 to 9 months ago. Petitioner has again stated that this transfer of connection from one location to another has been done in contravention of concerned regulations in support of which statement he has enclosed three photographs of the site.
6. Despite repeated adjustments and petitioner having engaged a counsel, petitioner was not present on date fixed for arguments. Having heard respondent, matter was fixed for orders. Petitioner then intimated through email that he was denied opportunity to present his case. The matter was adjourned and in the interest of justice, even though sufficient time had been allowed, petitioner was allowed to submit written arguments, which he has done. In these written arguments, petitioner has reiterated the points he has made in his petition and his rejoinder. He has also sought attention to the point raised in his rejoinder dated 19.11.2018 wherein he has stated that the connection can be given as per rule 2.(1)(n) only from common feeder transformer line and not from a service line. Petitioner has regretted that no order on this point has been given by the Forum. Petitioner has again stated that since a pole exists close to the factory

where this connection has been given but respondent UPCL have for some reason given the connection from his pole rather than the pole nearest to the factory and hence he has alleged a deficiency in service and since the Forum has failed to recognize this deficiency to set aside the order of the Forum.

7. Respondent in their oral arguments expressed ignorance of rule 5 (1)(n) quoted by petitioner since the relevant Act or Rules to which it pertains has not been explicitly stated . On the contrary, respondent also argued that as per provisions under section 67 (f) and section 164 of the Electricity Act, 2003, the Licensee has the power to draw lines in their area of jurisdiction and the petitioner cannot ask for shifting of a line already drawn by the Licensee. In case a petitioner is aggrieved by the drawing of such a line the only remedy available is to approach the District Magistrate for compensation.
8. The record available on file has been carefully examined and the averments made by both parties have been heard and perused. While petitioner has repeatedly stated that the offending connection has been given from his service line, this averment has been disputed by the respondent who have clearly stated in their written statement *“It is wrong to allege that any pole (No. 3 is shown in the site plan which shows that there is difference of connection of Shri Haseen) is erected near the factory. It is wrong that the connection has been wrongly connected from petitioner line there is deficiency in service.”* Respondent have further stated categorically that *“It is wrong to allege that this impugned connection was from elsewhere and due to illegal conspiracy this connection has given to the said persons from the connection of the petitioner. It is wrong to allege that there is any factory is installed. It is wrong to allege that the CGRF has not considered these facts.”* As far as evidence of photographs given by petitioner, is concerned these photographs do not indicate their location or how the interests/rights of the petitioner are adversely affected. On the contrary respondent have given a line diagram which reveals that the connection given to the petitioner and the connection no. BH6-P21-108510 are indeed from the same pole but not from the service line of the petitioner.
9. 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.

10. Complaint has been defined in regulation 2 (d) of UERC (Appointment and Functioning of the Forum for Redressal for 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 issues and Cases where licensees 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.

11. 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 disposed off as above without any order on merits.

Dated: 28.03.2019

(Vibha Puri Das)
Ombudsman