

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Mohd. Inaam  
S/o Mohd. Shafi  
Roshnabad, Near Tower,  
Haridwar, Uttarakhand

Vs

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

Representation No. 15/2022

### **Order**

**Dated:** 23.05.2022

Being aggrieved with Consumer Grievance Redressal Forum, Haridwar Zone, (hereinafter referred to as Forum) order dated 28.02.2022 in his complaint no. 03/2022 before the said Forum against UPCL through Executive Engineer, Electricity Distribution Division, Jwalapur, Haridwar (hereinafter referred to as respondent) Mohd. Inaam S/o Mohd. Shafi, Roshnabad, Near Tower, Haridwar has preferred this appeal for releasing connection to him, without any condition and without payment of half of the outstanding dues and for setting aside Forum order dated 28.02.2022.

2. The petitioner has averred that he is a co-owner of the property in village Roshanabad, Distt. Haridwar where he had applied for a connection on 07.08.2021 vide registration no. 110708210048. The another co-owner of the property Shri Inaam Shabir S/o Ninna Hassan has already taken a connection no. 11231977369 on which electricity dues are outstanding. The respondent has sent a letter dated 13.01.2021 raising objections in giving connection that there are 2 co-owners of the property as per sale deed so NOC from the another co-owner of the property not given and quantum of the load required has also not been mentioned in the application. Further as a sum of Rs. 78,185.00 are outstanding against an existing connection on the premises so the connection applied for by him cannot be given. The petitioner has

submitted that he has offered to deposit security @ 3 times the normal rate for taking connection. He has also mentioned that quantum of load applied for was also mentioned in the application as 4 KW. In his complaint before the Forum, the Forum directed to release the connection after getting the outstanding dues proportionally deposited by the petitioner and the respondents are at liberty to realize the balance amount from the another co-owner in whose name the connection is existing. He has further stated that the connection has duly been released to him on 12.02.2022 with connection no. 11231857778 and the respondents have demanded the outstanding dues from him. He has submitted the following grounds of appeal:

- i) Forum order dated 28.02.2022 is against law and is wrong
- ii) The existing connection on the premises belongs to the co-owner Shri Inaam Shabir, so he is liable to pay the outstanding dues against his connection. He has wrongly been asked to pay 50% of the outstanding dues against the existing connection.
- iii) UP Act, 13/72 (section 28 b) provides that any tenant or occupier can take a electricity/water/sewage connection for which NOC from owner of the property is not required.
- iv) Section 1 of Electricity Act, 2003 provides that an occupier of a premises can take a connection in the premises in his name. He has referred a ruling LCD 2005 page 634 of Hon'ble High Court, Allahabad wherein the Hon'ble High Court has given a ruling that a connection of a tenant was disconnected on the complaint of the landlord by the department, this disconnection was against law.
- v) The outstanding electricity dues against a connection in any building or premises cannot be treated as a dues on the building or the premises and neither dues against a connection in the name of earlier occupant or owner can be treated as payable by another occupier or landlord, who has applied for a new connection. He has stated that this ruling has been given by the Hon'ble Supreme Court in case no. CCC2010 (4) page 117 of Haryana Electricity Board vs. M/s Hanuman Rice Mill.

- vi) As per law connection to an applicant has to be given within a month from the date of application.
  - vii) Forum order dated 28.02.2022 is liable to be set aside.
  - viii) This matter is not pending in any other court or Forum and this is the first appeal related to this connection in the premises as above. The petitioner has requested that Forum order dated 28.02.2022 be set aside and he may be exempted from depositing 50% of the outstanding dues against another connection of the co-owner in the premises and order may be issued for giving him the connection unconditionally.
3. The Forum in their order has mentioned that the Forum has already directed as per order on the order sheet dated 27.01.2022 to release the connection to the complainant and the Executive Engineer, (opposite party) had duly confirmed that connection with no. JW11231857778 has duly been released to the complainant on 11.02.2022. The Forum has observed that the main dispute in this case is about non release of connection to the complainant. The opposite party has duly released connection no. JW11231857778 to the complainant. The Forum has further mentioned that as there are 2 co-owners of the property and a sum of Rs. 78,185.00 is outstanding against the existing connection on the premise so they held that both the co-owners of the property are liable to pay the aforesaid outstanding dues. So they (the Forum) were of the opinion that it would be justified to proportionately divide the aforesaid outstanding dues between both the co-owners of the property. The Forum has also mentioned sub-regulation 3.1 (8) of chapter 3 of UERC (Electricity Supply Code, Release of New Connection and Related Matters) Regulations, 2020 dated 29.10.2020 which reads as follows:

“जहां कोई सम्पत्ति विधिसंगत रूप से उप-विभाजित की गई है तो पूर्व अविभाजित सम्पत्ति पर विद्युत के उपभोग हेतु बकाया देय धनराशि, यदि कुछ है, तो वह ऐसी उपविभाजित सम्पत्ति के क्षेत्र के आधार पर यथानुपातिक रूप से विभाजित की जाएगी।”

The Forum has allowed the complaint with the direction to the department that the total outstanding dues against the existing connection no. JW11231977369 be divided proportionately between both the co-owners who had been using the connection. The department is at liberty to realize the proportionate amount of the outstanding dues

from the complainant. The Forum has further directed that compliance of the order be reported within 30 days from the date of order.

4. The respondent, Executive Engineer has submitted his written statement vide dated 02.04.2022 along with an affidavit under oath.

- i) It is admitted that a sum of Rs. 78,125.00 are outstanding against existing connection no. JW11231977369. Further it is also admitted that application for a new connection in the name of Mohd. Inaam S/o Mohd Shafi has been registered against which connection has duly been released on 12.02.2022.
- ii) The petitioner's submission against para 1 of grounds of appeal that Forum order dated 28.02.2022 is against law and is based on false submissions is not correct but the Forum order dated 28.02.2022 is in accordance with law.
- iii) Submission against para 2 of grounds of appeal that the existing connection belongs to the co-owner Shri Inaam Shabir and he is liable to pay the outstanding dues against the said connection is based on wrong facts but the fact is that the complainant has himself admitted in his complaint dated 13.01.2022 lodged before the Forum that he is a co-owner of the property.
- iv) The petitioner's submission under para 3 of the grounds of appeal that under UP Act, 13/72 (section 28 b) any tenant can take an electricity connection without any NOC from the owner, is admitted. But in the instant case the petitioner is a co-owner of the property where he has applied for a connection. A sum of Rs. 78,182.00 outstanding against an existing connection JW11231977369 but as per Electricity Supply Code, 2005 clause 4.3 (f) a connection in a premises where dues are outstanding cannot be given until the said outstanding dues are paid. **(The aforesaid Electricity Supply Code, 2005 is not applicable in the State of Uttarakhand so the respondent has wrongly quoted this Supply Code.)**
- v) The petitioner's submission under para 4 of the grounds of appeal that as per section 1 of Electricity Act, 2003, any occupant of a premises can take electricity connection is admitted but in the instant case the petitioner is a co-owner of the property on which Rs. 78,182.00 are outstanding against the

existing connection as per ruling of the Hon'ble Supreme Court given in AIR 2009 SC 647 of Pashchimanchal Vidhyut Vitran Nigam vs BVS Steel and alloys, realization of dues against electricity bill of previous owner of the property from the new owner of the property is not wrong. In the instant case the petitioner is a co-owner and not a tenant.

- vi) The petitioner's submission under para 5 of the grounds of appeal is based on false grounds. The Hon'ble High Court, Allahabad in case no. 2017 (1) CAR page 646 of Jitendra Kumar Gupta vs State of UP has clarified that a person in whose occupation the property is, such person is responsible to pay all the outstanding dues. In the instant case the petitioner is a co-owner and connection no. JW11231977369 is in his notice since beginning.
- vii) Petitioner's submission under para 6 of the grounds of the appeal that release of connection within one month is mandatory, is against law because he was already informed that a sum of Rs. 78,185.00 are outstanding against the premises against existing connection, on which he wants to take a new connection.
- viii) His submission under para 7 of the grounds of appeal that Forum order dated 28.02.2022 is liable to be set aside, is wrong and based on false grounds. The fact is this that Forum's order is as per law and the appeal preferred by the petitioner is liable to be dismissed and he is not entitled for any relief.

5. The petitioner has submitted a rejoinder dated 13.04.2022 wherein he has submitted as follows:

- i) Partially admitted the contents of para 1 of respondent's written statement, connection no. JW11231977369 is not in the name of the petitioner neither it is in the name of petitioner's predecessor.
- ii) Contents of para 2 and 4 of respondent's written statement are partially admitted.
- iii) Contents of para 3, 5, 6, 7 of respondent's written statement are not admitted.

- iv) Contents of para 8 and 9 of respondent's written statement are denied in totality.

**6. Additional submissions**

- i) Petitioner's name is Mohd. Inaam S/o Mohd. Shafi and connection no. JW11231977369 is in the name of Mohd. Inaam Shabir S/o Mohd. Ninna Hassan.
- ii) A property was jointly purchased by him and Mohd. Inaam Shabir as such the petitioner is legally a co-owner i.e. to say the petitioner is an owner of the property with another person. No electricity connection has earlier been taken by the petitioner on the portion of the land belonging to him, neither any connection was installed on the land belonging to him before 13.02.2022.
- iii) Although the department is admitting the petitioner as a co-owner but it is not clarifying that whether on the portion on the land belonging to him the said connection was ever installed. The fact is that the said connection was given to Mohd. Inaam Shabir S/o Mohd. Ninna Hassan on the portion of the land belonging to him and not on the common land belonging to both co-owners.
- iv) It is clear in terms of Electricity Supply Code, 2005 clause 4.3 (1) that a connection in a premises where electricity dues are outstanding cannot be given a new connection unless such dues are cleared but no connection was ever given by the department on the portion of the land belonging to the petitioner, then how he should be asked to pay the dues in respect of a connection which does not exists in his property.
- v) His portion of land is adjoining to the portion of land on which connection exists and he is being pressed for payment of the dues against such a connection which is a illegal process, which should be checked and stopped.
- vi) Although as per ruling of Hon'ble High Court in case no. AIR 2009 SL647 of Pachimanchal Vidhyut Vitran Nigam vs. BVS Steel and Alloy the outstanding bill of the previous landlord can be realized from the new landlord but in the instant case no connection exists in the name of earlier landlord. It is clarified that there were 2 owners of the property earlier and they are as such at present

also. There is no legal obstruction in giving connection to both the owners in case they apply for such a connection on the portion of the land belonging to them. Under Electricity Supply Code, 2005 there is no such provision under which a person can be denied a connection in his portion of land or he may be pressed to deposit the outstanding dues against a connection which did not exist in his portion of land.

- vii) The petitioner has stated that the Hon'ble Allahabad High Court in their judgment 2017 (1) CJR page 646 in case of Shri Jitendra Kumar Gupta vs UP State has clarified that liability of payment of old dues lies only on the person who is an occupier of the premise. The petitioner has never been the owner of the portion of property belonging to Mohd. Inaam Shabir so pressurizing him for the old outstanding dues of a connection not existing in his property is causing mental harassment to him so department should be stopped or prevented from pressurizing him to make payment of the outstanding dues against the connection not existing in his property and belonging to Mohd. Inaam Shabir and existing in his own property.

7. Office copy of respondent's letter no. 559 dated 21.02.2022 addressed to the Forum is also available on file along with a copy of Forum's day sheet dated 27.01.2022 wherein the Forum has ordered ***"Hence OP to issue connection as per rules immediately"***. The respondent vide his aforesaid letter dated 21.02.2022 has reported compliance of Forum's order dated 27.01.2022 wherein it has been reported that connection has duly been released to Mohd. Inaam.
8. Hearing in the case was fixed for 18.04.2022 which was postponed to 25.04.2022 and again postponed to 04.05.2022. Hearing was thus held on prefixed date 04.05.2022, both parties appeared and argued their respective case. Documents available on file have been perused, arguments from both parties heard. It is borne out that a property was jointly purchased by the petitioner Mohd. Inaam S/o Mohd. Shafi with Mohd. Inaam Shabir S/o Mohd. Ninna Hassan. A connection no. JW11231977369 is already existing in the property. The petitioner Mohd Inaam S/o Mohd. Shafi has applied for a connection in his portion of the land but the department denied to give a connection to the petitioner on the grounds that dues against the existing connection were outstanding to the tune of Rs. 78,125.00. The petitioner approached the Forum

through his complaint no. 03/2022. The Forum ordered on 27.01.2022 as per the day sheet directing the respondent to issue connection as per rules immediately. The respondent in compliance to these instructions released the connection on 12.02.2022 as connection no. JW11231857778, however without getting the outstanding dues deposited. The Forum decided the complaint vide their order dated 28.02.2022 wherein they have allowed the complaint with the direction that the outstanding dues be proportionately divided between the 2 co-owners who had been using the existing connection. The respondent shall be at liberty to realize the proportionate amount of the dues against connection no. JW 11231977369 from the petitioner. It is therefore clear that the connection to the petitioner has been released on 12.02.2022 in compliance to Forum's interim order dated 27.01.2022 without getting the proportionate amount of total outstanding dues deposited from the petitioner. The Forum in their final order dated 28.02.2022 has referred UERC Regulations, dated 29.10.2020 specifically sub regulation 3.1. (8) on the basis of which perhaps the Forum has ordered to proportionately divide the outstanding dues between the 2 co-owners of the land and get proportionate amount deposited from the petitioner. As such the connection was released to the petitioner on 12.02.2022 without getting his portion of dues deposited before release of connection. A perusal of Forum order dated 27.01.2022 and 28.02.2022 as well as compliance report by the respondent suggests that the Forum has somehow erred in issuing order for release of connection without getting outstanding dues deposited, which is in contravention to the aforesaid regulation UERC (Electricity Supply Code, Release of New Connection and Related Matters) Regulations, 2020 dated 29.10.2020 which came into effect from 28.11.2020, the date of gazette notification, which is reproduced below:

***“3.1 (8) Where a property has been legitimately sub-divided, the outstanding dues for the consumption of electricity on earlier undivided property, if any, shall be divided on pro-rata basis based on area of each sub-divided property.***

***A new connection to any portion of such sub-divided premises shall be given only after the share of outstanding dues attributed to such legitimately sub-divided premises is duly paid by the Applicant. A Licensee shall not refuse connection to an Applicant only on the ground that dues on the other portion(s) of such premises***

***have not been paid, nor shall the licensee demand, record of last paid bills of other portion(s) from such Applicant.”***

9. In view of the aforesaid UERC Regulation it is clear that the Forum should have ordered release of connection only after getting proportionate amount of total outstanding dues RS. 78,185.00 deposited by the petitioner and the connection should have been given only after depositing such amount. Thus there has been a violation of the aforesaid regulation.
10. Such being the case the respondent is directed to immediately disconnect the connection of the petitioner and ask him to deposit his share on proportionate basis of the total outstanding dues Rs. 78,185.00 against existing connection of the co-owner Mohd. Inaam Shabir S/o Mohd. Ninna Hassan. Further connection no. JW11231977369 of Mohd. Inaam Shabir S/o Ninna Hassan against which the total dues Rs. 78,185.00 are outstanding be disconnected immediately and ask him to pay his share of the aforesaid total dues and both the connection should only be reconnected after realization of due. In case however the outstanding dues are not paid by any of the 2 co-owners, the respondents are at liberty to use such means which are available to them under relevant UERC Regulations and Electricity Act, 2003 to recover the total outstanding dues including issue of RC under Dues Recovery Act, 1958 for recovery of the dues as arrears of land revenue through District Magistrate concerned. The Forum order is set aside. The petition is dismissed.

Dated: 23.05.2022

(Subhash Kumar)  
Ombudsman