

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Intjar Hussain
S/o Late Shri Irshad Hussain
Khusboo Farms,
Bareilly Road, Haldwani,
Distt. Nainital, Uttarakhand

Vs

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

Representation No. 40/2021

Order

Dated: 22.02.2022

Being aggrieved with Consumer Grievance Redressal Forum, Kumaon Zone (hereinafter referred to as Forum) order dated 24.07.2021 in his complaint no. 56/2021, before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (Urban), Haldwani (hereinafter referred to as respondent) Shri Intjar Hussain S/o Late Irshad Hussain R/o Khusboo Farm Bareilly road, Haldwani, Distt. Nainital has preferred this petition for termination of a connection given to Shri Abdul Rauf in his property by the respondent.

2. The petitioner Shri Intjaar Hussain has submitted an application dated 10.12.2021 with an affidavit and with which he has submitted his original petition dated 21.08.2021, which was submitted by him earlier via email, but he was given to understand that the petition was not received in the office of Ombudsman, so he has now submitted his original petition dated 21.08.2021 with his aforesaid application dated 11.12.2021 with a request that the petition be admitted after condonation of delay as the delay has not occurred due to any mistake on his part.
3. The petitioner has averred that a complaint was lodged by him with Forum against a connection released to one Shri Abdul Rauf (land mafia) on his property with the intention to grab the land with connivance with departmental offices/officials where a

commercial connection was released. Meter of the said connection was installed on a tree already existing at the premises. The said Abdul Rauf is neither a authorized tenant nor any NOC was given to the department by him for releasing connection to Shri Abdul Rauf in his land. A complaint was made to the Executive Engineer in the matter but as no action was taken by him, a complaint was made to Forum where it was registered as complaint no. 56/2021. The Forum however dismissed the complaint vide its order dated 24.07.2021.

4. In para no. 1 and 2 of the petition he has mentioned the details of his land on which land mafia are trying to get their hold and the cases pending with Civil Court. He has further mentioned that neither any NOC or understanding was given by him to Shri Abdul Rauf for taking a connection at the land belonging to him so the connection has been given to Shri Abdul Rauf illegally. He has further stated that no construction exists at the place where connection has been released and the meter has been installed on a tree already existing at site. Referring to a judgment dated 05.03.2021 of Hon'ble High Court, Nainital in Writ Petition no. 3132 of 2018 of Executive Engineer, Distribution Division vs Shri Parasram Joshi wherein the consumer has been defined (a perusal of this definition shows that it is the same as given under section 2 (15) of Electricity Act, 2003).
5. The petitioner has further submitted that Shri Abdul Rauf has managed to take electricity connection for commercial use at the land belonging to him, based on fabricated documents and hiding the facts. No construction, building or go-down exists at the premises where the connection has been given and it is only a piece of land. The said connection has been taken by Shri Abdul Rauf with connivance of departmental employees. He has requested that the said illegal connection is required to be removed to safeguard the petitioner's land and he has further requested that legal action against the erring officers/officials of the department may also be taken. He has further submitted that he is an old citizen of 79 years of age suffering from diabetes and high BP and feel harassed with the action of the department for giving connection to Shri Abdul Rauf on his land illegally so he has demanded compensation also for the same and has requested that Forum order dated 24.07.2021 in complaint no. 56/2021 be quashed and set aside and orders for removal of the illegal connection of Shri Abdul Rauf given in his land may kindly be issued.

6. The Forum have observed that the complainant himself has prayed that matter be investigated by the Forum at their level and action against the culprits be taken. The Forum having observed that firstly the complainant is not a consumer of the opposite party and further no such request has been made by him for issuing any direction to the opposite party so they concluded that the complaint is not liable to be allowed and as such the Forum dismissed the complaint vide their order dated 24.07.2021.

7. The respondent, Executive Engineer has submitted his written statement vide letter no. 3973 dated 23.12.2021 wherein he has submitted that Shri Abdul Rauf S/o Late Shri Abdul Mazid R/o ward no. 28 near Mazar Ujala, Haldwani had applied for a commercial connection on 01.01.2021. An affidavit with ikraarnama and nazul land was also submitted with the application. In accordance with UERC (Electricity Supply Code, Release of New Connection and Related Matters) Regulations, 2020 sub regulation 3.3.2 (4) (e) which is reproduced below the connection was released on 06.01.2021 on depositing security @ 3 times of the normal rate in accordance with the aforesaid regulation.

“e) An Applicant who is not an owner but an occupier of the premises shall along with any one of the documents Listed at a) to d) above also furnish a no objection certificate from owner of premises.

Provided that in case the Applicant is unable to submit any of the document listed at a) to e) above, then the Applicant shall be charged thrice the amount of security as per Table 3.4 to 3.6 of Clause (11) of Sub-regulation 3.3.3. The owner of the premises, if different from the Applicant, shall not be liable for payment of any dues against such connection.”

8. He has further submitted that as per report of SDO dated 22.07.2021 the meter was installed in the office of the applicant (prospective consumer), but the meter was subsequently replaced and installed at a nearby tree due to the damage of the roof in wind storm which was subsequently installed at its proper place. He has further submitted a copy of the report of Revenue Inspector wherein it has been confirmed that business of bottle scrap is being conducted at the premises of the consumer on the disputed land. The respondent has substantiated his submissions with documentary evidences enclosed with his written statement which are available on file.

9. The petitioner has submitted a rejoinder dated 05.01.2022. He has stated that a fabricated ikraarnama has been submitted by Shri Abdul Rauf on the basis of which the connection was released to him, instead of his objections dated 16.01.2021 given to the JE, but the connection was not removed. He has quoted judgment dated 22.08.2017 from Civil Judge (CD) Haldwani. Connection has been released in violation of the conditions of sub regulation 3.3.2 (4) (a) of UERC Regulations, 2020. Referring to the affidavit of the respondent Executive Engineer dated 23.12.2021 submitted with his written statement the petitioner has challenged that the respondent's averment that the Tin-shed was removed in a wind storm is false because there was no construction or Tin-shed at the premises neither it is available now. No construction has been done on the open land. The disputed land has been rented out to Shri Irshad Hussain S/o Shri Navi Hussain for last 8 years which is still in his occupation. In reply to a clarification/reply by the Court the JE Shri Naveen Pant, in connivance with Shri Abdul Rauf, the meter was removed from the tree and was installed on a wooden pole in the night of 21.12.2021, which was informed verbally to the department, but no cognizance was taken by the department. Regarding Revenue Inspector's report the petitioner has submitted that the said report is related to some other land between Abdul Rauf and Abdul Razzak and not related with petitioner's land. The connection was therefore wrongly released on the basis of the said false report. He has requested that the connection illegally given to Shri Abdul Rauf be ordered to be removed and necessary action against the erring staff be also ordered and compensation for contesting the case be also awarded.
10. Hearing in the case was held on prescheduled date 16.02.2022. Shri Manish Joshi, SDO Haldwani appeared on behalf of the respondents. The arguments on behalf of the petitioner were made by his advocate online. The petitioner's advocate referred Hon'ble High Court judgment and an application under section 195. Respondent's representative submitted that the connection to Shri Abdul Rauf was given in accordance with relevant UERC Regulations, 2020 on depositing 3 times security and on production the proof to the fact that he is an occupier of the premises where the connection has been applied for.
11. Documents available on file have been perused and arguments from both parties were heard. It appears that there is a dispute of land between the petitioner and Shri Abdul

Rauf who had applied for a commercial connection at the premises. It is clarified that the UPCL as a Licensee is duty bound to give connection to any applicant whosoever applies for the same in accordance with section 43 of Electricity Act, 2003, whether an owner of the premises or an occupier of the premises. Abstract of the same is as follows:

“section 43. Duty to supply on request – 1[Save as otherwise provided in this Act, every distribution] Licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply”

12. Further the Licensee shall be governed by sub regulation 3.3.2 (4) (e) of UERC Regulations, 2020, as mentioned above in releasing a connection to an applicant. In the instant case the connection has duly been released in accordance with section 43 of Electricity Act, 2003 as well as relevant UERC Regulations on depositing 3 times the security. In the instant case as the applicant is not an owner of the premises but an occupant and as such the connection given to Shri Abdul Rauf is a legal connection lawfully given by the Licensee in accordance with aforesaid regulation and statutory provision, as such the connection to Shri Abdul Rauf cannot be removed or terminated on the request of the petitioner Shri Intjar Hussain on the grounds that the connection has been given on a disputed land belonging to him (the petitioner) and Shri Abdul Rauf is not an authorized occupant of the premises and a case about the dispute on the land is already pending before Civil Court. It is also clarified that it is no concern of the Licensee to see whether the occupant of the premises is an authorized or unauthorized occupier or there is some dispute pending in some Civil Court. They are duty bound to give a connection to an applicant in accordance with aforesaid statutory provisions and regulations and since they have followed the statutory provisions and regulations in giving this connection so this is a lawfully given legal connection and cannot be terminated on the request of the petitioner.
12. The Hon'ble Supreme Court in their judgment in Civil Appeal no. 7572 of 2011 read with judgment in writ petition no. 103 of 2013 has inter-alia directed that the Licensee is duty bound to give connection to an applicant in accordance with section 43 of Electricity Act, 2003.

13. In view of above statutory provisions and UERC regulations petitioner's request for termination of connection of Shri Abdul Rauf is not maintainable and his appeal is therefore dismissed. Forum order stands modified as per this order.

Dated: 22.02.2022

(Subhash Kumar)
Ombudsman