

**THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

Shri Ajay Mall  
S/o Shri Mann Bahadur Mall  
Flat no. 206, Skarfa Apartment,  
Jakhan, Dehradun, Uttarakhand

Vs

1. The Executive Engineer, Electricity Distribution Division (North), Uttarakhand Power Corporation Ltd. 18, EC Road, Dehradun, Uttarakhand
2. Shri Inder Raj Shahi S/o Shri Govardhan Shahi, Anarwala, Dehradun, Uttarakhand.

Representation No. 40/2023

**Order**

Dated: 08.12.2023

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 30.08.2023 in complaint no. 35/2022 filed by Shri Inder Raj Shahi S/o Shri Govardhan Shahi, Anarwala, Distt. Dehradun (hereinafter referred to as respondent no. 1) before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (North), 18, EC Road, Dehradun (hereinafter referred to as respondent no. 2), Shri Ajay Mall S/o Shri Mann Bahadur Mall, Flat no. 206, Skarfa Apartment, Jakhan, Dehradun (hereinafter referred to as petitioner) has preferred the instant petition for setting aside Forum's order dated 30.08.2023.

2. The petitioner, Shri Ajay Mall has preferred the instant petition in which he has averred as follows:

**Grounds of appeal: -**

- i) Forum order is against law and is erroneous so it is liable to be set aside.
- ii) The Forum has acted arbitrarily so its order is liable to be set aside.
- iii) The Forum did not use its jurisdiction so order is liable to be set aside.

- iv) The Forum has passed order beyond its jurisdiction so it is liable to be set aside.
- v) The Forum order is based on imaginations and its own opinion and has no legal basis.
- vi) Order has been passed without using legal mind.
- vii) The Forum has used unnecessary haste in disposing off the case and has passed order on erroneous grounds.
- viii) The Forum has passed order ignoring the documents and evidences available on file, so it is based on wrong legality.
- ix) The Forum paid no attention to see that the petitioner is the owner and possession of 0.0903 hectare part of the total land and he has already constructed a tin shed on that portion.
- x) The Forum did not consider that the said portion of land was sold out to him through sale deed dated 18.03.2019 and has already been mutated in his name as per official records.
- xi) The Forum did not see that Shri Inder Raj Shahi has the feelings of enmity against him and stay has already been obtained from Civil Court restraining all the parties from destruction or damage of the construction made by him. Referring to Hon'ble High Court's order in writ petition no. 890/2022 wherein the Hon'ble Court has ruled out that under Article 21 of the Constitution of India, every citizen has a fundamental right to get electricity connection (electricity is one of the fundamental rights of existence under Article 21 of the Constitution of India). Similarly the Hon'ble Kerala High Court has also defined electricity as a right to life in CR 1153-2022 dated 19.12.2022. However the Forum ignoring the above case laws has passed the impugned order which is liable to be quashed.
- xii) The Forum did not see that the respondent no. 1 has no right to raise objection on the electricity connection given to him, neither there is any locus standi for the same. His objection is simply to harass him.
- xiii) Since the Forum order is against the fundamental rights defined in the constitution and is based on imaginations and is against law, so it is liable to be quashed. The connection has duly been released in his favour and respondent no. 1's objection that the connection is dangerous from security point of view is not justified and is against law.

- xiv) The Forum did not consider that he had applied for the connection as per rules and the same was released in accordance with rules, in his premises and connection was not given in violation of the rules.
- xv) In view of aforesaid facts it is clear that Forum order dated 30.08.2023 is illegal, against law, which should necessarily be quashed. If the said order is not set aside it would cause irreparable loss to him and shall be a failure of the justice.
- xvi) In view of the above facts his appeal is liable to be admitted.

He has prayed that his appeal be admitted and impugned order of the Forum dated 30.08.2023 passed in complaint no. 35/2022 be set aside. Further any other relief as deemed fit by the Hon'ble Court may also kindly be granted. The petitioner has also submitted an affidavit under oath.

3. The Forum heard both parties and perused the records available on file and have observed that relevant regulation chapter 3 release of new connections of UERC regulation 2020 notified on October 29<sup>th</sup> 2020 have not been followed in releasing the connection under reference and as is further established from letter no. 546 dated 11.08.2023 of SDM, Dehradun, wherein it is clearly mentioned that "प्रकरण के सम्बन्ध में तहसीलदार देहरादून द्वारा स्पष्ट किया गया है कि उपरोक्त विषयक भूमि में स्थल पर एक टीन पोश कमरा पाया गया है जो कि प्रार्थी द्वारा बनाया जाना बताया गया है" से स्पष्ट है कि विपक्षी द्वारा तृतीय पक्ष को टीनपाश बने कमरे में ही स्थई विद्युत संयोजन प्रदान कर दिया गया है जो कि सुरक्षा की दृष्टि से तर्कसंगत एवं न्यायपूर्ण नहीं है।

Having observed as above the Forum has ordered that the connection released to Shri Ajay Mall S/o Shri Mann Bahadur Mall, Bamanpur Line, Jeevan Garh, Vikasnagar, given in violation of UERC regulation 2020 be disconnected.

4. Both the respondents have submitted their respective written statements as follows:
5. The respondent no. 1, Shri Inder Raj Shahi has submitted his written statement dated 09.10.2023. In his written statement he has not admitted almost all the points of the petition being false, holding that Forum's order dated 30.08.2023 is in accordance with law. He has also denied that the petitioner is the owner of 0.0903 hectare of the disputed land and the said portion of the land is in his possession. It is also denied that the tin shed has been constructed by him at the site. The fact is this that the petitioner

has no possession of that portion of the land neither any construction is existing at site. The fact is this that the said portion of the land is duly occupied by him (respondent no. 1) and the construction existing there has also been done by him. He has also denied that the portion of land was sold out to him, by some Dr. Jagdish Shahi. The fact is this that the sale deed dated 18.03.2019 has been challenged in the court of law for declaring the said sale deed as null and void. It is therefore clear that a number of cases are pending in Civil and revenue courts about the disputed property. He has also denied that any stay has been granted by Hon'ble Civil Court in the matter of dispute of land. He has also denied that it is wrong to say that he has no right to raise objection on giving connection on the disputed land, the fact is this that he has legal right to raise objection for giving connection to the petitioner on the disputed land. In view of his submissions he has requested that the order dated 30.08.2023 passed by the Forum is a legal one and thus the appeal is liable to be dismissed. He has also submitted that the mutation order dated 30.08.2019 in favour of Shri Ajay Mall has been stayed by Ad. Tehsildar, Dehradun vide his order dated 27.04.2023 and he has therefore submitted that in view of his submissions the appeal is having no force being baseless and is therefore liable to be dismissed. He has also submitted an affidavit with his written statement and other documentary evidence referred in written statement.

6. Respondent no. 2, the Executive Engineer, has submitted his written statement vide letter no. 3228 dated 29.09.2023 along with an affidavit under oath wherein he has submitted that connections up to 10 KW load are released from sub division office. The connection under reference was released by Sub Division Anarwala under the jurisdiction of his division. The SDO concerned has reported that Shri Ajay Mall had applied for a 2 KW connection on 02.03.2023 on the prescribed application form. He has submitted a sale deed of the premises in his favour along with a copy of Khasra Khatauni and his Aadhar card. After submission of the desired documents and depositing necessary charges on 28.03.2023, connection was released to him on 07.04.2023.

After release of connection Smt. Seema Shahi submitted a letter dated 07.04.2023 raising objections on release of the said connection, wherein she informed that there is a land dispute on the premises where connection was released and the case is pending before Court. On receipt of objections from Smt. Seema Shahi, SDO asked

clarification from Shri Ajay Mall vide his letter dated 10.04.2023. Shri Mall submitted his clarification to SDO vide his letter dated 13.04.2023. The respondent Executive Engineer has submitted that the said connection was released by SDO on receipt of desired documents in accordance with UERC regulations. He has substantiated his submissions with documentary evidences such as application for 2 KW load, a declaration, copy of his aadhar card, a photograph of the land, a copy of sale deed, a copy of SDO letter dated 10.04.2023 and copy of letter dated 13.04.2023 of Shri Ajay Mall addressed to SDO and Executive Engineer.

7. The petitioner has submitted rejoinders dated 21.10.2023 on written statement of respondent no. 1 and that dated 21.10.2023 on written statement on respondent no. 2.

**Rejoinder against written statement of respondent no. 1 dated 21.10.2023.**

While maintaining the contentions of his appeal the petitioner has denied para 3 to 10 being false and has reiterated contents of respective paras of his petition. Further against para 11 while he has denied it being false, he has submitted that it is wrong to say that the petitioner is not the occupier neither he was ever a occupier of the premises in past also, under reference and it is also denied that he is using the connection as a tool for establishing his possession on the premises so that he may use this electricity connection in the Civil court for getting the case decided in his favour and it is also wrong to say that he doesn't have any fundamental right to get an electricity connection. It is wrong to say that the petitioner neither resides in the premises nor it is in his possession as he has given his residential address as 206, Scarf Apartment, Jakhan, Dehradun and by giving this residential address his ownership and occupation on the land does not become false. The disputed land belongs to him and he has all rights to get an electricity connection on this land. Against para 12 he has stated that because of some case is pending in a court he cannot be deprived from giving an electricity connection. Further no court of law has issued any order against giving connection to him in the property under reference. The respondents submission that giving electricity connection without order of the Court is against law, is completely unconstitutional submission, he has no right to raise any objection against giving a connection. He has further denied that pending a case in a court of law is not legal basis for denying connection to him in his own property. The connection has been given to him on the land piece or the property purchased by him.

*d.*

Against para 18 he has submitted that the sale deed issued to him is as per law and it has not been declared null and void by any of the Court. It is clarified that no order has ever been passed on 06.01.2019 regarding the said land and there was no stay on the date on which the sale deed was issued in his favour. He has also denied objections under para 19, 20 and 21 also. The objections by the respondent no. 1 have been raised simply to harass him. He is pressurizing him so that he may sell the land to him (respondent no. 1). An stay order has already been passed by Civil Judge, Junior Division in case no. 150 of 2021. He has further stated that the objections raised by respondent no. 1 are completely against law and the constitution. These objections are simply out of jealousy against him and these are not maintainable. He has taken electricity connection on the land owned by him and occupied by him, which is his fundamental right. Further referring to judgment in case no. WPC 890/2022 of the Hon'ble High Court he has stated that as per the said order electricity is one of the fundamental rights for existence under Article 21 of the Constitution of India and the same ruling has been given by Hon'ble Kerala High Court also vide order dated 19.12.2023 in CR-1153-2020. He has submitted affidavit under oath also.

**Rejoinder against written statement of respondent no. 2 dated 21.10.2023.**

The petitioner has submitted that Respondent no. 2 has confirmed vide his letter dated 29.09.2023 (WS) that the said connection has been released by sub division office strictly in accordance with relevant rules, so objections raised by respondent no. 1 are liable to be dismissed.

8. Hearing in the case was held on 20.11.2023. All the three parties appeared and argued their respective case. Apart from oral submissions respondent no. 1 also submitted a written argument which mainly related with pending court cases in various Civil Courts on the property dispute and also reiteration of his written statement on other points of the petition. His written argument dated 20.11.2023 has however been taken on records. The arguments were concluded and 08.12.2023 was fixed for pronouncement of order. The interim stay granted on 19.02.2023 was extended up to 30.10.2023 vide order dated 17.10.2023 and was further extended till 20.11.2023 vide order dated 30.10.2023.
9. All the documents available on file have been perused and arguments from all the parties were heard. Before arriving at a final decision in the instant case it will be

desirable that the following statutory provisions under Electricity Act, 2003, UERC relevant regulations 2020 and the case law of Hon'ble Supreme Court are discussed here as under.

- i) Section 43 (1) of the Electricity Act, 2003 which is reproduced below:

*“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.”*

*Comments: Grant of Electricity Supply The electricity connection can be granted to an owner or occupier of the premises. The word “occupier” has been defined to mean the owner or person in occupation of the premises.”*

As provided for in the above section of the Act, the licensee, UPCL in the instant case is duty bound to give the connection to an applicant whosoever applies for the same. In the instant case the connection has been released by respondent no. 2 as their duty under the above section of the Act and hence it is a legal connection given by the Licensee to the petitioner.

- ii) Chapter 3 Release of new connection, sub regulation 3.1 and 3.3 of UERC (Electricity Supply Code, Release of New Connection and Related Matters) regulations, 2020.

This sub regulation provides that if any person applies on the prescribed format and submits necessary documents as provided in the aforesaid sub regulation the licensee is bound to give him electricity connection within the prescribed time period, if the applicant is the occupier of such a premises where he has applied for a connection. As confirmed by respondent no. 2 in his written statement dated 29.09.2023, the connection to the petitioner was given in accordance with the aforesaid regulation after depositing necessary documents and charges required for the connection and as such the connection under reference given to the petitioner is a legal connection and hence such a connection cannot be disconnected on raising objections by any third party on the grounds of some dispute of the property for which cases are


*d.*

pending in a number of Civil Courts. As such this connection being a legal one cannot be disconnected on objections by respondent no. 1.

iii) The Hon'ble Supreme Court in their judgments in writ petition no. 103/2013 and in Civil appeal no. 7572 of 2011 have clarified that the licensee is duty bound to give connection to any applicant under section 43 of Electricity Act, 2003, if such an applicant is the occupier of the premises where the connection has been applied and connection to any applicant cannot be denied, so this case law of the Hon'ble Supreme Court also provides that connection to any applicant being occupier of the premises cannot be denied and hence in the instant case the Licensee is within their duty to give connection to the petitioner and thus they have given the connection to him as they are bound to give under the provisions of the act, UERC regulations and aforesaid ruling of the Hon'ble Supreme Court.

10. Such being the case the connection given to the petitioner could have not been disconnected, even under the impugned order of the forum, which has not been disconnected under stay orders granted by undersigned, despite of Forum's order dated 30.08.2023. The same Forum order is set aside. The petition is allowed.

Dated: 08.12.2023.

  
(Subhash Kumar)  
Ombudsman