

## Before

### UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

#### In the matter of:

Revision filed under Rule 3 Sub-Rule (3) of The Work of Licensee Rules, 2006 on the Order dated 02.05.2015 issued by the District Magistrate, Udham Singh Nagar (Uttarakhand), under Rule 3 Sub-Rule 2 of The Work of Licensee Rules, 2006 on the representation of Mr. Suresh Kumar Mittal.

#### And

#### In the matter of:

1. Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun, Uttarakhand, through its Director (Projects).
2. Executive Engineer (UPCL), EDD, Sitarganj, District-Udham Singh Nagar, Uttarakhand.

..... Revisionists/Petitioners

#### &

1. District Magistrate/Collector, District-Udham Singh Nagar, Uttarakhand
2. Suresh Kumar Mittal S/o Late Sh. Mangatram, R/o Ward No. 4, Khatima, Tehsil Khatima, District Udham Singh Nagar.

..... Respondents

#### Coram

**Shri Subhash Kumar**

**Chairman**

**Shri C.S. Sharma**

**Member**

**Shri K.P. Singh**

**Member**

**Date of Order: October 21, 2015**

A Revision Petition dated 13.07.2015 was filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "the Petitioner" or "the Revisionist") before the Commission against the Order dated 02.05.2015 passed by the District Magistrate, Udham Singh Nagar (hereinafter referred to as Respondent No. 1) under Sub-Rule 2 of Rule 3 of The Work of Licensee Rules, 2006 on the representation of Mr. Suresh Kumar Mittal (hereinafter referred to as Respondent No. 2), wherein the District Magistrate

directed the Revisionist to pay an amount of Rs. 1,57,900.00 as compensation for the area of land affected by the 33 kV electric supply line passing through the land of Respondent No. 2.

2. The Revisionist in its Revision Petition has submitted that:

- (1) A 12 Km. 33 kV Electric Supply line from 132 kV S/s Badhora to 33 kV S/s Jail camp SIDCUL, Sitarganj was laid and energized in the year 2006-07, which is passing through the land of the Respondent No. 2 in village Turkatissour, U.S. Nagar.
- (2) At the time of erection of the poles and laying of line, objections were received from the public and accordingly, the route was decided and the line was laid, which is in service since then.
- (3) After a time gape of 5 years, a legal notice was received on 11.04.2013 from Respondent No. 2 stating that he is the owner of a piece of land bearing Khasra No. 329/1 measuring 0.234 Ha. and a demand was raised in the said notice that either the electric poles/line from his land be removed or a compensation be given to him for the damages sustained. The Revisionist denied the claim on the grounds that the objection after a span of 5 years is not valid and the line is serving a substantial number of consumers of the area.
- (4) Thereafter, the Respondent No. 2 filed a Writ Petition No. 1675 of 2013 (Shri Suresh Kumar Mittal Vs. UPCL and Ors.) before Hon'ble High Court of Uttarakhand requesting to issue instruction for removal/shifting of poles and pay compensation of Rs. 50 lac @ of 18 lac per Ha. since the entire piece of land has been affected by the line.
- (5) The Hon'ble High Court disposed of the Petition with the direction to the District Magistrate, Udham Singh Nagar (DM) to issue a speaking order after hearing the interested parties including UPCL. Thereafter, the Respondent No. 2 made a representation before the District Magistrate and subsequently

an Order dated 20.05.2014 was issued by the DM wherein following has been held:

“ ...

सन्दर्भित प्रकरण में तहसीलदार सितारगंज से विद्युत लाईन खींची जाने से प्रभावित भूमि एवं सड़क से भूमि की दूरी तथा प्रभावित भूमि का नजरी नक्शा प्राप्त किया गया। तहसीलदार सितारगंज ने अवगत कराया है कि ग्राम तुर्कातिसौर के खाता संख्या 66 में सुरेश कुमार मित्तल पुत्र मंगल राम निवासी रन्पुरा के नाम वर्ग-1 क संक्रमणीय भूमिधारी में खसरा नं० 329/1 रकवा 0.2340 है भूमि दर्ज अभिलेख है, तथा उक्त खसरा नं० के बीच से विद्युत हाईटेक लाईन जाने से सम्पूर्ण भूमि क्षति नहीं हुयी है, वरन 10 से 15 प्रतिशत भू-भाग प्रभावित हुआ है। भूमि में वर्तमान में खेती की जा रही है। उक्त भूमि खटीम-पानीपत राजमार्ग से 1/2 कि०मी० एवं तुर्कातिसौर को जाने वाली रिंग रोड से 100 मीटर से अधिक दूरी पर स्थित है। जिसका वर्तमान सर्किल रेट 27.00 लाख प्रति हैक्टेयर है। works of Licensee Rules, 2006 which have been made under sub-Section (2) of Section 67 of the Electricity Act, 2003 by the Central Government In the said Rules i.e. Rule 3(2) of the Works of Licensees Rules, 2006 में निहित अधिकारों का प्रयोग करते हुए वादी श्री सुरेश कुमार मित्तल की ग्राम तुर्कातिसौर के खेत नं० 329/1 रकवा 0.2340 है० भूमि पर विद्युत लाईन जाने से 10 से 15 प्रतिशत प्रभावित होने के कारण उक्त भूमि का वर्तमान सर्किल रेट 27.00 लाख प्रति है० की दर से कूल रू० 19,79,500.00 जिसका 10 प्रतिशत रू० 1,57,900.00 होता है। उक्त भूमि के मुआवजे के रूप में रू० 1,57,900.00/- का भुगतान किया जा सकता है। उक्त धनराशि का भुगतान वादी श्री सुरेश कुमार मित्तल उक्त को कर दिया जाय।”

- (6) On the above decision of the DM, the Revisionist filed a Revision Petition before the Commission on 08.08.2014 under Sub-Rule (3) of Rule 3 of The Works of Licensee Rules, 2006. The Commission heard the parties and issued an Order dated 02.09.2014 in the matter wherein the matter was remanded back to the DM for passing a fresh speaking order as directed by the Hon'ble High Court covering the views on contentions and arguments advance by UPCL and also lay down the basis of determining the compensation. However, the Respondent No. 1 i.e. DM without holding any proceedings and providing the opportunity to the Revisionist, issued an Order dated 27.09.2014.
- (7) On the above Order of the DM, the Revisionist filed a Revision Petition on 06.02.2015. The Commission heard the matter and issued an Order dated 03.03.2015 holding that:

“ ...

The Commission hereby, Order that the mater be remanded back to the District Magistrate, Udham Singh Nagar for passing a fresh speaking Order, which shall

*cover the views on contentions and arguments advanced by the Revisionist & Respondent No. 2 and also lay down the basis of determination of compensation”*

Thereafter, the DM initiated the proceedings, heard the matter and issued an Order dated 02.05.2015 granting 10% compensation of the value of the land to the Respondent No. 2.

3. Further, the Revisionist has submitted that it has not acquired any land and the said 10% land is still available with the Respondent No. 2 and being used by him, therefore any compensation equivalent to acquisition of land is arbitrary. Besides this, the Revisionist has also submitted that the compensation should be either on damage of crop or yield and not on the cost of the land. Since the Report of Tehsildar does not verify any such damage of crop, therefore, no compensation is payable.
4. The Commission heard the matter and issued an Order dated 30.07.2015 directing Respondent No. 1 to submit copy of the Report of Tehsildar, Sitarganj and all other documents which were relied upon by him in deciding the matter in its order Dated 02.05.2015 latest by 14.08.2015. However, the same was not received by the stipulated date and hence a reminder dated 24.08.2015 was issued to the Respondent No. 1 for submitting the same. The Commission received a letter dated 09.09.2015 on 23.09.2015 alongwith the enclosures related to the case.

### **Commission’s Views and Decision**

5. The Rule 3 of The Works of Licensee Rules, 2006 stipulates that:

*“ 3. Licensee to carry out works.- (1) A licensee may-*

- (a) carry out works, lay down or place any electric supply line or other woks in, through, or against , any building, or an over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;*
- (b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:  
provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of*

*Police or any other officer authorized by the State Government in this behalf, for carrying out the works:*

*Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may be order in writing direct for any such works, support, stay or strut to be removed or altered. "*

6. From the submission made before the Commission, it has been observed that UPCL sought the objections from the Stakeholders before constructing the line and thereafter laid the line. Since Respondent No. 2 did not raise any objection at the time of laying of the line, therefore, permission was not required from the District Magistrate under the 1<sup>st</sup> proviso of Sub-Rule (1) (b) of Rule 3 for carrying out the works. Hence, 1<sup>st</sup> proviso does not apply in this particular case.

7. Further 2<sup>nd</sup> proviso of Sub-Rule (1) (b) of Rule 3 provides that if any time the owner shows sufficient cause, the DM may direct for removal/alteration of such works.

The Commission is of the view that while the first proviso applies before the work is taken up, the second proviso applies any time during execution of work. The objection raised after 5 years of execution of work cannot be covered by either of the provisos. The words "any time" cannot be read to include a period after 5 years of energisation of line. Furthermore, when a request for removal is received, compensation cannot be granted.

8. Moreover, compensation was decided by the DM on the humanitarian ground, which is not supported by any of the provisions of Rule under which the DM is authorized to fix the compensation.

Though the District Magistrate is authorized to fix a compensation under Sub-Rule 2 of Rule 3 of The Works of Licensee Rules, 2006 through an order issued under Sub-Rule (1)(b) of Rule 3. However, the power of the DM to fix compensation under the Rule is not discretionary or plenary as the same is flowing from Rule 3 (1) of the said Rules and both the provisos of Rule 3(1) (b) under which the compensation has been fixed by the DM would not be applicable on the above grounds stated at para 6 & 7 above.

9. Further as per Rule 15 of The Works of Licensee Rules, 2006 the matter was to be disposed off with in a period of 30 days after hearing the parties, however, It would be pertinent to record here that due to the delayed submissions of documents from the Respondent No. 1 as directed in the Order dated 30.07.2015, the matter could not be decided within the stipulated time frame.
10. In the instant case, works of licensee rules, 2006 notified by Central Government have been applied in absence of these rules having been notified by the State Government. Section 67(2) of Electricity Act, 2003 read with Section 180 Sub-section (2) (b) requires the State Government to notify such rules. A request in this regard has already been made on 08.05.2015. A copy of this order be also served on Principal Secretary (Energy), Government of Uttarakhand to expedite notification of said rules.

Accordingly, the Order of DM is set aside and the Revision Petition is disposed off.

**(K.P. Singh)**  
Member

**(C.S. Sharma)**  
Member

**(Subhash Kumar)**  
Chairman