

## **THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

Shri Vigyan Bikram Shah, S/o Late Shri Shardul Bikram Shah  
10-A, Kalidas Road, Dehradun, Uttarakhand

Vs

1. Shri Surender Singh Pangtey IAS (Retd.), Trustee, Maharaja Narendra Shah Trust, 10-A, Kalidas Road, Dehradun.
2. Executive Engineer, Electricity Distribution Division (Central), Uttarakhand Power Corporation Ltd., 18, EC Road, Dehradun.

Representation No. 12/2009

### **Order**

Shri Vigyan Bikram Shah, (applicant) has filed this representation against the order passed by the Consumer Grievance Redressal Forum, Garhwal zone (Forum) dated 03.07.2009 on a complaint filed by M/s Maharaja Narendra Shah Trust (Trust).

2. Brief facts of the case are that the applicant had been given electricity connection on the premises 10-A, Kalidas Marg, Dehradun. The Trust which has a dispute with the applicant regarding ownership of the said premises filed a complaint before the Forum requesting for immediate disconnection of the electricity connection that had been given to the applicant. Acting on the said complaint the Forum passed the impugned order. According to the applicant he was not impleaded in the proceedings before the Forum and the disputed order was passed without giving him any opportunity to put forth his case.
3. The applicant claims that he learnt of the impugned order only when UPCL's officers went to the said premises to disconnect the supply. The applicant obtained a copy of the impugned order dated 03.07.2009 with the help of the Right to information Act.
4. The applicant has challenged the order both on procedural grounds as well as on merits. It has been alleged that even though the complaint before the Forum was about the connection given to the applicant, the Forum did not implead the applicant in the proceedings and passed the impugned order which adversely affects the applicant's interests without giving him an opportunity of hearing. By doing so the Forum has violated the principles of natural justice. Another procedural irregularity that has been alleged is that one of the signatories of the impugned order is a Trustee of Mahraja Narendra Shah Trust, the complainant, and thus had interest in the matter agitated before and decided by the Forum. Being an interested party, the said member should not have heard or decided this complaint. On merit it has been claimed that the applicant is the

rightful owner and occupier of the premises 10-A, Kalidas Marg, Dehradun and is therefore entitled to obtain electricity connection from UPCL. The applicant's grievance is that notwithstanding his right to get electricity supply the Forum has wrongly got his supply disconnected.

5. The representation has been contested by the respondent no. 1, the Trust. A written reply has been filed by Respondent no. 2, the Executive Engineer, UPCL who has supported the applicant's contentions and has stated that the complaint filed before the Forum by the Trust was not about the connection earlier given to the Trust but related only to the connection given to the applicant. Such complaint filed by a third party could not and should not have been entertained by the Forum as per provisions of the Electricity Act, 2003. It has also been stated by respondent no. 2 that the dispute between the applicant and the Trust is a private dispute about their rights over the said property and is required to be decided by the concerned Courts and not by the Forum.
6. I have gone through the documents on file and have heard the parties. The procedural objections raised by the applicant are being taken up for decision first. A plain reading of the complaint dated 12.01.2009 filed by the Trust before the Forum leaves no doubt that the grievance taken to the Forum was only about the connection given to the applicant by UPCL and the request contained in the said application was to cancel the applicant's connection, take action against concerned officials of UPCL and grant damages to the Trust. Section 42 (5) of the Electricity Act, 2003, envisages the Forum to redress grievances of consumers. The Trust had not approached the Forum with any grievance that it had against UPCL as a consumer. Instead it had approached the Forum only with a complaint pertaining to UPCL's action relating to a third party, i.e. the applicant in these proceedings. The Forum has not been established or empowered to entertain from any consumer third party complaints if they do not pertain to the complainant's own relationship with UPCL as its consumer. The Forum has erred in entertaining such third party complaint.
7. In the impugned order the Forum has not dealt the complainant's request for action against UPCL officers or grant of damages to the Trust, but has examined and given its finding on the request for cancellation of the allegedly illegal connection to the applicant. The Forum could not have been unaware that their decision on this request would adversely affect the applicant's interests. Still the Forum did not find it necessary to make the applicant a party to the proceedings before it or to hear him before passing any order on the Trust's request. By not giving the applicant opportunity to put forth his case and passing this order behind his back, the Forum has undoubtedly deviated from the basic principle of natural justice. This has also vitiated the proceedings before the Forum and the order passed by it.
8. The next procedural objection that has been raised pertains to the conflict of interests. It has been alleged that one of the members of the Forum who heard the matter and signed the impugned order is Shri S. S. Pangtey, who is also a Trustee of the Maharaja Narendra Shah Trust, the complainant in this matter. This fact has not been disputed either by respondent no. 1 or Shri S. S. Pangtey who was sent a copy of the representation filed by the applicant. Shri Pangtey's membership of the Trust may not automatically vitiate the proceedings or affect the merits of the impugned order but his interest in the Trust and its complaint is too obvious to be ignored. By choosing to hear this matter and decide it, even though the complainant was the Trust of which Shri Pangtey is a Trustee, the

Forum has strayed from the well accepted principle that “justice should not only be done but should also be seen to be done”. Shri Pangtey’s involvement in deciding the Trust’s complaint has understandably raised doubts in the mind of the applicant about the fairness and objectivity of the Forum’s action. Not impleading the applicant in the proceedings even though his interest was directly being attacked in the complaint, has only reinforced these doubts. The Forum has certainly erred on this issue.

9. The impugned order examines merits of the applicant’s claim of ownership over this property and concludes that the electricity connection has wrongly been given to the applicant. It then directs UPCL to restore supply of electricity to the Trust and deal with the applicant’s connection in accordance with UERC Regulations. I have carefully gone through the complaint filed before the Forum on behalf of the Trust. The complaint is only about the connection given to the applicant and not about discontinuation of supply to the Trust. It is not clear how the Forum concluded that the supply to the Trust has been discontinued and needed to direct its restoration. If the supply to the Trust had actually been discontinued the reasons for doing so will have to be in conformity with the relevant Regulations issued by the Commission. For this the Trust should have filed before the Forum a complaint against disconnection and sought restoration of supply to it. There is no such mention in the complaint filed before the Forum and the prayer made is only for disconnection of supply to the applicant. Accordingly the Forum’s directions to UPCL for restoring supply to the Trust is uncalled for and has been issued without examining facts relevant to such nonexistent disconnection.
10. As stated above the Forum’s order extensively deals with the applicant’s claim of ownership and reaches an adverse conclusion about the same and concludes that the applicant not being the legal owner of this property, UPCL should not have given electricity connection to the applicant. The ownership dispute between the applicant and the Trust cannot be gone into and decided by UPCL or by the Forum. Such disputes have to be decided in the appropriate Court and it is understood that the matter is already being so considered. UPCL has rightly not involved itself with examining merits of the ownership claims of the two parties. Forum has assumed upon itself this responsibility and by doing so has exceeded its jurisdiction under the Electricity Act, 2003 and the Regulations framed there under.
11. The Uttarakhand Electricity Regulatory Commission has issued detailed guidelines to be followed in dealing with grant of new LT connections. Regulation 4 (a) (v) reads as follows:

*“(v) An applicant who is not an owner but an occupier of the premises shall along with any one of the documents listed at (i) to (iv) above also furnish a no objection certificate from owner of the premises.*

*Provided that in case the applicant is unable to submit any of the document listed at (i) to (v) above then the applicant shall be charged thrice (except for BPL consumers) the amount of security as per Table 1 given in Regulation 5(10) and clause (iii) of Regulation 5 (10) respectively. The owner of the premises, if different from the applicant, shall not be liable for payment of any due against such connection.*

*Provided further that in cases covered under first proviso, the licensee shall have the right to review and re-determine security twice in a year i.e. on 1st April and on 1st October every year and make adjustments for the same in electricity bill for next billing cycle”.*

12. Considerable emphasis has been placed on the fact that the applicant had sought electricity connection as owner of this property. While this claim is yet to be decided by a competent court, the Forum has examined and concluded that this claim is false. A party claiming ownership rights over the property cannot be expected to seek electricity connection in any different capacity till such time that its claim is declared invalid by a competent court. Therefore the fact that the applicant had sought electricity connection as owner of the property, a claim which no competent court but only the Forum has examined and found invalid, does not debar the applicant from being given electricity connection and supply by UPCL. Even if a competent court was to find that the applicant does not have ownership rights over the said property, the applicant would still be entitled to get electricity supply from UPCL as a person who is not the owner of the property but in occupation of the same. The provisions reproduced above clearly provide so. If such a person is able to furnish a “no objection certificate” from the owner, he is required to pay security deposit as given in Regulation 5. If he is unable to furnish a “no objection certificate” from the owner, even then he is entitled to get the connection and the only difference being that the security that UPCL can seek from such a person will be higher as stipulated in the proviso and the actual owner of the premises will not be responsible for any dues arising out of such connection. Such being the case all that UPCL can ask for from the applicant is the enhanced amount of security deposit if the Trust is found by a competent court to be the owner of these premises, and then any dues pertaining to the applicant’s connection will not be the owner’s, that is the Trust’s, responsibility. An application obviously could not at the same time be dealt with as that from the owner that the applicant claims to be or from an occupier as stipulated in Regulation 3 (a) (v) and its provisos. Accordingly Forum’s action in first deciding the ownership question against the applicant and then faulting his application based on such finding is uncalled for and irrational. As stated above Even if the applicant has no right in this property and is occupying the same without the actual owner’s consent, he is entitled to and UPCL is legally bound to give him electricity connection as long as he fulfils the conditions stipulated in the first proviso of Regulation 3 (a) (v). UPCL of course can protect its own interest by seeking enhanced security deposit. Forum’s conclusion holding that the connection should not have been given is faulty and cannot be upheld.
13. For reasons discussed above the Forum’s impugned order suffers from following infirmities;
  - a) a complaint regarding a matter concerning a third party has been entertained when the Forum has been created for removal of grievances of the consumers themselves.
  - b) the applicant who is directly and adversely affected by the impugned order has not been heard before passing the order.
  - c) in spite of obvious conflict of interest the matter has been heard and decided by a member who is a Trustee of the complainant and had indeed complained about this very issue to Executive Engineer, UPCL under his own signature on 24.12.2008.

- d) even though not mentioned anywhere in the complaint filed before it, the Forum on its own has issued directions for restoration of supply to the Trust, though no such relief had been asked for by the complainant and the supply had not been discontinued.
  - e) the Forum has totally ignored the first proviso of Regulation 3 (a) (v) and has arrived at a conclusion which is totally at variance with these Regulations issued by the Commission.
14. For reasons given above the Forum's impugned order dated 03.07.2009 is hereby set aside. This order only upholds the applicant's right to get electricity supply as stipulated in the Electricity Act, 2003 and UPCL's action in giving such supply through the connection given to the applicant for this purpose. This order does not in any way determine or lend support to the ownership claims of either party. The same has to be examined and decided only by a court empowered to do so.
15. The Trust's complaint to the Forum and the latter's action in entertaining and allowing the same, has caused unnecessary and avoidable harassment to the applicant. The Trust is accordingly directed to pay to the applicant by way of costs a sum of Rs. 10,000.00 only.

Dated: 15.06.2010

Divakar Dev  
Ombudsman