

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Sampat Singh Negi
S/o Shri Khajan Singh
45-A, Shivlok Colony, Nayi Basti,
Ladpur, Dehradun, Uttarakhand

Vs

1. Uttarakhand Power Corporation Ltd.
VCV Gabar Singh Bhawan, Kanwali
Road, Dehradun
2. The Executive Engineer, Electricity
Distribution Division (North),
Uttarakhand Power Corporation Ltd.,
18, EC Road, Dehradun

Representation No. 07/2016

Order

The petitioner, Shri Sampat Singh Negi has filed this appeal against the order dated 18.04.2016 of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) in his complaint no. 196/2015. The petitioner had filed the complaint before Forum for cancellation of recovery proceedings against him in respect of connection no. 68320 in rented accommodation no. 43, Birgirwali, Rajpur, Dehradun where he had been staying as a tenant from 1987 to 1991.

2. The case in brief according to Shri Sampat Singh Negi, is that he had taken an electricity connection as a tenant since the Landlady Smt. Hridyesh Jain did not have an electricity connection in her house. His own house was constructed in 1991, he decided to vacate the rented accommodation and hand over the connection to the Landlady who assured him that she would get the connection transferred to her name and till that is done continue to pay the dues. The petitioner has maintained that this receipt from the landlord was deposited with respondent along with an application that he had vacated the house (No such record or evidence has been filed regarding application given to respondent). The petitioner has informed that on 22.01.2016 he received recovery letter no. 1441 dated 22.12.2015 from respondent no. 2, Executive Engineer, UPCL for a sum of Rs. 94,610.00 in respect of connection no. 68320 for the

above mentioned address namely 43, Birgirwali, Rajpur, Dehradun. On his approaching respondent no. 2 for details regarding recovery he was informed that no details are available but that the connection had been permanently disconnected on 26.03.2007 but prior to that an outstanding of Rs. 85,979.00 was pending against this connection. The petitioner in these proceedings tried to highlight many lacunae in the working of the UPCL, namely, that the connection continued without any payment from 1991 to 2007 but when the connection was permanently disconnected in 2007, recovery notices were issued 8 years later in 2016, that the meter and cable were missing from site while this amount was outstanding. Petitioner has also highlighted that as per Regulations 4.1.1 of UERC (The Electricity Supply Code) Regulations, 2007 the connection should be permanently disconnected if no payment is made for over 6 months. Further petitioner has also alleged that recovery proceedings are time barred under section 56 (2) of Electricity Act, 2003 and that the Forum have erred in not giving him any relief from the recovery proceedings and hence Forum order needs to be set aside and recovery proceedings quashed.

3. Forum in their order dated 18.04.2016 have elaborated that they caused opposite parties UPCL to conduct an inspection of the premises in which the petitioner had his connection in order to ascertain:
 - i) How many connections had been released for these premises and whether after connection of Shri Sampat Singh Negi was disconnected, any new connection had been released.
 - ii) How has landlord been using electricity in this part of the house while arrears outstanding against this connection have still not been paid.
4. The inspection report pointed out that at present (25.02.2016), 2 connections were existing in these premises. 1st connection no. 7011111045019 which was released in favour of Shri Sheel Chand Jain on 17.12.1984 and 2nd connection no 7061116121057 was released in favour of Smt Hridyesh Jain on 30.08.2011. Consumer history of these two connections was also submitted along with the inspection report. It was also pointed out that between 1990 and 2010 no new connection was released nor was any old connection disconnected. The Forum, therefore, found on the basis of site inspection, that connection no. 7011111068320 of Shri Sampat Singh Negi had not been disconnected as claimed by him and no evidence to this effect was found from

the site inspection. Further, since the petitioner was unable to produce any documentary proof regarding payment of electricity bills or connection disconnection fees nor any action as per UERC (The Electricity Supply Code) Regulations, 2007 and hence the Forum dismissed the application

5. Respondent in their written statement have argued that Forum order is as per provisions of Law and need not be interfered with. They have further claimed that while bill against this connection for the period 27.01.2007 to 13.03.2007 (date of disconnection) for consumption of 310 units and arrears was issued, due to nonpayment on 13.03.2007 and at reading 12790, connection was temporarily disconnected. Further since the above payment was not made, connection was permanently disconnected at which time the meter and cable were not found on site. Recovery in lieu of cable and meter and including disconnection charges and LPS for a maximum of 8 months @ 2% was levied, hence a bill of Rs. 85979.00 was pending for realization from the petitioner. Notice u/s 3 was issued for this amount on 15.03.2014, including postal charges a sum of Rs. 86009.00 (and RC for this amount was issued on 22.12.2015). The petitioner's allegation that the respondent took four years to permanently disconnect the connection on 25.12.2011, is wrong because the reading on which connection was temporarily disconnected on 13.03.2007 is the same reading on which it was permanently disconnected in 2007 and hence petitioner is liable to pay the said demanded amount.
6. Respondent were requested to give details regarding bills issued from 1997 to 2007 along with payments made against such bills and date of removal of meter and cable and photo copy of MB. Respondent filed copy of bill ledger for old and new meter from 2001 to 2007 and informed that no material was found at site at the time of finalization of permanent disconnection. The bill ledger as well as the response of the respondent indicate that the bills were being issued by respondent regularly in the period 1991 to 2007 and payments have also been made in some cases. As per information gleaned from the bills and bill register the meter was changed in September 2001. Sealing certificate of the changed meter is not available and it is therefore not possible to conclude reasons for change of the meter but it is clear that connection was alive and was continuously in use since a payment of Rs. 846.00 was made on 13.11.2001.

7. The case of the petitioner rests on the premise that since he had vacated the rented accommodation on 15.10.1991 and handed over the electricity connection to the landlady who had assured him that she would get the connection transferred in her name and that such an application was made to UPCL. However no evidence of such application having been filed before UPCL has been placed on record. The connection not only continued unobstructed up to 2001 when the meter was changed but after the change of meter it again continued to be used and occasionally payments were made. Petitioner has also made issue of another connection having been given in the same premises while one connection with over dues outstanding was already existing. It has been pointed out by the respondent along with evidence thereof that 2 connections in these premises in addition to the petitioner's exist. The one connection issued to Shri Sheel Chand Jain was released in 17.12.1984 (much before release of connection to the petitioner in 1987). The second connection was released to Smt. Hridiyesh Jain on 30.08.2011. Both are in separate premises. The number of the premises occupied by Shri Sampat Singh Negi is 43A whereas the premises for which connection was released on 30.08.2011 is 52. This point therefore is not relevant to the existing case and to establish liability for payment. The petitioner has been at pains to establish culpability of the respondent in having continued with connection till 2007 when payments were not being made. However as already explained above payments were being made and laxity on behalf of respondent in not disconnecting connection promptly for nonpayment cannot be an argument for avoiding payment by a consumer legitimately receiving electricity supply and having undertaken to pay.
8. While petitioner has claimed that he vacated the premises in 15.10.1991, no evidence for this have been filed. However even if it is assumed that he did in fact vacate on the said date the Regulations applicable to disconnection will be Regulations of 1984 which provide in para 20 as under

“20. Notice of vacation of premises-

The consumer desirous of vacating the premises where the supply was taken, shall give to the Supplier a notice in writing of not less than fourteen days to disconnect the supply. On receipt of such notice, the Supplier shall cause the meter reading to be taken and shall serve the bill to the consumer who shall pay the amount of the same within time. If the consumer fails to pay the dues, it shall be adjusted from

the security deposited by the consumer. The consumer shall, however, be responsible for the energy consumed in the premises till the date of final disconnection of supplied and for the safety of the Supplier's apparatus. The Supplier shall, however, have the discretion to accept any shorter notice."

9. It is clear from the above that the petitioner has not complied with the Regulations at the time of his vacating the premises as claimed on 15.10.1991. Even during the pendency of this petition he has filed no evidence to support his claim that premises were indeed vacated by him in 1991 and no liability for consumption against the above connection rests on him since he had handed over vacant possession to Landlady. Further not having made the Landlady Smt. Hridiyesh Jain a party in this case it has not been possible to address these concern/clarifications to her so that the veracity of the claim that an informal arrangement between former tenant Shri Sampat Singh Negi and the Landlady Smt. Hridiyesh Jain had indeed been arrived at according to which the Landlady had undertaken to pay the dues against the said electricity connection. This taken together with provisions of Regulation 20 quoted above establish clearly the responsibility of the petitioner to pay dues as claimed by the respondent till the time of permanent disconnection.

10. Petitioner has also claimed relief under section 56 (2) of the Electricity Act, 2003 and sub Regulation 3.3.1 (5) of UERC (The Electricity Supply Code), Regulations, 2007 claiming that this recovery being beyond period of limitation of 2 years is time barred.

The petitioner's claim under above sub Regulation and section 56 (2) of the Act is not maintainable in this case as the dues have continuously been shown as arrears in the bills and so the liability to pay was continuously due. The limitation of two years under aforesaid statutory provisions is thus not applicable in instant case. The limitation in the case is also not applicable as per following ruling of the Hon'ble High Court of Delhi in W.P. (C) 8647/2007 in Jingle Bell Amusement Park P. Ltd. vs North Delhi Power Ltd. in this regard is clear as will be evident from below:

"5. The question as to when the electricity charges become first due is no longer res integra. The Single Judge of this Court in H.D. Shourie Vs. Municipal Corporation of Delhi 32 (1987) DLT 73 held that the electricity charges become due and the limitation for recovery thereof commences only when the bill therefore has been raised. The Division Bench in appeal reported as MCD (DESU) Vs. H.D. Shourie 53

(1993) DLT 1 reiterated that liability to pay accrues when liability is quantified and bill is raised.”

11. Further he has also claimed that as per provision of Section 4.1 1 of the UERC (The Electricity Supply Code) Regulations, 2007 if dues are not recovered in six months the connection of the consumer shall be permanently disconnected.

The above sub Regulation provides for permanent disconnection within six month of the temporary disconnection due to nonpayment of dues. In the instant case temporary disconnection was done on 13.03.2007 and permanent disconnection was done on 26.03.2007 so requirement of the aforesaid sub Regulation has been fulfilled by the respondent. However, the PD order in which accounts are finalized was issued on 25.12.2011 for which no limitation of time has been prescribed in the said Regulation.

12. It is therefore established that the petitioner is liable to pay the dues as per demand raised by the respondent for which RC u/s 5 has already been issued, he is directed to pay the same. Forum order is upheld. The petition is dismissed.

Dated: 10.08.2016

(Vibha Puri Das)
Ombudsman