

BEFORE THE ELECTRICITY OMBUDSMAN
(For the State of Goa and Union Territories)
Under Section 42 (6) of the Electricity Act, 2003

3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18
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, Email ID: ombudsman.jercuts@gov.in
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Appeal No-203 of 2023

Date of Video Conferencing: 8.11.2023

Date of Order: 10.11.2023

Smt Merelina B.S.Das.

.... Appellant

Versus

1. Chief Electrical Engineer, Electricity Department, Govt. of Goa, Vidyut Bhavan, Panaji, Goa
2. Executive Engineer, Electricity Department, Govt. of Goa
3. Assistant Engineer, Eect S/D-I, Nanerwada, Pernem Goa

.... Respondent No 1

.... Respondent No 2

.... Respondent No 3

Parties present:

Appellant(s)

Mr Antonio Alvares Husband of Smt Merelina B S Das

Respondent 3

Mr Vattu Sawant Assistant Engineer (O&M), Sub Division No 1, PERNAM

ORDER

This representation was filed on 18th October, 2023 by Smt Merlina B S Das. under Section 42(6) of the Electricity Act 2003 read with Regulations 32 & 33 of Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations against the order in case No. **22/2023/106** dated 11.09.2023 passed by the Ld. Consumer Grievance Redressal Forum (CGRF), Goa. The Appeal No 203 was admitted on 25.10.2023.

After scrutiny of the documents in support of their representation. the Ombudsman has issued admission notice dated 26-10-2023 in the above said appeal filed by the appellent.

It has been mentioned in the said notice that above mentioned appeal/ representation received on 18.10.2023 by email/ by hand has been admitted for examination and consideration on 25-10-2023. The Ombudsman directed Respondent No.1 & 2 to file reply to the representation for the grant of New commercial Connection in view of the order dated 11-09-2023 passed by Ld. CGRF, Goa within 10 days and also directed to file reply to the appeal / representation within 20 days.

The reply received from Assistant Engineer, Elect., Sub Div-I, Pernem – Goa (Respondent No 3) on 3.11.2023.

Mr Antonio Alvares, Husband of Smt Merelina B S Das has also filed the rejoinder vide his Email dated 7.11.2023 in reference to the comments/reply submitted by the Assistant Engineer Sub Division -1, Penam Goa.

Another representation was also received from Mr Lourenco Reberio, Secretary, Village Panchayat Dhargalim requesting therein to intervene in appeal no 203.

After examining all the representations and the reply submitted by Respondent No 3 the e-hearing was held through video conference on 8.11.2023. Parties were heard at length.

The submissions of the Appellant are as below: -

1. Smt Merelina B S Das, applied for a commercial electricity connection in her name for the Restaurant & Bar. It has been submitted that her Grandfather Mr. Lourenco Dias was permitted to run a licensed Taverna (Bar and restaurant) by the Portuguese Authorities. Later when the Goa Excise Act 1964 came into force, the same was incorporated as a Bar and Restaurant under license No. FCL- 01.

2. Subsequently, in 2011 this license was transferred in the name of appellant.
3. In the meantime, a Civil suit (Civil Suit No 34/2013) was filed by the Head of the family which owns rest of the property described in the Form I & XIV which surrounding this suit structure and appurtenant land (Bar and Restaurant) claiming the structure as his. The suit is still pending before the session Court at Panaji, Goa.
4. On 12th May 2023 she applied for New Electricity Connection online, paid the requisite amount and the later handed the file with original documents to Electricity Department, Goa.
5. Electricity Department, vide their Email dated 27.07.2023 informed her that as per form I & XIV she must produce N.O.C. from Shri Bhika Sitaram Naik and Prabhakar Bhika Naik as occupants and Pernem Municipality having other rights in the property.
6. Thereafter she preferred a complaint in CGRF Goa for seeking relief and Ld. CGRF Goa passed the orders on 11.09.2023 by allowing the LTC connection (LT Commercial) as an adhoc measure subject to the final outcome of the Title dispute.
7. Electricity Department, Goa released a LTTC (Temporary Commercial) connection instead of LTC (Permanent Commercial connection).
8. Having aggrieved with this action of Electricity Department Goa, she preferred an appeal with Ombudsman, Joint Electricity Regulatory Authority.
9. She has also submitted a counter reply to the reply of Respondent No 3 which is taken on record.
10. Appellant has also filed Objection to the intervention sought by the village panchayat of Dargalim vide his Email dated 09.11.2023 in his objection the appellant has placed on record two documents one is the Dept of Land Survey record (Form I & XIV) showing that the erstwhile Camara Municipal de Pernem (Pernem Municipality were once the owners of the structure). This is indicated in the "Other Rights" column. "Pernem Municipalitycha Malkichi Imarath Ahe" (Malkichi -means owners)
11. Secondly there is a letter on record send by the Chief officer of the Pernem Municipal Council to the Village Panchayat of Dargalim that "there is no document of transfer of Building in Survey No. 19/1, Situated in Mahakhazan in the name of Village Panchayat, Dhargalim in the records of this Pernem Municipal Council".



The submissions of the Respondent 3 are as below: -

1. Electricity Department Goa has released a temporary connection in accordance with the orders passed by Ld CGRF by interpreting the abstract of order "The Department shall release the service connection sought by the complainant within fifteen days from the receipt of this order, purely as an adhoc measure and subject to final outcome of the title dispute".
2. It is an admitted fact that appellant had applied for an LTC connection but they have considered an LTTC connection.

The submissions made by Mr Pravin Naik representing Mr Lourinco Reberio, Secretary, Village Panchayat Dhargalim, PERNEM, GOA.

There was an Email received in the office of Ombudsman, JERC from the Secretary, Village Panchayat Dhargalim, PERNEM, GOA stating that they want to intervene in this matter. Though they were not party to the proceeding in CGRF Goa but in view of Section 36 (2) and in the interest of natural justice an opportunity was given to Secretary Village Panchayat, Dhargalim, Pernem, Goa to appear on 8.11.2023 through video conference. Accordingly, Mr Pravin Naik represented on behalf of Secretary, Village Panchayat, Dhargalim, Pernem, Goa and submitted as below:

1. He has sent the CAVEAT Application submitted before Hon'ble High Court of Bombay at Goa and "KARARNAMA" written in Marathi language along with Form I & XIV dated 25.10.2023. All the documents sent through Email have been taken on record.
2. He further submitted that the premise where connection is sought is not in possession of appellant.

Findings

The records submitted by appellant, respondent and Secretary, Village Panchayat, Dhargalim, Pernem Goa have been perused and due consideration have been paid to the submissions by all. The issue that arises are as under: -

- A. Whether the premise, where connection is sought by the appellant is under their occupation/possession or not.



B. Whether LTTC (Temporary Commercial) or LTC (Commercial permanent) connection to be released.

It has been confirmed by the respondent No 3 that he has personally inspected the site along with his staff and found that the premise where connection has been requested is occupied by the appellant. It is only after the site inspection; Electricity Department has processed the connection.

As per Chapter 5 "PROCEDURE FOR RELEASE ON NEW CONNECTION AND MODIFICATION IN EXISTING CONNECTION" clear guidelines are available in JERC Supply code Regulations 2018 but it has been observed that many times occupancy by the incumbent is challenged/contested. There are many judgements on this matter which has clarified that Electricity is a basic need for any occupant and Electricity connection should not be denied if NOC is not issued by the owner/landlord. The Ombudsman is relying on the following judgements passed by Hon'ble Supreme Court and Hon'ble High Court of Calcutta, Delhi and Punjab & Haryana

In view of the judgement passed by Hon'ble Apex Court in the case titled as **Dilip (Dead) Through LRS v. Satish & others SLP No.8917 of 2019** on 13.05.2022 held that electricity is a basic amenity and the occupier cannot be denied the same. Relevant portion of the judgment is reproduced herein below:

It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question.

In another case, Division bench of Hon'ble High Court of Calcutta in the matter of Santosh Jaiswal Vs CESC Limited in WP No 3794 (W) of 2008 decided on 22.07.2008 wherein, while interpreting the scope of Section 43 of the Electricity Act in the light of section 12 (6) of The Indian Electricity Act, 1910, the High Court of Calcutta dealt with the issue as under: -

17. Applying the literal rule, there appears to be no doubt that an occupier of a premises meaning thereby a person in possession thereof, in terms of section 43 of the new Act, is entitled to supply of electricity on request being made to the licensee and once electricity is supplied and he bears the charges therefor, he becomes a consumer of electricity. The duty of the licensee is to supply electricity,

i.e., sell electricity. However, duty and/or obligation of the licensee to ascertain whether the prospective consumer is in lawful occupation or not is not discerned in the statutory provisions.

Similarly, in case titled as Pradeep Kumar Vs BSES Yamuna Power Ltd in case No W.P.(C) 15525/22 Hon'ble High Court of Delhi has ordered as under: -

- i. The petitioner shall make an application for grant of a fresh electricity connection within seven days from today.*
- ii. The respondent No. 1 shall process the said application for restoration of electricity connection forthwith without insisting on a NoC from co-owners.*
- iii. The petitioner shall comply with all the codal and commercial requirements of the respondent No. 1.*
- iv. The petitioner shall also deposit a sum of Rs.10,000/- with the respondent/BSES in addition to the regular security deposit that he is required to make under the rules or regulations.*
- v. The petitioner shall pay the consumption charges in accordance with the bills raised by the respondent No.1/BSES from time to time/till the time he occupies the subject premises.*
- vi. The petitioner shall not seek adjustment of the security deposit. However, on the petitioner vacating the premises and surrender of the electricity meter, he shall be entitled to refund of the security deposit subject to adjustment of any dues of the respondent No. 1.*
- vii. The respondent No.1/BSES shall be entitled to disconnect the electricity supply in case the petitioner fails to pay the electricity charges.*

8. It is clarified that this order is without prejudice to the rights and contentions of the parties and shall not be construed as recognizing rights of any nature whatsoever, including either the ownership, title or possessory rights of the petitioner with respect to the subject premises. It is also clarified that no special equities shall flow in favour of the petitioner on account of this order.

9. The writ petition is disposed of in the above terms. Pending application, if any, is disposed

of as infructuous.

Further, in the judgement passed by Hon'ble Punjab and Haryana in the matter of" **Mobin Ansari verses Punjab State Power Corporation Limited and others "reported as 2023 (1) PLR 32.**

31.The aforesaid proofs described in the Supply Code, 2014 are only illustrative and are not exhaustive. It is not up to the Department to contend that in the absence of any of those illustrative documents, it shall not consider any other event or document of possession as a valid proof of possession.

32.In the instant case, the respondent No.3, who is the author of the suit, has specifically admitted possession of the petitioner and such statement has also been reiterated today before this Court. Consequently, this factual aspect of undisputed possession could not have been ignored.

33.The stand adopted by the respondent - PSPCL is based upon a deliberate misreading of the statutory provisions and incorporating in the statute what is not contained therein. This, in my view, amounts to doing violence to the statute. The other documents can also be looked into for ascertaining the nature of occupancy.

34.In view of the aforesaid statutory provision and position of law laid down through various precedent judgments, the conscious departure of the Legislature is well established. The adoption of the interpretation by the PSPCL is contrary to the legislative intent.

35. The present petition is accordingly allowed. The respondents are directed to release the electricity connection within a period of 30 days to the petitioner as per mandate of Section 43 of the Electricity Act, 2003 upon receipt of copy of this order subject to the petitioner complying with the other norms. Petitioner however, is at liberty to initiate appropriate proceedings before the PSERC or any other forum for redressal of his any other issues and grievance, if so advised.

The judgment in the matter of" Omprakash Vs Balkar Singh and others in CR 1153-2020

I have heard learned counsel and perused the relevant material on record.

Admittedly, respondent No.1 has filed a suit for possession of the suit property along with recovery of mesne profits, which is still pending adjudication, therefore, the question as to whether the petitioner is an illegal occupant of the suit property or not, or as to whether he is liable to be evicted or not, would be a matter of trial. The fact of the matter is that the petitioner is in possession of the suit property and still further his eviction has not yet been ordered by a competent Court of law.

It cannot be over-emphasized that electricity being a basic necessity, is an integral part of right to life as enshrined under Article 21 of the Constitution of India. Therefore, as long as the petitioner is in possession of the suit property, he cannot be deprived of electricity.

In the facts and circumstances, without commenting upon merits of the suits instituted by both the parties, the instant revision petition is allowed and the impugned orders are set aside. The electricity connection of the suit property be restored subject to payment of requisite charges by the petitioner, if any, till the final decision of the suit filed by him. It is clarified that the petitioner shall continue to pay the electricity charges regularly.

Anything contained hereinabove shall not be construed to be an expression of opinion on the merit of the suits pending between the parties.

Accordingly, appellant approached Consumer Grievance Redressal Forum (CGRF) Goa and filed a complaint vide case No 22/2023/106

Ld. CGRF Goa vide its order dated 11.09.2023 has decided as under:

1. The complaint is allowed.
2. The Department communication to the complainant dated 14.07.2023 ref No 3/1(gen)/Tech/Per-1/23-24/669 is hereby set aside.
3. The Department shall release the service connection sought by the complainant within fifteen days from the receipt of this order, purely as an adhoc measure and subject to final outcome of the title dispute.
4. The Department shall report compliance to the Registry of this Forum within 30 days thereafter.
5. The complaint stands disposed off accordingly. Proceedings closed.


Decision

In view of the section 37 of CGRF and Ombudsman Regulations 2019,

- A. The appeal/representation filed by the appellant is allowed.
- B. The Order in Complaint No- 22/2023/106 dated-11.09.2023, passed by Learned CGRF-Goa is upheld.
- C. Electricity Department, Goa could have approached Ld CGRF Goa for getting clarification in regard to the term "Adhoc" mentioned in the order rather than mis-interpreting the orders. Release of Temporary and permanent connection does not have any impact on the

cause of action in case any orders are passed by Hon'ble District Court in the Civil matter (34/2013) pending before them for adjudication. However, if the premise where connection is sought by the appellant qualifies for a permanent commercial connection (LTC) and appellant completes all commercial formalities, LTC connection be allowed.

- D. It is clarified that this order is without prejudice to the rights and contentions of the parties and shall not be construed as recognizing rights of any nature whatsoever, including either the ownership, title or possessory rights of the petitioner with respect to the subject premises as Ombudsman has no jurisdiction on Civil matters. The orders passed by the Hon'ble District Court or any other court wherever, the Civil matter is pending for adjudication has to be complied by the Electricity department and appellant.
- E. The Electricity Department/Licensee is directed to submit a compliance report to the office of Electricity Ombudsman on the action taken in this regard within 10 days from the issuance of this Order by email as sufficient time has already lapsed in this case.
- F. In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
- G. Non-compliance of the orders of the Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Commission under the provisions of the Electricity Act, 2003.
- H. The appeal is disposed of accordingly.



(C M SHARMA)

Electricity Ombudsman
For Goa & UTs (Except Delhi)

Dated: 10.11.2023