

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,
Gurugram (Haryana) 122015,
Phone No.:0124-4684708, Email ID: ombudsman.jercuts@gov.in

Appeal No.147 of 2021

Date of Video Conferencing: 16.09.2021

Date of Order: 22.09.2021

Shri Benjamin Fernandes,
Goa

.... Appellant

Versus

The Chief Electrical Engineer,
Electricity Department,
Goa and others

.... Respondents

Parties present:

Appellant(s)

1. Shri Ryan A Dcosta
Appellant's Representative
2. Shri Benjamin Fernandes
Appellant

Respondent(s)

1. Shri Vallabh M. Samant
Executive Engineer



Date of Order: 22.09.2021

The Appellant has preferred an Appeal against the order of the Learned CGRF-Goa in the order no.- CC -27/2021/52 dated-24.06.2021. The Appeal was admitted on 26.07.2021 as Appeal No.147 of 2021. Copy of the same as received was forwarded to the respondents with a direction to submit their remarks/ counter reply on each of the points. A copy of counter reply was supplied to the Appellant who has filed the Rejoinder.

Settlement by Mutual Agreement

Both the parties appeared before the Electricity Ombudsman through Video Conferencing as scheduled on 16.09.2021 and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleading on the matter.

(A) Submissions by the Appellant:

Appellant submitted the brief facts as under: -

1. FACTS OF THE CASE

- a) That the Appellant had entered into Lease Deed dated 4th April 2019 with Shri. Sufiyan Abbas Shaikh alias Sufiyan A. Shaikh and Smt. Nafisa Sufiana Shaikh for leasing out the property known as "Santerimaravoril", situated at Saterimol, village Nirankal, Panchayat of Bethora Nirankal, Ponda, Goa, for the business of agriculture and dairy unit. The Lease period was for a period of 15 years commencing from 02/04/2019 to 01/03/2034. In terms of said Lease Deed Lessee Shri. Sufiyan Abbas Shaikh was to pay all charges of electricity to the electricity department.
- b) The Appellant is the consumer of LTI installation at Nirankal, Ponda under C A No. 60002153363 standing in the name of "Benfils Foods & Beverages"
- c) In the month of January 2021, when the complainant had been to the premises, he found that the Licensee Department had raised the electricity bill dated 08.01.2021 for the period 19.09.2020 to 06.11.2020, amounting to Rs. 2,19,841/-. The complainant found that the said electricity bill of Rs. 2,19,841/- was not paid by the Lessee Shri. Sufiyan Abbas Shaikh.
- d) On the failure to pay the electricity bill by the Lessee Shri. Sufiyan Abbas Shaikh, the complainant immediately on 11.02.2021 wrote to the Licensee Department to disconnect the electricity supply in respect of CA No. 60002153363 standing in the name of "Benefits Foods & Beverages".
- e) The Licenses Department did not reply to the application dated 11.02.2021, but raised the electricity bill dated 03.03.2021 for the period 06.11.2020 to 08.01.2021, amounting to Rs. 3,22,189/-.
- f) Further without replying and acting on the said application dated 11.02.2021, the Licensee Department further raised the electricity bill dated 22.04.2021 for the period 08.01.2021 to



03.03.2021 amounting to Rs. 1,78,773/- and further bill dated 15.06.2021 for the period 03.03.2021 to 15.04.2021, amounting to Rs. 1,89,434/-.

- g) The complainant had also filed application dated 01.06.2021 to the Assistant Engineer, Electricity Department, Div- X, Curti, Sub-Div-II, Curti, Ponda, Goa, application dated 01.06.2021 to Executive Engineer, Electricity Department, Div-X, Curti, Ponda, Goa in respect of the theft of the electrical cable from the pole and theft of all related electrical gadgets by the Lessee Shri. Sufiyan Abbas Shaikh and complaint dated 31/05/2021 to the Police Inspector in respect of the damaging of the factory premises and theft of electrical equipments. Since the Licensee Department failed to act on the said application dated 11/02/2021, the complaint further by application dated 07/05/2021, requested the Licensee Department for disconnection of the electric connection in respect of C A No. 60002153363. The Licensee Department finally disconnected the connection on 23/05/2021.
- h) Since the Licensee Department failed to act on the application dated 11/02/2021 and the subsequent applications, the complaint approached the 'Chairman, Consumer Grievance Redressal Forum, Vasco Goa to initiate necessary action against the Licensee Department for not acting on the application dated 11/02/2021. The Ld. CGRF vide order dated-24.06.2021 has given facility to pay the arrears in installments. The impugned order does not state the actual amount to be paid.
- i) He has prayed for following reliefs: -
- a) In spite of the application dated 11.02.2021, the Electricity Department has not acted on the application and on the contrary, raised the electricity bill dated 03.03.2021 for the period 06.11.2020 to 08.01.2021 amounting to Rs. 3,22,189/- and also further raised for the bill dated 22.04.2021 for the period 08.01.2021 to 03.03.2021 amounting to Rs. 1,78,773/- and bill dated 15.06.2021 for the period 03.03.2021 to 15.04.2021 amounting to Rs. 1,89,434/-, as such the Appellant is not liable to pay the electricity bill raised from the month of March 2021 till date.
- b) The Appellant has therefore prayed that necessary action be taken against the electricity department for not disconnecting of the supply to CA No. 60002153363 and that the Appellant is not liable to pay the bill raised after the date of application for disconnection dated 11.02.2021.

(B) Submissions by the Respondents :

Shri Vallabh M. Samant, Executive Engineer on behalf of the Respondent/Electricity Department-Goa, vide his email dated-13/9/2021 submitted the counter reply as under: -

- a) The said connection is released in the name of M/s. Benfils Foods and Beverages, Prop. Benjamin Fernandes. No lease deed as stated was submitted to this office. The bill was issued to M/s. Benfils Foods and Beverages and the amount was not paid. As the connection was in the name of M/s. Benfils Foods the disconnection notice was issued in the same name vide no. AE/SD II/ Accts-19/ 2020-2021/3059 dtd 22/02/2021. Based on letter dated 11/02/2021 the disconnection notice was served vide letter no. AE/SD II/ Accts-19/ 2020-2021/3059 dtd 22/02/2021 and the bill was raised for the units consumed.
- b) Decision was conveyed by CGRF to pay the outstanding amount in 12 installments and to reconnect the installation within 7 days. Accordingly, letter was written to the consumer



- vide No. AE/SD-II(O&M)/Tech-1C/2021-22/983 dtd. 28/07/2021 for reconnection, however, Appellant has not turned up and hence the same is pending for reconnection.
- c) As per the orders of the CGRF the installment plan was worked out excluding delay payment charges and informed the Appellant vide letter AE/COM/SD II/ DIV X/Accts-77/2021-22/757 dtd. 02/07/2021. The installment plan was also enclosed along with the letter. Efforts were made to hand over the letter to Shri. Benjamin Fernandes, who after reading the same denied to accept the letter, as per JE's remarks. The matter was also brought to the notice of the Chairman, CGRF vide letter no. AE/COM/SD II/ DIV X/Accts-77/2021-22/1083 dtd. 06/08/2021 regarding the non-payment of installment.
- d) Department acted on application by serving disconnection notice dtd. 22/02/2021. The occupant requested and paid Rs. 2,00,000/- (Rupees Two lakhs only) towards part payment and the connection was not disconnected as the owner intimated about entering into a lease agreement.
- e) After expiry of 15 days disconnection notice our JE went to premises, it was found that the factory was working and the person assured to pay the due amount and accordingly paid Rs. 2,00,000/- (Rupees Two lakhs only) towards part payment. Also, during inspection, it was observed that the activity was related to milk products and sudden disconnection would have created loss / spoil the raw material and products.
- f) The supply was finally disconnected on 23/05/2021 from the pole, as there was no access to complainant's premises as gate was locked. The bills raised were based on actual consumption of the energy utilized and need to be paid.
- g) Considering all the above, the Department has acted within the framework of the rules and the consumer is liable to pay the bill amount as the amount raised is as per the actual energy consumption.

(C) Ld. CGRF-Goa order no.- CC -27/2021/52 dated-24.06.2021, preferred for Appeal:

- (i) Ld. CGRF-Goa, has passed the order and relevant part is reproduced below: -

Order.

“Hence, the following order:

1. The complaint is partly allowed.
2. The Department shall recover the arrears against the complainant's installation accumulated as on date in twelve equal monthly instalments without DPC commencing from 01.07.2021.
3. The complainant's installation shall be reconnected within a week from today.
4. Department shall report compliance of the order in the registry of the Forum within 30 days of its receipt.
5. The complaint stands disposed accordingly.”



(D) Deliberations during Video hearing on 16.09.2021:-

1. Appellant's Submission:

- a) Shri Ryan A Dcosta- Appellant's Representative, reiterated his version as submitted in the Appeal, Rejoinder.
- b) He submitted that his lessee has not paid the dues owes to him and he is in financial distress.
- c) He further stressed that since he has informed the Respondents that supply be disconnected, he is not responsible to pay the pending bill as supply was consumed by his lessee.

2. Respondent's Submission:

- a) Shri Vallabh M. Samant-Executive Engineer, reiterated his version as submitted in the counter reply to the appeal.
- b) He insisted that since connection is in the name of the Appellant's firm, they have no concern with any tenant/lessee of the Appellant's firm/Appellant.
- c) He further stressed that pending bills are of actual consumption and required to be paid by the connection holder.

(E) Findings & Analysis: -

1. I have perused the documents on record, CGRF orders and pleadings of the parties.
2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. The only issue which have arisen for considerations in the present Appeal is as under: -
 - i. Whether the Appellant is liable to pay the pending dues for the consumption alleged to be utilized by the lessee of the Appellant or not?
4. Regarding issue no 3(i) as above, as to whether the Appellant is liable to pay the pending dues for the consumption alleged to be utilized by the lessee of the Appellant or not?

(a) Following provisions have been provided in the Supply Code Regulations, 2018, notified by the Hon'ble Regulatory Commission: -

(i) *Permanent Disconnection*

9.7 The supply shall be disconnected permanently in following cases:

- (1) *On the termination of the Agreement;*
- (2) *If the cause for which the supply was temporarily disconnected is not removed within the notice period:*

Provided that if the service of the consumer remains continuously disconnected for



180 days, not being a temporary disconnection upon request of the consumer, the Agreement shall be deemed to be terminated on the expiry of 15 days or after expiry of the initial period of agreement, whichever is later without prejudice to the rights of the Licensee or of the consumer under the Act for recovery of any amount due under the Agreement.

Disconnection on Consumer's Request

9.8 In case a consumer desires his meter to be permanently disconnected, the consumer shall apply for the same in the format prescribed in *Annexure XV* to this Supply Code, 2018. The Licensee shall give a written acknowledgment of receipt of such request, on the spot.

9.9 The Licensee shall carry out a special reading and prepare a final bill including all arrears up to the date of such billing within 5 days from receipt of the request. Upon payment, the Licensee shall issue a receipt with 'Final Bill' stamped on it. This receipt shall be treated as a No Dues Certificate:

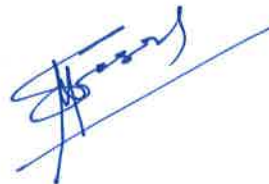
Provided that whenever an agreement is terminated on notice given by the consumer, the Licensee shall give a written intimation within 2 working days after termination in the format given in Annexure XVI to this Supply Code, 2018, failing which such intimation shall be deemed to have been given to the consumer.

Section 7.40: -

"Recovery of Arrears

7.40 No sum due from any consumer, on account of default in payment shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

Further, dues of any consumer (if any) pending for a period more than 6 months can be transferred to another installation of the same consumer after thorough verification by the Licensee, i.e., proof that the both consumers are same."



(b) The format for disconnection has been prescribed at **Annexure XV** in the Supply Code, 2018 as under: -

Annexure-XV

Request for Permanent Disconnection & Termination of Agreement

Service Connection No.....
Name of the consumer:.....
Consumer category:.....
Contracted load:.....
Address:.....
.....

It is requested that the above connection may be permanently disconnected and the relevant Agreement with the Licensee be terminated forthwith.

Note: The following documents are attached with the application form:

1. Copy of last bill
2. Copy of payment receipt of the last bill

Thank you

Signature of the Consumer
Date:.....
Place:.....
Name:
Contact No.
Address Email-Id:

Acknowledgement

Application of.....(name of applicant) complete in all respects for disconnection and termination of Agreement has hereby been received at this office on (date). In this regard, the applicant is given a reference no.....to be used for all future correspondence

Signature / Seal of Licensee's representative
Name and Designation:



- (c) As per above said Regulations, the Appellant is required to submit the Application for Permanent Disconnection along with a copy of the last bill along with the receipt of the payment made of that last bill. However, a perusal of representation dated-11.02.2021, as submitted by the Appellant to the Electricity Department reveals that it is in the shape of a grievance against his lessee rather than in the form of Application for Disconnection.
- (d) As enumerated above, as per Regulations notified by the Hon'ble Joint Electricity Regulatory Commission under section 7.40 of Supply Code, the Distribution Licensee/Electricity Department can only transfer the dues from one premises to another of the same consumer. Neither Electricity Act nor the Regulations notified by the Regulatory Commission empowered the Distribution Licensee/Electricity Department to become the Recovery Agent of a consumer. Electricity Department has an agreement with a consumer for supply of electricity and is not a party to the Rent/Lease Agreement.
- (e) A tenant/ lessee has no privity of contract with the Electricity Department and obviously cannot be asked to pay the pending dues. The connection has been obtained by the Appellant in his name/ firm's name, but it does not give him any right to get the connection disconnected when tenant/ lessee is still there. If the Appellant has any issue with his tenant/ lessee, he needs to sort it out through the due process of law.
- (f) **Hon'ble Delhi High Court in Tata Power Delhi Distribution vs Neeraj Gulati has observed as under in para-18, which is reproduced as under: -**

“18. It appears that the petitioner therein relied upon the judgment of the Supreme Court in the case of Isha Marbles case v. Bihar State electricity Board (1995) 2 SCC 618. The Division Bench insofar as Isha Marbles (supra) is concerned, was of the view that in the said decision the facts were the previous owner of the premises in question had mortgaged/hypothecated the premises to secure a loan from the State Financial Corporation. Since the loan was not repaid, the property was auctioned/sold under Section 29 of the State Financial Corporation Act. The auction purchaser applied for reconnecting of the electricity supply to the premises, which had been disconnected for non -payment of dues by the previous owner. The question arose, whether the auction purchaser had to pay the electricity dues of the previous owner to get restoration of the electricity connection. The Supreme Court held that the Electricity Board had no charge over the property and the Board could not seek enforcement of the contractual liability against the third party. The Division Bench also held that the aforesaid view of Isha Marbles (supra) was repeated by the Supreme Court in Ahmedabad Electricity Company Ltd. (supra).”

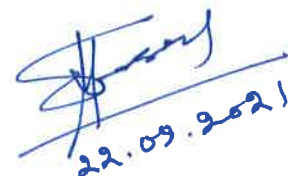
- (g) Electricity Department had served a notice under section -56 of Electricity Act-2003 to clear the outstanding payment but no action was taken by him. Through notice dated-02.07.2021 and 04.08.2021 he was again requested to clear the payment as per instalment plan ordered by the Ld. CGRF, so that reconnection can be done, but no action was taken by him. The supply was temporality disconnected on 25.05.2021, for non-payment of pending dues.
- (h) In view of above discussions, I am of the view that the Appellant is fully responsible to clear the outstanding dues as he has entered into contract with the Electricity Department. The Electricity Department cannot enforce the contractual liability against a third party/Tenant, as alleged by the Appellant. His plea to get the connection disconnected to pressurise the



tenant to vacate the premises is legally not sustainable.

(F) DECISION

- (i) For the reasons discussed above, the appeal of the Appellant is dismissed with no order as to the costs.
- (ii) The Order in Complaint No- CC -27/2021/52 dated-24.06.2019, passed by Learned CGRF-Goa is upheld.
- (iii) If the Appellant fails to pay the instalments as ordered by Ld. CGRF, then he is liable to pay the surcharge on the pending instalments. In the absence of non-payment of instalments/pending dues, necessary action may be taken for Temporarily/Permanent disconnection as per provisions of Supply Code Regulations/Tariff order notified by the Hon'ble Joint Electricity Regulatory Commission and further action for recovery of dues be taken as required.
- (iv) 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.
- (v) The Electricity Department/Licensee should submit a compliance report to the office of Electricity Ombudsman on the action taken in this regard within **30 days** from the issuance of this Order by email.
- (vi) Non-compliance of the orders of the Electricity 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.
- (vii) The appeal is disposed of accordingly.



22.09.2021

(M.P. Singh Wasal)
Electricity Ombudsman
For Goa & UTs (except Delhi)

Dated 22.09.2021