

**BEFORE THE ELECTRICITY OMBUDSMAN**  
**(For the State of Goa and Union Territories)**  
**Under Section 42 (6) of the Electricity Act, 2003**  
**3<sup>rd</sup> 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.140 of 2021

Date of Video Conferencing: 08.04.2021

Date of Order: 15.04.2021

Shri. Neil D'Souza  
Goa

.... Appellant

Versus

The Chief Electrical Engineer,  
Electricity Department,  
Goa

.... Respondents

Parties present:

Appellant

1. Shri Joseph S Vaz-Advocate  
Appellant's representative

Respondent(s)

1. Shri Pradip Narvekar  
Executive Engineer



**Date of Order: 15.04.2021**

The Appellant has preferred an Appeal against the order of the Hon'ble CGRF-Goa order in CC -04/2020/122 dated-08.01.2021 filed by Shri. Neil D'Souza. The Appeal was provisionally admitted on 24.02.2021 as Appeal No.140 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. Appellant was also requested to attend the shortcomings, which he attended on 06.04.2021 and accordingly the Appeal was treated as Regular Appeal. A copy of counter reply was supplied to the Appellant.

**Settlement by Mutual Agreement**

Both the parties appeared before the Electricity Ombudsman through Video Conferencing as scheduled on 08.04.2021 and was 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**

The Appellant states and submits as under:

- (i) The Appellant was a complainant before the Consumer Grievance Redressal Forum (CGRF), against the demand raised by the Respondent No 3.
- (ii) It was the case of the Appellant that, there exist a old structure bearing H.No. 313. The Respondent No. 4 constructed illegal extensions to the said existing house and began operating illegal restaurants and club house without permission from the Petitioner, or the Village Panchayat.
- (iii) That the Appellant immediately on 23/08/2014 lodged a complaint to the Secretary of the Village Panchayat of Candoim village about the said trespass and illegal activities by the said Respondent No. 4.



- (iv) The Village Panchayat gave a notice dated 25/8/2014 to the Respondent No. 4.
- (v) The Village Panchayat by the letter dated 12/09/2014, directed the Respondent No. 4 to stop the illegal constructions.
- (vi) The Appellant also lodged a complaint with the Calangute Police Station reporting the said illegal activities of Respondent No. 4. The Calangute Police Station forwarded the said complaint to the Village Panchayat of Candolim to take required action.
- (vii) The Appellant again wrote to the Village Panchayat on 12/09/2014.
- (viii) The Appellant lodge a complaint with Respondent No. 3 (Asst Engineer) requesting for the disconnection of the electricity connection with respect to the said illegal structure in the property No. 27/7 and that the electricity bill was mounting.
- (ix) The Respondent No. 3 thereafter by a letter dated 30/12/2014 informed the Appellant that the meter stands in the name of one Mr. Ubaldo D'Cunha and as such the meter cannot be disconnected, inspite of the fact that the Respondent No. 3 was informed that the said property belonged to the Appellant and that Respondent No 4 was using the electricity illegally.
- (x) The Appellant thereafter on 9/04/2015 again reminded the Village Panchayat about the illegal activities being carried out by Respondent No. 4.
- (xi) The Appellant states that the Village Panchayat cancelled the Restaurant license of the H.No.313 by the letter dated 1/11/2016 in view of the illegal use of the premises, but the Respondent No 3 did not disconnect the electricity supply, and allowed the Respondent No 4 to continue to use inspite of knowing that the new structure was illegal.
- (xii) In view of the Respondent No.3 not acting, the Appellant wrote a letter to Respondent No. 2 dated 20/02/2018, requesting for the disconnection of the electricity supply; besides attaching deed of sale and form I and XIV in view of letter received from Respondent 3, dated 30/12/2014 stating that the meter stands in the name Mr. Ubaldo D' Cunha.
- (xiii) The Appellants have been begging with Respondents 2 and 3 to disconnect the electricity supply but the reasons best known to them the said Respondents were avoiding to take action against the Respondent No 4.
- (xiv) The Appellant states that in the mean time Respondent No. 4 filed Special Civil Suit (Commercial) No 1/2019 against eviction of the Respondent No 4.
- (xv) The Appellant states that Respondent No. 4 owed large sum of money to the Appellant's father in respect of the resorts and the Appellant's father who is now 80 years old, since the age was catching up and not to leave any litigation to the family, decided to forgo and settle the matter by way of consent terms, and in the said consent terms, the Respondent No.4 who owed large sum of



money to Respondent No. 3 undertook to pay the money to the electricity department. Which matter also came up before the Consumer Grievance Redressal Forum, Vasco in another complaint filed by the Respondent No 4.

- (xvi) The Appellant states that inspite of the above facts known to the Forum, when the Appellant went to file the present complaint, subject matter of this appeal, before Consumer Grievance Redressal Forum Vasco, the Court Clerk informed one of the member telephonically Mrs. Sandra Correia that such a complaint had come, the Court Clerk was asked to read the cause title, thereafter the said Mrs Sandra Correia directed the Court Clerk to instruct me to deleted the Respondent No. 4 or the complaint would not be registered that is how I was forced to bracket the Respondent No 4 as deleted while all the allegations against the Respondent No 4 remained unchanged. At the relevant time my father was present along with Mrs. Jaffrin Johnson.
- (xvii) The Consumer Grievance Redressal Forum disposed of the complaint without considering the facts on record, on the contrary made a remark in the order that subsequently the Appellant deleted the name of Respondent No.4.
- (xviii) The Appellant states that when the instructions were given, to delete the name of the Respondent No 4, along with Appellant was Appellant's father and one lady Mrs. Jaffrin Johnson.
- (xix) It is against the said order that the present appeal is filed on the following grounds without prejudice to one another

### G R O U N D S

- (i) The order states that the Appellant's case is that his father is an owner of the property 27/7, when such facts have not been pleaded at all. It is not understood from where the Presiding officer obtained such facts.
- (ii) The Appellant states that the complaint also does not speak of any lease and yet the said facts have been found incorporated in the order.
- (iii) The reply filed by Respondent No. 3 does not state that the father of the Appellant is the owner of H.No 313 of Sy No. 27/7 yet contrary findings to the reply are found in the impugned order.
- (iv) The Respondent No. 3 was bound to give breakup of the arrears once the demand was raised and the question does not arise that such breakup ought to be asked, such findings of Consumer Forum are erroneous.
- (v) The order states that in the consent decree that Respondent No. 4 have stated that they have cleared all the electricity bills due and payable as on 31/5/2019 and there are no dues to be paid to Respondent No. 3, ignoring the undertaking given to the department in appeal filed by Respondent No 4, that the Respondent No 4 has stated that any dues are pending will be paid on final decision of the appeal filed by the Respondent No , 4 in the meantime the Respondent No.4 deposited part payment with the Respondent No 3.
- (vi) The order speaks of non application of mind and have not taken into consideration that admittedly it was Respondent No 4 who was using electricity supply for illegal activities and inspite the directions of Village Panchayat to disconnect the supply, Respondent No. 3



- avoided to take actions against Respondent No. 4 , inspite of the documentary evidence, it is the Respondent No. 3 who refused to act.
- (vii) The Consumer Grievance Redressal Forum order dated 8/01/2021 is liable to be set aside.
  - (viii) This forum has the jurisdiction to entertain this appeal, the order was passed on 8/1/2021, the copy was received on 12/01/2021 and therefore the appeal is within the period of limitation.
  - (ix) The Appellant states that the Respondent No 4 is the owner of the property admeasuring 701 sq. mts in survey No 178/2-G, Village of Candolim, wherein the Respondent No 4 is running a Resort by name of Royal Mirage Boutique Report situated at Ana Waddo, Candolim, which ought to be taken into account for recovery of the arrears of electricity used illegally.
  - (x) The Appellant states that from the facts of the case stand proved by way of documentary evidence, that Appellant was not at fault and he cannot be saddled with any penalty and as such depositing any penalty will cause undue hardship to the Appellant and hence the same be dispensed with.

The Appellant therefore prays that:

- a) The impugned order of the Consumer Grievance Redressal Forum dated 8/1/2021 be set aside.
- b) That records and proceedings before the Consumer Grievance Redressal Forum at Vasco be called.
- c) Quashing the demands of Respondent 3 dated nil annexure K to the complaint.
- d) For such other orders and directions as this authority may deem fit.

**(B) Submissions by the Respondents :**

Shri. Pradip Narvekar son of Shri Krishna Narvekar aged 57 years, working as Executive Engineer in the Electricity Department Division VI, Mapusa do hereby solemnly affirm and state on oath as under:-

1. That the deponent is working as Executive Engineer, and is authorized by Electricity Department, Government of Goa (being Deemed Licensee) vide letter No. 149/03/CEE/Tech/Com/2279 dated 05/03/2021 (Certified copy enclosed), to file this reply and represent on behalf of Electricity Department, Government of Goa, in this case.
2. Facts of counter reply are as follows:
  - The Appellant had first requested for disconnection on 18/12/2014 (Annexure 'F' of the Appeal documents)
  - The Sub divisional Engineer had then vide letter dated 30/12/2014 replied to the Appellant that the same cannot be carried out as the connection stood in the name of Shri. Ubaldo D'Cunha (Annexure 'G' of the Appeal documents)

- The Appellants father Shri. Aubrey D`Souza had a lease deed with M/s Aadarsh Hospitalities of which the pre-nises in question (i.e H.No. 313) was a part and as an owner had requested for disconnection of 56 connections (including the installation in question that is under appeal) on 8<sup>th</sup> December 2017. The installation in question along with 55 other Installations were accordingly temporarily disconnected on 19/02/2018 which finds mention at page 3 of the CGRF order dated 08/01/2021 (against which the appeal has been filed) (Order No. 04/2020/192 dated 08/01/2021 placed at pages 60 to 65 of the Appeal)
- On disconnection, M/s Aadarsh Hospitalities approached the CGRF at Vasco Goa. The Hon`ble forum thereafter vide interim order directed the connections to be reconnected within 24 hours and in the final order found the action of the Department as unfair, unjustified and in violation of Electricity Act (Page No. (3) of order dated 08/01/2021).
- Thereafter the connection was reconnected and on accumulation of arrears was served a notice for disconnection on 28/01/2020. (Annexure `K` of the Appeal). There was a clerical error while recording the name. The Appellant thereafter contested this claim before the CGRF Vasco, Goa.
- The Hon`ble CGRF has further observed that there were serious ongoing disputes between the Complainants father and his lessee which were amicably resolved by entering into a consent decree before the Ld. District Judge 2 Mapusa in SCS (commercial) No. 1/2019. In the consent decree the lessee has declared interalia that they have cleared all the electrical bills due and payable to the State as on 31/05/2019 and no further dues are payable to the Department of Electricity or any Authorities and therefore concludes that the Complainant must have cross checked the fact of payment of electricity prior to affixing his signature on the consent terms. The Hon`ble CGRF also concludes that by way of the consent terms the lessee M/s Aadarsh Hospitalities cleared or is deemed to have cleared the arrears against the Installation in H.No. 313 as on 31/05/2019 (The Installation bearing CA No.60006059160 in the name of Shri. Ubaldo da Cunha currently contested in this Appeal) The House No. 313 finds mention in the consent terms in Civil Suit No. 1/2019 before the Court of the Hon`ble Additional District Judge II at Mapusa Goa placed at pages 34 to 47 of the Appeal.
- The CGRF apparently justly concludes that the arrears as on 28/01/2020 and further amounts accrued thereafter will have to be paid by the complainant (page 5 of order dated 08/01/2021).
- The Appellant thereafter preferred this appeal against the order of the CGRF before this Hon`ble Forum.



- On instructions of this Hon'ble forum the matter was sought to be resolved through mutual agreement with the Appellant by having a meeting with him on 26/03/2021. The Appellant during the hearing agreed to withdraw the case in case a request from him to waive of the accumulated "Delayed payment charges" is accepted by the Department.
- On careful analysis of the matter it is concluded that the Department has in no way erred and as concluded by the Hon'ble CGRF Vasco the amount should have been recovered by the Appellant from the lessee M/s Aadarsh Hospitalities while filing the consent terms before the District Judge 2 Mapusa in SCS (Commercial) No. 1/2019 to which this office / Department is not a party. The request of the Appellant to waive of the Delayed Payment charges, hence has been rejected.
- The Appellant has deposited an amount of Rs. 92,130/- (Rupees Ninety Two Thousand One Hundred Thirty Only) same being 1/3<sup>rd</sup> of the outstanding amount.
- It is therefore prayed that the order of the Hon'ble CGRF No. 04/2020/122 dated 08/01/2021 be upheld and the Appellant be directed to clear all pending dues due to the Department.

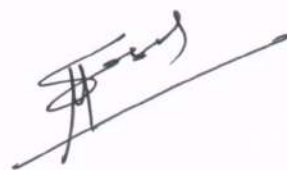
**(C) CGRF- Goa order in CC-04/2020/122 dated-08.01.2021 , preferred for Appeal:**

Learned CGRF-Goa, has passed the following order: -

**ORDER**

In view of the foregoing, I pass the following order:

1. The complaint is partly allowed.
2. The complainant is liable to pay to the licensee Department the arrears of Rs. 2,35,517/- as on 28.01.2020 and further amounts accrued thereafter if any.
3. However, in the interest of justice, the licensee Department shall not charge DPC on the outstanding amount for the period between 14.02.2020 to 08.01.2021 when the complaint was pending before the Forum.
4. The licensee Department shall furnish to the complainant an upto date detailed statement of the arrears payable within 15 days from receipt of this order, and submit compliance to this Forum within 30 days.
5. The complaint is disposed accordingly. ”



**(D) Deliberations during Video hearing on 08.04.2021:**

**1. Appellant's Submission:**

- a. Shri Joseph, the Appellant's representative reiterated his version as submitted in this appeal.
- b. On being asked to prove his claim/ownership to the Electricity connection in the name of Mr. Ubaldo D'Cunha. He informed that he has already supplied sale deed between Mr. Aubrey D'Souza and others and Mr. Neil D'Souza (Appellant). On being pointed out that there are no documents submitted on record, regarding relationship between Mr. Ubaldo D'Cunha and Mr. Aubrey D'Souza and others, he promised to send the sale deed dated-26.02.1990 and 30.10.1990, in this regard by email to the office of Ombudsman.
- c. He further informed that they have made a complaint to the Electricity Department 20/02/2018(Annexure-J) to disconnect the electricity connection, as illegal construction was being carried out by one Mr. Vijay \Pal Singh, Director of M/s Aadarsh Hospitalities. Since the electricity connection was not disconnected by the respondents, the Appellant is not required to pay the outstanding dues of electricity. He further submitted that his case is squarely covered by the Judgment of Mafatlal Industries Ltd. Vs UoI .He was requested to supply/email the full citation for its appreciation.
- d. A reminder was issued vide email dated- 08.04.2021 for submission of following documents within 4 days as discussed in the VC hearing: -
  - i). Sale deed from Mr. Ubaldo D, Cunha to Mr. Aubrey D'Souza
  - ii). Judgement cited in the VC hearing.Accordingly, the Appellant has submitted the judgement , sale Deeds and Deed of Rectification on 09.04.2021 and copy of the same was supplied to the Respondents.
- e. On being asked about the relationship between Appellant and Mr. Vijay \Pal Singh , Director of M/s Aadarsh Hospitalities, he confirmed that he had a Lease Deed for 5 years and the same had expired in 2017.
- f. He further submitted that since Electricity Department has not disconnected the connection being used by Mr. Vijay \Pal Singh , Director of M/s Aadarsh Hospitalities in time , for months, he is not required to pay the pending dues of around Rs.2,76,390/- . He further requested for refund of 1/3<sup>rd</sup> amount deposited as pre-requite to this Appeal.
- g. He further confirmed that he had not challenged the order no.-08/2018-19 dated-12.04.2018 of Learned CGRF-Goa.





**2. Respondent's Submission:**

- a. The Respondents reiterated their version as submitted in reply to the appeal and requested to dismiss the appeal.
- b. He stated that till date, the electricity connection is in the name of Shri Ubaldo D'Cunha. One application was received by the Respondents on 18.12.2014 for disconnection of electricity connection, which was replied on 30.12.2014 that request cannot be carried out as electricity connection is in the name of Shri Ubaldo D'Cunha. Thereafter no reply or request was received till 20/02/2018(Annexure-J).
- c. He further submitted at the request of Shri Aubrey D'souza, the father of the Appellant that they have disconnected 55 electricity connection, but the connection in this dispute could not be disconnected as M/s Aadarsh Hospitalities approached the CGRF-Goa and the connection was reconnected as per orders of Learned CGRF in order no.-08/2018/19 dated-12.04.2018.
- d. Shri Pradip Narvekar was requested to supply a copy of said CGRF order dated-12.04.2018 for its appreciation. He has supplied a copy of the order no.-08/2018/19 dated-12.04.2018 by email on 08.04.2021 and a copy of the same was also supplied to the Appellant.  
During VC hearing, Shri Joseph confirmed that he had not challenged the order no.-08/2018-19 dated-12.04.2018 of Learned CGRF.
- e. On the question of illegal construction as alleged by Appellant, Respondent clarified that though the premises is numbered as H.No-313, but actually it's a commercial property and connection has been applied for commercial purposes. It was found that electricity supply is being used for commercial purposes and electricity supply was properly metered through a meter and they have no connection with the allegation of the Appellant as it appears to be a landlord-tenant dispute.

**(E) Findings & Analysis: -**

1. I have perused the documents on record and pleadings of the parties.
2. It was agreed by both the parties that Shri Ubaldo D'Cunha is no more and he had sold this property many years ago. Therefore the agreement between Electricity Department and Shri Ubaldo D'Cunha is null and void.



3. Following provisions have been provided in the Supply Code Regulations- 2018, notified by the Hon'ble Commission: -

**Transfer of Connection**

“ 5.85 The consumer shall not without prior consent in writing of the Distribution Licensee assign, transfer or part with the benefit of the Agreement executed with the Distribution Licensee nor shall part with or create any partial or separate interest there under in any manner.

5.86 A connection may be transferred in the name of another person upon death of the consumer or in case of transfer of the ownership or occupancy of the premises, upon filing an application form in the prescribed format given in either **Annexure IV or V** (as applicable) for change of name by the new owner or occupier:

Provided that such change of name shall not entitle the applicant to require shifting of the connection from the present location.

5.87 The Licensee shall deal with applications relating to change of consumer's name due to change in ownership/occupancy of property in accordance with the procedure detailed below.

- (1) The applicant shall apply for change of consumer's name in the format prescribed in **Annexure IV** to this Supply Code, 2018, along with a copy of the latest bill duly paid. The request for transfer of connection shall not be accepted unless all dues recoverable against the concerned connection are settled. The application form shall be accepted on showing proof of ownership/occupancy of property. A “No Objection Certificate” from the registered consumer/ authorized person/ previous occupant of the premises shall be required for cases involving transfer of security deposit in the name of applicant. The Licensee shall process the application form in accordance with Regulations of this Supply Code, 2018.
- (2) In case the No Objection Certificate from the registered consumer/ authorized person / previous occupant is not submitted, an application form for change of name shall be entertained only if security deposit as stipulated in this Supply Code, 2018 is paid afresh. However, the original security deposit shall be refunded to the claimant as and when a claim is preferred by the concerned person.
- (3) Change of consumer's name shall be in effect within two billing cycles after acceptance of application form.

5.88 The Licensee shall deal with applications relating to transfer of consumer's name to legal heir in accordance with the procedure detailed below:

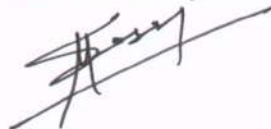


- (1) The applicant shall apply for change of consumer's name in the format prescribed in **Annexure V** to this Supply Code, 2018, with a copy of the latest bill duly paid. The application form shall be accepted on showing the Registered Will/deed, Succession/Legal heir Certificate, Mutation in municipal/land records or any other proof of legal heirship. The Licensee shall process the application form in accordance with Regulations of this Supply Code, 2018.
- (2) Security deposit lying with the Licensee in the name of original consumer shall be transferred to its legal heir to whom the connection is to be transferred and the shortfall in security deposit calculated as specified in **Annexure XVIII** of this Supply Code, 2018, if any, shall be payable by the applicant.
- (3) The change of consumer's name shall be effected within two billing cycles after acceptance of application.
- (4) Any charge for electricity or any sum other than charge for electricity as due and payable to Licensee, which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any land/premises as the case may be, shall be a charge on the premise transmitted to the legal representative/successors-in-law or transferred to the new owner of the premise as the case may be, and same shall be recoverable by the Licensee as due from such legal representative or successor-in-law or new owner/occupier of the premises as the case may be."

4. To understand the controversy, I have gone through the order of Learned CGRF passed in 2018. Learned CGRF had passed the following orders in CC no.-08/2018-19 dated-12.04.2018 and the relevant part is reproduced below: -

"Above all, it must be kept in mind that electricity supply is an essential service and a part of fundamental right to life. In *Chameli Singh v. State of UP* reported in *AIR 1996 SC 1051*, Hon'ble Apex Court, while discussing the components of right to life, specifically observed that the right to life includes the right to live with human dignity and further, while discussing right to shelter, held that right to shelter includes electricity.

Returning to the Electricity Act 2003, a perusal of S. 43 indicates that the word 'shall' has been used. Section 43 begins with the heading "duty to supply on request". Section 44 begins with heading "exceptions from duty to supply electricity" stating that nothing shall be taken as requiring a distribution licensee to give supply of electricity to any premises if it is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control. Therefore, it



is quite vivid that there is statutory obligation to provide electricity to the owner or the occupier of the premises. Thus, it flows that is the intention of Parliament to provide electricity supply to all the persons, whether they are the owners of the property or the occupiers like a tenant or other person who is in lawful possession of the premises.

In this backdrop, it was incumbent on the Department to have restored the supply on being petitioned by the complainant on 19.02.2018. The request made by the complainant to CEE on 19.02.2018 is not denied by the Department in its reply; instead it is merely stated that CEE could not grant relief since the complainant was not a bonafide consumer as per billing records and the installation were disconnected on request of the bonafide consumer.

It would be another matter had the Department been unaware of the background of the case and had innocently disconnected the power supply on request of the intervener. However, as stated earlier, Department was well aware of the matter, more particularly the litigation between the parties. At the very least, it ought to have heard the complainant before deciding on disconnection, as was rightly done in 2014.

We permitted Shri Aubrey D'Souza to intervene in the proceedings being the owner of the property and file his written version. He submits that the lease has expired on 31.05.2017. He narrated his account of the facts and produced copies of all past correspondence with the Department requesting for disconnection of the 56 installations and other with other authorities. He submitted that the local Panchayat had written to the police authorities that the premises were being used for prostitution and other criminal and illegal activities. He prayed for dismissal of the complaint. In his written arguments, he submits the complainant owes him a sum of Rs. 9 Crores and that he had not disclosed that he was in arrears of electric bill payment.

We did not find any substance in the case of the intervener. No doubt he wants eviction of the complainant from the premises and has been locked in litigation on the issue, which apparently has resulted in protection of the complainant's possession as of now. The contractual dispute is before the civil courts that will decide on the same, and is of no relevance to the issue before us.

In its reply, Department has admitted that are no dues pending against the said 56 installations. While claiming otherwise, the intervener is probably referring to a communication dated 13.03.2018 from the Department to him copied to the complainant containing a provisional assessment order, copy whereof is appended to his written version. We take no cognizance of the communication as it appears to be some action initiated during pendency of these proceedings; moreover, it does not even find mention in the Department's reply filed two days later.



In view of the above, we have no hesitation to find the issue framed for our consideration in the negative. We hold the disconnection of the 56 installations on 19.02.2018 to be unfair, unjustified and in violation of the Electricity Act. The Department's action is hereby set aside.

The complainant has been needlessly compelled to initiate these proceedings and incur expense. In the circumstances and in the interest of justice, we award an amount of Rs. 200/- (Rupees Two Hundred only) as costs of these proceedings that shall be credited to the next bill issued against each of the said 56 (fifty-six) installations.

The complaint stands disposed accordingly and proceedings closed. ”

5. I have examined the judgement cited by Shri Joseph Vaz , Appellant's representative and in my considered opinion the facts and the circumstances of the instant case, and those of cited decision has no relevance. In any case such claim/unjust enrichment can only be decided by a competent court and is beyond the jurisdiction of this authority.
6. Hon'ble Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. Vs M/s DVS Steels Alloys Pvt Ltd. has observed as under in para-11, which is reproduced below :-

“11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. **In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues.** Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.”

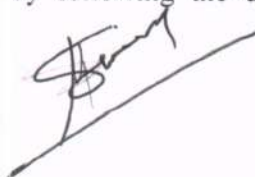
7. It is true that as a general principle of law, proceedings against dead persons are null and

void.

8. Hon'ble Delhi High Court in *Tata Power Delhi Distribution vs Neeraj Gulati* has observed as under in para-18, which is reproduced as below: -

“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* was repeated by the Supreme Court in *Ahmedabad Electricity Company Ltd.* ”

9. In view of above discussions, I am of the considered view that the Appellant has not come to this authority with clean hands. As submitted by Appellant, his father Shri Aubrey D'Souza had purchased the property from Shri Ubaldo D'Cunha in 1990, which was further sold to him in 2009. Thus, for around 31 years nobody bothers to get the Electricity Connection transferred in their names despite letter dated-30.12.2014 from Electricity Department. The conduct of the Appellant is against the provisions of clause-5.85 of Supply Code Regulations-2018, which are statutory in nature. As observed by Hon'ble Supreme Court this could be only to evade payment of pending dues of Electricity by selling property from one hand to another. By not getting the transfer of the electric connection carried out in their names for a sufficient long period, the Appellant has not acted bonafide to prove otherwise.
10. The issue of payment of electricity dues could have been raised by the Appellant, when M/s Adarsh Hospitalities, his lessee/occupier had challenged the issue of disconnection of electricity connection in 2018 before CGRF-Goa, in which the father of the Appellant, Shri Aubrey D'Souza had defended the case as intervener. Learned CGRF at that time has protected the rights of occupier (M/s Adarsh Hospitalities) against the forcible eviction. The Appellant could have secured for payment of electricity dues by their lessee/occupier or could have demanded that a separate electricity connection in the name of their lessee/occupier be released, till they are evicted by following the due process of law. As long as the




connection is in the name of owner or its legal successor, the payment of electricity dues is the responsibility of the owner/legal successor who has entered into agreement with the Electricity Department. If the Appellant was not satisfied with the decision of Learned CGRF, they could have challenged the CGRF order before Electricity Ombudsman/Competent Court. Shri Joseph confirmed that he had not challenged the order no.-08/2018-19 dated-12.04.2018 of Learned CGRF.

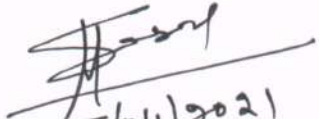
Their silence transpires that as per their understanding/Lease Deed/Consent Terms with their lessee/occupier, the payment of Electricity dues is required to be paid by the Appellant. In any case, the Electricity Department has no privity of contract/agreement with a lessee/occupier and therefore legally cannot ask him to pay the dues. The Electricity Department can neither file a suit nor initiate revenue recovery proceedings against a lessee/occupier for the outstanding electricity dues in the absence of any contract/agreement to the contrary. Therefore I do not find any merit in the contention of Appellant that payment of pending electricity dues should be recovered from their lessee/occupier.

(F) **DECISION**

- (i) For the reasons discussed above, the appeal of the Appellant is dismissed with no order as to costs, being devoid of merit. The order in CC -04/2020/122 dated-08.01.2021 passed by Learned CGRF-Goa is upheld.
- (ii) Since due to demise of Shri Ubaldõ D'Cunha , the existing agreement has become null and void, the Electricity Department-Goa/Deemed Distribution Licensee is directed to issue a notice to the Appellant to get the existing connection transferred in his name within 30 days. If the Appellant fails to file an application as per Supply Code Regulations-2018, this electricity connection be disconnected and action be taken to recover the pending dues. If Appellant applies for Transfer of connection/Change of name or a new connection as per provisions of Supply Code Regulations-2018, the same be expedited as per said Regulations.
- (iii) 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.
- (iv) The Electricity Department/Licensee should submit a compliance report to the office of Ombudsman on the action taken in this regard within **45 days** from the issuance of this Order by email.



- (v) 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.
- (vi) The appeal is disposed of accordingly.



15/04/2021

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

**Dated 15.04.2021**