

**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: ombudsmanjerc@gmail.com

**Appeal No.117 of 2019**

**Date of Hearing: 19.02.2020 at Puducherry**

**Date of Order: 11.03.2020**

Shri M. Subbu Mudaliar,  
Puducherry

**....Appellant**

**Versus**

Electricity Department, Puducherry  
and others

**....Respondent**

**Parties present:**

**Appellant**

1. Shri M. Subbu Mudaliar
2. Ms. Santhakumari (Representative of Sh. M. Subbu Mudaliar)

**Respondent(s)**

1. Shri V. Sridharan,  
Superintending Engineer (O&M),
2. Shri K. Ramanathan  
Executive Engineer  
Rural (South), O&M
3. Shri N. Kannan,  
Assistant Engineer



Rural South O&M

4. Shri N. Pakkirisamy  
Junior Engineer,  
Karikalampakkam

**Date of Order: 11.03.2020**

The Appellant has preferred an Appeal against the order of CGRF, Puducherry in Consumer Case No.42/2019 dated 14.10.2019. The Appeal was admitted on 17.12.2019 as appeal No.117 of 2019. Copy of the same as received was forwarded to the respondent with a direction to submit their remarks/ counter statement on each of the points.

**Settlement by Agreement**

Both the parties appeared before the Electricity Ombudsman as scheduled on 19.02.2020 at Puducherry and were heard. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleadings on the matter.

(A) **Submissions by the Appellant:**

That Shri M. Subbu Mudaliar, had filed a complaint before the Hon'ble CGRF vide C.C. No.42/2019 dated 04.09.2019 *“to cancel the electricity service connection in the name of Mr. K. Balasubramanian S/o of Shri Kanniappan or to transfer the service connection in his name i.e. Shri M.*



*Subbu Mudaliar* and the Hon'ble Forum vide order dated 14.10.2019 has dismissed his complaint without taking into consideration the highly legitimate and strong grounds as per the following details submitted by him :--

- (i) That he is owner of the property in which the electricity connection was given by the Electricity Department, Puducherry, in the name Mr. K. Balasubramanian. The property belongs to the Appellant Mr. Subbu Mudaliar vide will dated 25.05.1988 executed by his father Mannarsamy Mudaliar and registered as Doc. No.15/1988 in the Office of the Sub-Registrar, Bahour.
- (ii) The said Mr. Balasubramanian is only a Licensee in the property and not the owner of the property. In such a case, any electricity connection has to be given in the name of the owner of the property.
- (iii) However, the said Mr. Balasubramanian has given some false affidavit in favour of Electricity Department, Puducherry and managed to get Domestic electricity connection in the said property. Except the affidavit the said Mr. Balasubramanian has not produced any documents to prove his ownership to the property. The copy of the Affidavit on whose strength the electricity connection was given is also annexed as document. I have immediately objected the same and on my objection the connection was immediately disconnected and within two days again it was reconnected for no reasons.
- (iv) Therefore, aggrieved by this action of the Electricity Department, Puducherry the Appellant being a Senior Citizen aged about 83 years

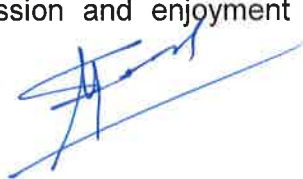


ran to pillar to post and met all officials of Electricity Department. However, he was humiliated and got bad treatment in the offices. Aggrieved by that he has preferred to file the application before the Consumer Grievances Redressal Forum (Under the Electricity Act, 2003), Puducherry, who heard the matter and passed final order dated 14.10.2019, stating that as per Electricity Department Rules , connection was given in correct manner only that the applicant has to seek civil court.

- (v) Aggrieved by the said Order, the appellant has filed this present Appeal before this Authority and prays to pass an order directing the Electricity Department, Puducherry either to cancel the service connection or to change the name of the service connection to the name of the Appellant namely Mr. Subbu Mudaliar and thus render Justice.

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

- (i) The Executive Engineer, Rural (South), O&M, on behalf of respondents denies all the averment in the petitioner's representation except those that are specifically admitted herein. The complaint is not maintainable either in law and hence it is liable to be dismissed in limine.
- (ii) I respectfully submit that as per the official records, domestic service connection to one, Thiru K. Balasubramanian S/o Kanniappan, Madukarai Main Road, Pudukuppam bearing policy No.253090/A2 was extended, based on the documents substantiating proof of his residence, possession and enjoyment substantiated by valid Voter



identity card, Aadhar card including his family ration card issued by the Competent Authority on 12.12.2017, by converting the existing OHOB service into domestic service.

(iii) I respectfully submitted that a petition received on the next day, i.e., on 13.12.2017, from Thiru M. Subbu S/o Mannarsamy, No.12, Manthaveli Pathai, Pudukuppam, Embalam Post, Nettappakkam Commune, Puducherry requesting to disconnect or transfer the policy to his name, on the grounds that Thiru. K. Balasubramanian and Thiru. Patchaiappan were residing in the land belonging to him and have availed service connection under the OHOB scheme. Based on the petition the above service connection was disconnected on 20.12.2017.

(iv) I respectfully submitted that the occupier of the house, Thiru K. Balasubramaian had submitted representation alleging that he is valid patta holder as per the land records of the Revenue Department substantiated by proof and he is residing in his ancestral house on the said land for decades and in actual possession and enjoyment of the said house substantiated by proof of identity and residence. On the strength of the existing OHOB connection and valid documents substantiating residence, identity, possession and enjoyment and patta copy including undertaking and indemnity bond furnished by him as per JERC supply code, Thiru K. Balasubramaian has requested for restoration of power supply which forms a basic amenity for the survival of his family.



(v) I respectfully submit that the Distribution Licensee/Electricity Department had already extended OHOB to Mr. K. Balasubramanian s/o Kanniappan earlier more than a decade ago which was not objected by the Appellant. Further, Mr. K. Balasubramanian s/o Kanniappan was in possession of the premises till date and also the occupier of the said premises and in actual possession and enjoyment substantiated by valid patta copy, aadhar copy, voter ID, Ration card. Further, in terms of the codal provisions of JERC supply code, the applicant has submitted his application along with the documents including undertaking and indemnity bond and paid the requisite fees. Further, the occupant is living in the house, paying current consumption charge regularly and requesting service connection as per the supply code and Supreme Court decisions.

(vi) I respectfully submit that it has been upheld by the Hon'ble Supreme Court of India and various High Courts, that an owner/tenant/occupant of premises is certainly entitled for the ELECTRICITY CONNECTION which forms part of right to live under Art 21 of the Constitution of India. To lead a life with human decency the supply of electricity is necessary and the conferment of the same is a duty cast upon the authority concerned. Further, supply shall be given even in a poramboke land on production of necessary documents, until eviction by the Tahsildar. (3 MLJ 59).



- (vii) I respectfully submit that as per Section 42(1) r/w Section 43 (1) of the Electricity Act, 2003 make it amply clear that a Distribution Licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply electricity of the distribution licensee, if such the owner/occupier of the premises applies for it, and correspondingly every owner/occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee. The dispute will have to be resolved in civil suit pending before the Court of Civil Judge or in any other suit, but pending resolution of any dispute between the parties, the applicant/appellant cannot be denied supply of electricity to his/her house. (2011) 12 SCC 314.
- (viii) I respectfully submit that an electricity connection can be given to persons who are in occupation of premises even if their ownership is under dispute provided that they furnish indemnity bond and pay necessary fee etc. Electricity supply can be given in promboke land as per directives of the Government issued from time to time. (2009)4 CTC 606.
- (ix) I respectfully submit that if the petitioner is in possession for more than 30 years occupying the place in a residential area, unless and until, the respondents take appropriate action for eviction in the manner known to law, the petitioner is certainly entitled for the ELECTRICITY CONNECTION which forms part of right to live under Art 21 of the Constitution of India. To lead a life with human decency the supply of



electricity is necessary and the conferment of the same is a duty cast upon the authority concerned. (CDJ 2011 MHC 722).

- (x) I respectfully submit that this apart the powers of the Distribution Licensee is limited to extend of providing power supply at the earliest based on substantiate records of the Consumer/Applicant and after apprising the apparent ground reality on field inspection. The Electricity Department is required to arrive out the feasibility of extending power supply in the interest of general public to ensure power supply.
- (xi) I respectfully submit that in the light of the aforesaid observations and as per clause 3.5 of JERC Supply Code 2010, the Respondents have the obligation to provide Electricity service connection to the owner or occupier located in the licensee area. Accordingly, the domestic service connection was restored to the existing policy holder on 21.12.2017.
- (xii) I respectfully submitted that the complainant who is not in actual possession and enjoyment of the disputed property repeatedly requesting the dependent either for disconnection of the service or name transfer of the service to his name. Further, the request of the consumer could not be carried out since the occupant is living in the house, paying current consumption charge regularly.
- (xiii) I respectfully submitted that the complainant assailed the matter before the Hon'ble CGRF, Puducherry in consumer case CC. No. 42/2019





against the Respondent Department seeking relief of disconnection of existing power supply or transfer of policy in the appellant name. The Hon'ble CGRF by order dated 14-10-2019 upon perusal of records and submissions of the Respondent, has not allowed the complaint of the Appellant.

(xiv) I respectfully submit that the Distribution Licensee is empowered to extent power supply to the public for domestic purpose through the existing supply line. Moreover, the applicant had also furnished the undertaking to indemnify the Distribution Licensee against any legal consequences or losses arising out of extension of power supply and in case, if there is any violation of rules, the Distribution Licensee is competent to disconnect power supply. It is made clear that as per the amended JERC supply code, 2018, extension of power supply by this department does not confer ownership of land and the onus is on the Appellant to substantiate his right/claim before the competent authority or the legal forum.

(C) **CGRF order dated 14.10.2019, preferred for Appeal:**

**Consumer Grievances Redressal Forum, Puducherry in its order dated 14.10.2019 has decided as under:-**

“

1. **OBSERVATIONS:**

*The hearing in the case was fixed for 14.10.2019.*



- (i) *On perusal of the documents submitted by the Complainant and Counter filed by the Respondent it is observed that the said Thiru K. Balasubramanian is in possession of the premises till date, and also the occupier of the said premises, is eligible to avail the service connection as per the provisions of the Electricity Act, 2003 and that the JERC Supply Code, 2010.*
- (ii) *It is observed that there is civil dispute between the Complainant and the Occupier viz., Thiru K. Balasubramanian and hence this dispute cannot come under the purview of this Forum.*
- (iii) *It is also the duty of the Complainant to take necessary steps to vacate Thiru K. Balasubramanian by way of eviction through the Court of Law. Then only, the Complainant shall sought for the assistance of Respondents during the time of eviction for cancellation of service.*

2. **ORDER:**

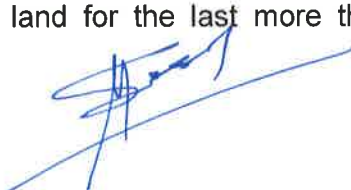
- a. *In view of the observation, the Complainant is not entitled for any relief from this Forum.*
- b. *Hence the Complainant is not allowed.*

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(D) **Submission during hearing at Puducherry:**

1. **Appellant submission:**

- (a) The Appellant reiterated his version as submitted in appeal. He admitted that Thiru K. Balasubramanian is occupying some piece of their land for the last more than 20 years but no electricity



connection should be released in the name of Thiru K. Balasubramanian, the alleged occupier. He further confirmed that as per undertaking given in the Appeal, no court case is pending on this issue.

- (b) During hearing Appellant submitted that he has not received the respondents reply and therefore he has been denied the opportunity to counter the respondents. On the other hand, respondents claimed that they have send the counter reply to Appellant through post. Anyhow to protect the Appellant's right to put forth his defend to the reply of respondents, a time of 10 days was allowed vide order dated-19.02.2020, a copy of which was sent through email dated-21.02.2020, as well as by post. and on further request vide email dated-27.02.2020 to grant further extension up to 06.03.2020, the same was also allowed in the interest of natural justice through email dated-28.02.2020.
- (c) The Appellant submitted his defend to the counter reply of respondents vide email dated-02.03.2020 and denied all the averments made by the Respondents in the reply, except those that are expressly admitted and is reproduced below: -
- i. I submit that in Para 2 of the reply by the Respondent, that the Respondent had converted the OHOB service scheme into domestic service on 12.12.2017 based on the residence proof submitted by Thiru. K. Balasubramanian i.e. Voter ID card, Aadhaar Card and Family Ration card and the act of the Respondent can only be termed as a biased and irresponsible one.
  - ii. I submit that in Para 3 of the reply by the Respondent, after the receiving a petition from me on 13.12.2017 requesting to disconnect or transfer the policy on the grounds that Thiru. K. Balasubramanian was residing in the land belonging to me



and the Respondent had disconnected the service on 20.12.2017.

- iii. I submit that the Respondent in their reply in Para 4 & 5, have acted in a biased and arbitrary manner and justifying its own act of renewing the electricity connection based on Patta and indemnity bond furnished by Thiru. K. Balasubramanian on 22.12.2017 (In fact the Patta for the property does not reveal the name of Thiru. K. Balasubramanian but it only reflects the Appellants name). The last line of Para 4 of the reply by the Respondent, states that Thiru. K. Balasubramanian requested for restoration of power supply and the Respondent has restored it without even conducting an enquiry or hearing but acting in a biased and arbitrary manner.
- iv. I submit that throughout the reply submitted by the Respondent, it has been defending its own act by bating for Thiru. K. Balasubramanian by quoting citations of the High Courts, Apex Court and that of Article 21. Whereas the Respondent has not even kept any enquiry or hearing before acting on its own by justifying its biased and arbitrary act of restoring the electricity connection, even after the Appellant submitted petition for disconnection but acted on its own by justifying the act of restoration of electric connection by talking about human grounds.
- v. I submit that Para 7 of the reply by the Respondent quoting Section 42(1) r/w Section 43(1) of Electricity Act, 2003 where the Sections read as follows;

“ *Section 42 (Duties of distribution licensee and open access):---*



- (1) *It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*

**Section 43 (Duty to supply on request): ---**

- (1) *[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply: ”*

The Section clearly talks about the statutory right to apply for and obtain electric supply from the distribution licensee. But in this the Respondent has restored the connection on 21.12.2017 after disconnecting the electricity on 20.12.2017 based on the petition submitted by me. The act of restoration is biased and arbitrarily as the restoration of electricity was within one day i.e. disconnected on 20.012.2017 & restored on 21.12.2017.

- vi. I submit that in Para 9 of the reply by the Respondent, it can be seen that the Respondent is completely guarding the interest of Thiru. K. Balasubramanian by playing the role of a civil court, in deciding possession of Thiru. K. Balasubramanian which is unwarranted and beyond the scope and powers of the Respondent. The Respondent did not talk as to why it acted arbitrarily by restoring the connection, when the appellant had already approached the



Respondent with petition seeking disconnection or transfer of the said connection.

- vii. I submit that the Respondent throughout its reply statement had only been trying to hide its biased and arbitrary act. In Para 10 the Respondent has defended its act of restoration by apprising the ground reality and field inspection but the Respondent has completely failed to support its statement by producing any documents either through the reply in this appeal or issuing any explanation to the Appellant for the petition moved by me on 13.12.2017.
- viii. I submit that in Para 12 of the reply by the Respondent, the Respondents states that the property in itself is a disputed property and also talks about the possession and enjoyment rights of the Appellant, all these shows how the Respondent has acted arbitrarily and unreasonably beyond the powers granted to it and also when the Appellant had moved in a petition for disconnection.
- ix. I submit that the Appellant has produced all documents relating to his ownership and enjoyment of the said property. Both the Respondent and Thiru. K. Balasubramanian had never come forward with any documentary proof or any reports of ground reality of field inspection as claimed by the Respondent in Para 10 of its reply, but the Respondent had only acted in a notion of a competent authority to restore the connection arbitrarily when the respondent has disconnected based on the petition given by the Appellant and subsequently restored the same in a biased and arbitrary manner.



Hence it is prayed that this Appellate Authority may pass an order directing the Electricity department, Puducherry either to cancel the service connection or to change the service connection in to my name and thus render Justice.

**2. Respondent submission:**

- a. The respondents reiterated their version as submitted in reply to the appeal and requested to dismiss the appeal.
- b. The respondents also confirmed during hearing that Electricity Connection was existing in the name of Mr. Balasubramanian under OHOB (one Hut one Bulb scheme) earlier more than a decade ago and Appellant never objected it.
- c. In the year 2017, the respondents have only extended the load from the OHOB connection to Domestic connection based on the status of Mr. Balasubramanian, as occupier (existing more than a decade ago). Accordingly, they have acted in accordance with Act, Rules and judgments quoted in their reply.

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

- (i) I have perused the documents on record and pleadings of the parties. The main grudge of Appellant is to cancel the Electricity connection given to the occupier in the name of Thiru. K. Balasubramanian or transfer the same in the name of Appellant. His further objection is to the reconnection in the name of Thiru. K. Balasubramanian on 21.12.2017 in a biased and arbitrary manner, despite his petition dated-13.12.2017.



(ii) The case has been examined in view of various provisions of Electricity Act, 2003 and Supply Code and various judgements of Hon'ble Apex Court and High Courts as detailed herein under:

(a) Section 43 of Electricity Act, 2003 provides as under:

“ **Section 43 (Duty to supply on request): -**

*I[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply: ”*

Therefore electricity connection can be given to an occupier as per Section-43 of Electricity Act, 2003.

(b) Hon'ble High Court at Calcutta Circuit Bench at Port Blair in its Constitutional Writ Jurisdiction disposed of the Writ Petition No.-423 of 2010, clearly deciding as under: -

“ *We therefore hold that a person in settled possession of a property as illustrated in the case of Rama Gowda (Supra) is free to apply for supply of electricity without consent of the owner of the same and is entitled to get electricity connection and enjoy the same until he is evicted by the due process of law.*





*We, have already pointed out that either in the Electricity Act, 2003 or in this Rules of 2006, there is no procedure prescribed for resolving the dispute as to the status of an occupier in the property over which the electricity is sought to be brought or over which any work is to be constructed by the licensee for giving connection of electricity to any person. To construe the word "lawful" appearing in the Rule as "having perfect legal title to possess would lead to absurdity in implementing the object of the Act and the Rules. In that event, at every stage, the licensee would face problem in giving electricity whenever any dispute as to the title of a person to remain in possession would be raised by any other person claiming to be the owner having lawful title over the property in question and the licensee would be required to wait until such a dispute is resolved by a competent court in a protracted litigation. We, therefore construe the word "lawful occupier" appearing in the Rule as "the person in settled possession".*

*Since all the land in these islands belong to the Union of India, the latter is not required to file a civil suit for eviction of a trespasser and the trespassers can be evicted by taking*



*recourse to Regulation of 1966. However, so long such a trespasser in settled possession is not so evicted, he should be entitled to get electricity with the aid of Section 43 of the Electricity Act on compliance of the terms of supply as provided under law. It is needless to mention that the enjoyment of such electricity will not confer any right or equity to favour of the TRESPASSER in occupation to defeat the title of lawful owner.*

”

- (c) The Appellant has admitted in his reply as at A(ii) above, which is reproduced below –

“A(ii) The said Mr. Balasubramanian is only a Licensee in the property and not the owner of the property.....”

He has further admitted during hearing that Mr. Balasubramanian is occupying/residing in their piece of land for the more than 20 years.

- (d) The respondents also confirmed during hearing that Electricity Connection was existing in the name of Mr. Balasubramanian under OHOB (one hut one bulb scheme) earlier more than a decade ago and Appellant had never objected to it.



- (e) From the above analysis, it is proved on record that Mr. Balasubramanian is in settled possession of premises for a very long time and it is well in the knowledge of the Appellant. The respondents are statutory bound by Act to release Electricity Connection to a occupier and they have rightly extended the existing (OHOB) connection (existing more than a decade ago as per respondents) into Domestic connection.
- (f) The plea of the Appellant that respondents have disconnected the connection on his petition dated 13.12.2017 and thereafter reconnected the same on 21.12.2017 without his permission /consent /enquiry hold no water, as it is obligatory on the part of the respondents to verify any new fact that came to their notice, to ensure that no inadvertent mistake may have taken place. However, they have erred in disconnecting the connection without proper verification.

**DECISION: -**

- (i) For the reasons discussed above, the order passed by Hon'ble CGRF, Puducherry is upheld and appeal of appellant is rejected.
- (ii) I have not expressed any view, regarding the true ownership of the land, which could be decided by the competent court only by following the due process of law.



- (iii) In case, the Appellant or the Respondent is not satisfied with the above decision, it is 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 appeal is disposed of accordingly.



(M.P. Singh Wasal)

Electricity Ombudsman

For Goa & UTs (except Delhi)

Dated 11.03.2020