

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.168 of 2022

Date of Hearing: 27.07.2022

Date of Order: 05.08.2022

Smt. Waheeda Ali,
Andaman & Nicobar Islands
Port Blair

.... Appellant

Versus

The Superintending Engineer,
Electricity Department, and others
Andaman & Nicobar Islands
Port Blair

.... Respondents

Parties present:

Appellant(s) Smt. Waheeda Ali,
Appellant

Respondent(s) Smt. Rizwana,
Executive Engineer



Date of Order: 05.08.2022

The Appellant has preferred an Appeal against Non-implementation of CGRF-A&NI's order dated-22/09/2021 in Complaint No-ANI/CGRF/212/20-21/31 by the Respondents. The appeal/representation received in this office on 07.06.2022 by email and the same was admitted for examination and consideration on 08.06.2022. Copy of the same as received was forwarded to the Respondents with a direction to file the counter reply in the required format, to the appeal/representation within 20 days from the date of Admission Notice. The Respondents have filed the counter reply and a copy of the same was supplied to the Appellant, who has filed a Rejoinder.

Settlement by Mutual Agreement

Both the parties appeared before the Electricity Ombudsman on 27.07.2022 at Port Blair and were heard. Smt. Rizwana-Executive Engineer for the Respondent informed that The Electricity Department has taken a decision as per Minutes of Meeting on 05/01/2022 and therefore unable to release the connection to Smt. Waheeda Ali, an encroacher. 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. Appellant submitted that Forum has issued an Order dated 22/09/2021 to provide electric connection with certain direction and expiry of 45 days, further next 15 days electric connection should be provided. Even after lapse of more than six month the department has not implemented the Forum's order. I personally visited time to time in CGRF and also Electricity department several times and contacted concerned officers and sections including site office but all efforts are vain.

2. She further filed Rejoinder as under: -

- a) That the complainant Smt. Waheeda Ali, R/o Ward No. 01, Teylerabad, Port Blair submitted an application along with all required documents dated 09/11/2020 in the Office of the Assistant Engineer, Chouldhari requesting to providing domestic electric connection at her dwelling house constructed on an encroached land situated at ward No. 1, Kaju Bagicha, Teylerabad, Port Blair.
- b) That when the Licensee (Electricity Department), A&N Administration failed to provide electric connection to the complainant/appellant approached the Electricity Consumer Grievance Redressal Forum by filing an application on 08/03/2021, praying therein for direction for release of electric connection in at her dwelling house.
- c) That by an Order dated 22/09/2021, Electricity Consumer Grievance Redressal Forum, A&N Islands disposed of the matter with the following direction: -



- (i) *Realizing the present correspondence scenario of the Licensee/Respondent (ED) between it and the A&N Administration, the Forum directs the Licensee (ED) to obtain some clear-cut legal direction from A&N Administration within a period of maximum 45 days from the date of receipt of this Order.*
- (ii) *The Licensee/Respondent (ED) is directed to provide Electricity connection to Smti. Waheeda Ali and Shri. M. Abishak, the petitioners in this instant case within next 15 days after the period of 45 days for making necessary correspondence as stated in para 1 above is over.*
- (iii) *After a period of 60 days, the Licensee/Respondent (ED) should submit a compliance report immediately to this Forum.*
- d) That inspite of the Order of Electricity Consumer Grievance Redressal Forum, A&N Islands while the Licensee (Electricity Department) failed to comply the same and release electric connection to the complainant, the complainant preferred the instant appeal before the Hon'ble Ombudsman vide here application dated 07/06/2022 which has been registered as this instant appeal.
- e) That para-wise comments / reply to the affidavit filed by the Respondent are as follows: -
- (a) So far as the submission at para 1 and 1 (i), (ii) & (iii) are concerned, the same are matter of records and hence, no specific reply / comments is required.
- (b) So far as the submission made at para (iv) is concerned, the same is the detail of internal office matters of the Licensee (Electricity Department), A&N Administration and hence, the appellant has not specific comments on the same however, the appellant submits that a verbal direction of the Secretary (Power) not to release electric connection constructed on encroached land makes no sense as the Licensee (Electricity Department), A&N Administration has failed to submit documentary evidence to any such direction before the Hon'ble Electricity Consumer Grievance Redressal Forum, A&N Islands during the hearing of the case.
- (c) No comments in respect of para (v) of the reply Affidavit filed by the Respondent as it is an internal matter of the Licensee (Electricity Department), A&N Administration and is the matter of records.
- (d) No comments in respect of para (vi) of the reply Affidavit filed by the Respondent as it is an internal matter of the Licensee (Electricity Department), A&N Administration and is the matter of records.



- (e) No comments in respect of para (vii & viii) as the same are matter of records.
- (f) So far as para (ix) of the reply Affidavit is concerned, the appellant as no comments as the same is internal communication of the Licensee (Electricity Department), A&N Administration.
- (g) That the submissions made at para (x) of the reply Affidavit filed by the Respondent is strongly disputed and challenged on the ground that in compliance to the Judgment Order dated 11/02/2011 of the Larger Bench of Hon'ble High Court at Calcutta, the Licensee (Electricity Department) of the A&N Administration has been releasing electric connection to consumers all encroached land for the last more than eleven (11) years. Now, an administrative order constituting a Technical Board Committee and taking a decision cannot supersede the Judgment of the Larger Bench of Hon'ble High Court. Had the Licensee (Electricity Department) of the A&N Administration its reservation against the above-mentioned Judgment of Larger Bench of Hon'ble High Court they ought to have preferred SLP before the Hon'ble Supreme Court against the said Order, but the same is also now limitation barred.

It is pertinent to mention that Hon'ble Consumer Grievance Redressal Forum also relied upon the above-mentioned Order of Hon'ble High Court. The Licensee (Electricity Department), A&N Administration in its submission as admitted that electric connection will not be issued to encroachers **“accept the direction issued in respective Judgment of Hon'ble Court Order for providing of Electric Connection to encroachers in A&N Islands”**. Needless to mention that Hon'ble Electricity Consumer Grievance Redressal Forum is also a statutory authority with quasi-judicial power and its Order needs to be complied as good as an Order of the Court.

In the light of the facts and circumstance as mention above the appellant / complaint most humbly **PRAYS** that: -

1. The Hon'ble Ombudsman may be pleased to issue specific Order / Direction to the Licensee (Electricity Department), A&N Administration to forthwith grant electricity connection to the appellant herein.
2. The Hon'ble Ombudsman may also be pleased issue an Order directing the Licensee (Electricity Department), A&N Administration to pay a compensation / cost as deemed fit for the delay in providing electric connection to the appellant/complainant inspite of the clear Order of Hon'ble Electricity Consumer Grievance Redressal Forum and thereby causing mental agony and financial loss to the appellant/complainant for the last more than nine (9) months, in terms of the provisions as contained under Section 43 of Sub-Section 1 & 3 of the Electricity Act 2003 and;



3. The Hon'ble Ombudsman may also be pleased to suitably fine the Licensee (Electricity Department), A&N Administration in terms of the provision as contained under Section 142 of the Electricity Act 2003 for the delay caused in providing the electric connection and causing physical problem to the Complainant/Appellant in staying in their own house for want of power supply, the resultant financial loss by staying in a rented accommodation inspite of having constructed her own house and the resultant mental agony running from pillar to post inspite of the Order of Electricity CGRF.

(B) Submissions by the Respondents :

Smt. Rizwana, working as Superintending Engineer (I/c) in the Electricity Department, A&N Administration, do hereby solemnly affirm and state on oath as under: -

1. That the deponent is presently working as Executive Engineer (South Andaman) and in addition is also holding the charges of Superintending Engineer, Electricity Department (as link arrangement) and is authorized to file this reply and represent on behalf of Electricity Department, A&N Administration, in this case.
2. **Facts of the counter reply as under –**
 - i. That, the appellant Smti. Waheeda Ali, R/o Ward No. 01, Kaju Bagicha, Teylerabad village, Port Blair, on 09.11.2020, submitted an application in the office of Assistant Engineer, Chouldhari, requesting to provide domestic electric connection in her dwelling house, constructed in the encroached area. The application received from the applicant and the documents submitted are enclosed as **Annexure- I Colly**.
 - ii. That, being an encroached land, the said application as per the direction of competent authority was forwarded by Assistant Engineer, Chouldhari on 12.11.2020, to the Forest Department seeking clarification on the nature of the land viz. revenue or forest land and also to revenue authority for want of NOC. A copy of letter dated 07.12.2021 send to Revenue department is enclosed as **Annexure- II**.
 - iii. That, the on 24.11.2020, forest department informed that the mentioned land does not falls in the reserve and protected forest. However, no reply was received from the revenue authority in the instant matter. A copy of reply received from forest department on 24.11.2020 is enclosed as **Annexure- III**.
 - iv. That, in the meantime a meeting was called by the then, Secretary (Power), A & N Administration on 09.07.2020, which was attended by the then, Superintending Engineer, Executive Engineer (South Andaman) (respondent herein) and Assistant Engineer (Ferrargunj) in the similar matter of providing electric connections to dwelling house constructed on encroached land on the basis of an affidavit submitted by the party. The issue was seriously viewed by the then, Secretary (Power), and it was directed verbally to cease the release of electric connections to dwelling house constructed on encroached land unless NOC is issued from the Revenue Authority.
 - v. That, on the basis of the discussion held in the Chamber of the then, Secretary (Power), A & N Administration, the respondent herein issued directions to all



concerned Assistant Engineer under the jurisdiction of South Andaman to immediately to cease the release of electric connections to dwelling house constructed on encroached land unless NOC is furnished by the party concern from the revenue authority. Accordingly, the connection to the appellant could not be processed by the concerned Assistant Engineer (Chouldhari).

- vi. That, the respondent herein exchanged correspondences on regular interval with the then, Superintending Engineer, Electricity Department, requesting for issue of clear directions in the matter of providing electric connection to dwelling house on encroached land. Copies of correspondences exchanged in the subject matter are enclosed as **Annexure – IV Colly**.
- vii. That, while the issue was pending for clear directions from the competent authority, aggrieved by the delay in providing electric connection, the appellant on 08.03.2021, filed an application in the Consumer Grievances Redressal Forum (CGRF), Haddo, praying for release of electric connection in her dwelling house.
- viii. That, by an Order dated 22.09.2021, CGRF disposed the matter issuing following direction –

Quote-

- i. *Realizing the present correspondence scenario of the Licensee/ Respondent (ED) between it and the A & N Administration, the forum directs the Licensee (ED) to obtain some clear-cut legal direction from A & N Administration within a period of maximum 45 days from the date of receipt of this Order.*
- ii. *The Licensee/ respondent (ED) is directed to provide Electricity connection to Smti. Waheeda Ali and Shri. M. Abishak, the petitioners in this instant case within next 15 days after the period of 45 days for making necessary correspondence as stated in Para 1 above is over.*
- iii. *After a period of 60 days, the licensee/ respondent (ED) should submit a compliance report immediately to this forum.*

Unquote

- ix. *That, the respondent herein on 29.09.2021, citing all the previous correspondences exchanged on the subject matter referred the Order passed by CGRF in the matter of the appellant and once again requested that the issue may kindly be examined in the light of the order passed by the CGRF and a direction be issued to the division for taking necessary action within the stipulated time. The respondent herein once again on 07.12.2021 requested for issue of direction in the order passed by CGRF in the matter of the appellant. Copies of correspondences exchanged in the subject matter are enclosed as **Annexure – V Colly**.*
- x. *That, the then Superintending Engineer on 17.12.2021, placed the matter before the Technical Board Committee, which was constituted with the approval of Secretary (Power) for holistic assessment of vital proposals for its techno-commercial and administrative viability vide A & N Administration's Order No. 2643 dated 03.12.2021 to assess the issue of providing electric connection to the encroachers. After detailed discussion and deliberation, the committee took a*



conscious decision that electricity to encroachments in A & N Islands on the basis of Affidavit shall be stopped immediately under all respective divisions as is done under South Andaman Division till further directions/ communications except the directions issued in respective judgments of Hon'ble Court Orders for providing of electric connection to encroachers in A & N Islands. Copies of A & N Administration's Order No. 2643 dated 03.12.2021 and Minutes of Meeting dated 17.12.2021 are enclosed as **Annexure – VI Colly**.

- xi. That, in compliance to the said direction, electric connection to the appellant could not be processed.
- xii. That, it is pivotal to mention that as per the provision enshrined in Clause No. 5.30 of JERC, Electricity Supply Code Regulation 2018, for release of new connection and modification any of the following documents shall be considered as acceptable proof of ownership or occupancy of the premises –
 - a. Copy of the registered sale deed or lease deed or rent agreement and in the case of agriculture connections, a copy khasra/ khatuni/ khatanakal
 - b. Registered General Power of Attorney
 - c. Municipal/ Panchayat Tax receipt or demand notice or any other related document.
 - d. Letter of allotment.
 - e. Copy of house registration certificate issued by the Panchayat/ ownership certificate issued by the revenue authorities
 - f. Any other ownership related document issued by local govt. Authority.
 - g. An applicant who is not an owner but occupier of the premises shall along with any one of the documents listed at 1 – 6 above, also furnish a NOC from owner of the premises.
- xiii. That, in the light of the above submissions made herein it is humbly requested that the appellant prayer may kindly be dismissed.

(C) Ld. CGRF-A&NI, order dated-22.09.2021 preferred for Appeal:

Order

Quote

1. "Realizing the present correspondence scenario of the Licensee/Respondent (ED) between it and the A&N Administration, the Forum directs the Licensee (ED) to obtain some clear-cut legal direction from A&N Administration within a period of maximum 45 days from the date of receipt of this Order.
2. The Licensee / Respondents (ED) is directed to provide Electricity connection to Smt. Waheeda Ali and Shri. M. Abishak, the petitioners in this instant case within next 15 days after the period of 45 days for making necessary correspondence as stated in para 1 above is over.
3. After a period of 60 days, the Licensee/Respondent (ED) should submit a compliance report immediately to this Forum.



4. The complainant having approached this Forum for settlement of grievance shall not be harassed overtly or covertly by the respondent in any manner whatsoever.
5. In case of dissatisfaction, the complainant shall have the liberty to appeal against this Order before (the Electricity Ombudsman, For the State of Goa and Union Territories , 3rd Floor, Plot No-55-56, Pathkind Lab Building, Service Lane, Udyog Vihar, Phase-V, Sector-18m Gurugram (Haryana) 122015, telephone No. 0124-4684708.) e-mail address: ombudsman.jercuts@gov.in within two months from the date of receipt of this order in the prescribed format which can be collected from this office in any of the working days."

Unquote

(D) Deliberations during hearing on 27.07.2022 at Port Blair :-

1. Appellant's Submission:

- (a) Smt. Waheeda Ali -Appellant, reiterated her version as submitted in the Appeal/Rejoinder and requested for grant of electric connection at the earliest as per CGRF order and further requested for penalty/compensation for not granting the connection in time.
- (b) She further submitted that she was allowed to reside on this land during last tsunami in 2004 and many connections has been allowed to such encroachers adjoining her house and she is being denied electric connection being similarly situated persons, despite CGRF orders.
- (c) She further requested that she is following with the departmental officers after the pronouncement of CGRF order was no one has helped her, therefore delay in filling the Appeal be condoned.

2. Respondent's Submission:

- (a) Smt. Rizwana-Executive Engineer for the Respondent reiterated her version as submitted in the counter reply to the Appeal.
- (b) On being asked by this Court to explain the reasons for not implementing the CGRF order, she stated that as per Minutes of Meeting of Technical Board Committee issued on dated-05.01.2021, a conscious decision was taken by the Electricity Department not to release electric connections to such encroachers.
- (c) On being asked by this Court to justify the legality of these Minutes of Meeting issued on dated-05.01.2021 ,to overrule the CGRF orders, which is constituted as per Electricity Act-2003, , she has no answers except stating that the Departmental instructions needs to be followed by them.

(E) Findings & Analysis: -

1. I have perused the documents on record 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 issues which have arisen for considerations in the present Appeal are as under: -



- i. Whether the Appellant is entitled to relief for grant of Electricity Connection, as prayed for?
 - ii. Whether the Appellant is entitled for penalty/compensation as prayed for?
4. (a) Regarding issue no 3(i) as above, as to whether the Appellant is entitled to relief for grant of Electricity Connection, as prayed for?
- (b) Following provisions have been notified in the Electricity Act, 2003:-

(i) Section 43 of the Electricity Act, 2003

Quote

"43. *Duty to supply on request - (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity of such premises, within one month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area;

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default".

(ii) Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

(iii) Section 143. (Power to adjudicate):-

(1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Unquote

(c) Following provisions have been provided in the Supply Code Regulations-2018, as notified by the Joint Electricity Regulatory Commission regarding grant of a New Electricity Connection: -

Procedure for providing New Electricity Service Connection

Application Form

5.24 The applicant shall apply for release of new connection in the following format as given in the Annexure to this Supply Code, 2018:

Application form for release of new connection (Low Tension) – **Annexure-I**

Application form for release of new connection (High Tension/ Extra High Tension) - **Annexure-II**

Format for declaration/undertaking to be signed at the time of receiving electricity supply - **Annexure-III**

5.25 Application forms shall be available at the local office of the Licensee free of cost. The Licensee shall also put up all application forms on its website for free download. Legible photocopies of a blank form may be made by the applicant, which shall be accepted by the Licensee. The Licensee shall clearly display on its website; the address and telephone numbers of offices where filled-up application form can be submitted. The Licensee shall also display in each office, the address and telephone numbers of offices in the respective area of supply where filled-up application form pertaining to that particular area can be submitted. Any assistance or information required in filling up the form shall be provided to applicants at the local office of the Licensee.



5.26 The Licensee shall also provide new avenues for applying for new connection or modification in existing connection through website, mobile application, call centres, etc., which minimize the applicant's interface with the utility during the process.

5.27 Application forms for new connection must be accompanied with a photograph of the applicant, identity proof of the applicant, proof of applicant's ownership or occupancy over the premises for which new connection is being sought, proof of applicant's current address, and in specific cases, certain other documents as detailed in Regulation 5.29- 5.34 of this Supply Code, 2018.

5.28 Non-Refundable Registration-cum-processing fees of Rs. 20,000/- for HT and Rs. 1,00,000/- for EHT shall be levied while applying for new connection. These charges shall be adjusted by the Licensee while issuing the demandnote.

5.29 Any of the following documents shall be considered as acceptable proof of identity:

If the applicant is an individual:

- (1) Electoral Identity Card
- (2) Passport
- (3) Driving Licence
- (4) Photo Identity card issued by Government agency
- (5) PAN Card
- (6) Photo Certificate from village Pradhan or any village level Government functionary like Patwari/ Lekhpal/ village level worker/ village chowkidaar/ Primary school teacher/ in-charge of primary health centre, etc.
- (7) Aadhaar Card.

5.30 Any of the following documents shall be considered as acceptable proof of ownership or occupancy of premises:

- (1) Copy of the registered sale deed or lease deed or rent agreement and in the case of agricultural connections, a copy of khasra / khatauni / khatanakal;
- (2) Registered General Power of Attorney;
- (3) Municipal/Panchayat tax receipt or Demand notice or any other related document;
- (4) Letter of allotment;
- (5) Copy of the house registration certificate issued by the Panchayat/ownership certificate issued by Revenue Authorities;
- (6) Any other ownership related document issued by local Government Authority.
- (7) An applicant who is not an owner but an occupier of the premises shall, along with any one of the documents listed at (1) to (6) above, also furnish a No Objection Certificate from owner of the premises:

Provided that where an applicant, who is lawful occupier of the premises, is a tenant or a

leaseholder and is unable to produce the No Objection Certificate from owner for obtaining a connection, a separate Indemnity Bond shall be executed in favour of the Distribution Licensee in the form prescribed by the Distribution Licensee.

- (8) For bonafide consumers residing in JJ clusters or in other areas with no specific municipal address, the Licensee may accept either ration card or electoral identity card mandatorily having the same address as a proof of occupancy of the premises only for the purpose of releasing electricity connection and not for any other purpose:

Provided further that the electricity bill shall be only for electricity supply to the premises occupied by the consumer and shall not be treated as having rights or title over the premises.

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(d)The Hon'ble High Court of Calcutta, Circuit Bench at Port Blair vide Order dated - 11.02.2011 in bench of Writ Petitions namely Abhimanayu Muzamdar vs. Superintending Engineer ,Electricity Department, Andaman Nicobar Islands and others has examined the issue as to whether unauthorized occupiers, encroachers of any premises and squatters of any premises are legally entitled to file an application under Section 43 of the Electricity Act, 2003 claiming status as 'occupier' and thereby may seek supply of electricity in the premises as constructed on encroaching the land; and, whether under the Works of Licensees Rules, 2006, the Distribution Licensee lawfully can provide electricity supply line in due discharge of their duties and what is meaning of word 'occupier' in said Act on reflection of Rule 2006 and has held as under:-

Quote

"When the Rules of 2006 were introduced, the legislatures had in their mind the aforesaid concept of settled possession which was capable of being defended against any threat of dispossession, even at the instance of the owner, except by due process of law as laid down by the Supreme Court and consequently, introduced the definition of the word 'occupier' as lawful occupier without further defining the word "lawful" therein. Therefore, in the absence of any definition of the word "lawful" in the Rules of 2006, we should apply the principle of "settled possession" laid down by the Supreme Court to the phrase "lawful occupier" appearing in the Rules for implementation of the object of the Electricity Act, 2003 to construe the same as a person in "settled possession" whose possession can be defended against the threat of dispossession otherwise than due process of law even by the lawful owner.

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

14. We have already pointed out that either in the Electricity Act, 2003 or in the 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 Rules as "the person in settled possession".

15. Since all the lands 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 the 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 in favour of the trespasser in occupation to defeat the title of the lawful owner.

16. We, thus, answer the first question of Reference in affirmative provided the encroacher is in settled possession of the property.

17. In view of our above answer to the first question, the other question becomes academic and redundant, and we propose not to deal with the same.

18. The first point of reference is, thus, answered. In all these writ-applications, the Respondents will give electricity to the writ petitioners if the applicant is found to be in settled possession of the premises in question and they will be entitled to the enjoyment of the electricity so long they are not dispossessed by due process of law on compliance of all other formalities required under the Act."

Unquote

(e) As gathered from the judgment of Hon'ble High Court of Calcutta, Circuit Bench at Port Blair in Order dated -11.02.2011 in bunch of Writ Petitions as stated in para (d) above and namely Abhimanayu Muzamdar vs Superintending Engineer ,Electricity Department ,Andaman Nicobar Islands and others case, even the Government of India vide their letter dated-17.01.2003 and 11.03.2003 to the address of Chief Secretary ,Andaman & Nicobar Administration has taken a policy decision to allow the release of electricity connections to such encroachers subject to certain restrictions. The copies these letters are also reproduced below:-



No. U. 13034/3/2003-ANL
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi, the 17th January, 2003

To
Shri Pradeep Singh,
Chief Secretary,
Andaman & Nicobar Administration,
PORT BLAIR

Subject: Sanction of electric connections to the families which have encroached in government revenue land in A&N Islands.

Sir,

I am directed to reference to your d.o. letter No. 1- 32/2000 I-(c) dated the 14th January, 2003 regarding the subject mentioned above and to say that there is no objection if the families which have encroached on government revenue land are sanctioned temporary electric connections subject to the following conditions:

(a) The electricity shall be supplied for domestic use only.

(b) The facility will be extended to only those families which had encroached on government revenue land after 1978 but prior to April 1993;

(c) The grant of this facility shall not entitle the person concerned to claim regularization of the construction made on the encroached land or occupation of such encroached land; and

(d) The facility shall be extended only if the anti-fire and other safety requirements are met with.

2. It is requested that further appropriate action in the matter may please be taken under intimation to us.

Yours faithfully,

Sd/-

(VIKRAM DEV DUTT)

Deputy Secretary to the Govt. of India

Tele: 23092436

No. U. 13034/3/2003-ANL
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi, the 11th March, 2003

To
Shri Pradeep Singh,
Chief Secretary,
Andaman & Nicobar Administration,
PORT BLAIR

Subject: Sanction of electric connections to the families which have encroached in government revenue land in A&N Islands.

Sir,

I am directed to refer to the A & N Administration's d.o. letter No. 1-18(7)/2001-Power dated 6th March, 2003 on the above cited subject and to say that in view of the circumstances indicated therein, the Central Government have 'no objection' to grant permanent electric connections to the families which have encroached on revenue land in A & N Islands, subject to fulfilling the conditions indicated in this Ministry's letter of even number dated 17th January, 2003.

Yours faithfully,

Sd/-

(VIKRAM DEV DUTT)

Deputy Secretary (CPS)"

(f). Recently Hon'ble Punjab and Haryana High Court in CWP N0-10299, 10808, 11120 of 2022 titled Davinder and others vs Union Territory Chandigarh, vide their order dated-01.06.2022 has observed as under and relevant part is reproduced below:-

Quote

“

Adjourned to 20.09.2022 with the interim orders to continue but with it further directed, as has already been directed earlier (in CWP No.10967 of 2022 on 20.05.2022), that the petitioners obviously being human beings and citizens of India, are also entitled to the right of life in terms of Article 21 of the Constitution of India and whereas we again very obviously realise that they are occupying land that does not strictly belong to them, however, admittedly it is public land vested in the State and if they are not members of the public we do not know who else is; and consequently, Chandigarh being a Union Territory, the competent authority in the Union of India would file an affidavit providing a viable scheme for rehabilitating such like people who out of necessity have to occupy jhuggis on such land which otherwise does not obviously belong to them personally. The request for vacation of stay as has been vehemently made by counsel for the U.T. Chandigarh is declined at this stage, with a viable scheme to be provided.

The land involved in these petitions admittedly being public land, in the affidavit to be filed on behalf of the Union of India, it would be stated also as to why housing colonies to rehabilitate genuine jhuggi dwellers who have been living there for many years (as per verification criteria already in place in such cases), be not constructed in the form of flats etc., (to be constructed on the occupied land itself).

Naturally, once such like land is exhausted after accommodating people who have been living in such jhuggis for years if not decades, the Union Territory being a small town, if there is no other place left for jhuggis, such jhuggis would not come up in the future.

It is to be noticed that the Government of Haryana has come up with an almost continuously running Aashiana scheme to rehabilitate such like persons and consequently, that scheme would also be looked into to determine the viability of a similar scheme in the Union Territory, Chandigarh; or any other better scheme.

Interim order to continue till that date.

It is also to be further noticed that illegal structures have also come to our notice as are occupied by persons who are undertaking commercial ventures like sale of marble, junk (kabadi shops) etc., for whom land is already stated to have been earmarked at different places but with those schemes not being actually given effect to by way of proper rehabilitation of those persons for the last twenty years or more. Of course, that is subject matter of a different petition.

A photocopy of this order be placed on the files of the other connected cases.”



Unquote

(g). Following are the extract of Minutes of Meeting dated-05/01/2022 of Technical Board Committee: -

"MINUTES OF THE MEETING HELD UNDER THE CHAIRMANSHIP OF CHIRMAN, TECHNICAL BOARD, ELECTRICITY DEPARTMENT ON 17.12.2021 AT 1700 HRS IN THE CHAMBER OF SUPERINTENDING ENGINEER (ELE), VIDYUT BHAWAN.

A meeting was convened on 17.12.2021 at 1700 hrs in the Chamber of Superintending Engineer, Electricity Department under the Chairmanship of Member Technical Board, Electricity Department with the Members of Technical and Advisory committee to discuss on various issues for vital implementation of on-going / future works and projects.

The list of participants in appended as Annexure-A.

Para (1) to (9)

Para (10)- Providing of Electricity connection to encroachments in A&N Islands on the basis of Affidavit shall be stopped immediately under all respective divisions as is done under South Andaman Division till further directions / communications except the directions issued in respective judgments of Hon'ble Court Orders for providing of electric connection to encroachers in A&N Islands.

-Action by -All EEs, Electricity Deptt.

Para (11) to (12).....

Para (13) The meeting concluded with the thanks to the Chair

TECHNICAL BOARD

Sd/-
Sree Valsan,
Accts. Officer(c)
(Member Finance)

Sd/-
Rizwana,
Executive Engineer (SA/ND)
(Vice Chairman)

Sd/-
Ramesh Chander,
Asst. Engineer (HQ)
(Member Technical)

Sd/-
Deepa Nair,
Executive Engineer (NRSE)
(Member Technical)

Sd/-
Usha Kapoor,
Asst. Engineer (I/c)
(Member Secretary)

Sd/-
Karuna Jaydhar,
Superintending Engineer (Ele.)
Chairman

F. No. EL/PL/17-3(a)/2022/
Andaman & Nicobar Administration
Office of the Superintending Engineer
Electricity Department
Port Blair-744101.

Dated: 05/01/2022

Copy to:-

1. The Secretary (Power), A&N Admn. Port Blair for kind information.
2. The Executive Engineer (SA/ND)/ Vice Chairman, Technical Board, Electricity Department, Port Blair for kind information.
3. The Executive Engineer (NRSE), Member (Technical), Technical Board, Electricity Department, Port Blair for information.
4. The Accounts Officer (Circle), Member (Financial), Technical Board, Electricity Department, Port Blair for information.
5. The Assistant Engineer-1, HQ, Member (Technical), Technical Board, Electricity Department, Port Blair for information.

Copy also forwarded to:-

1. The Executive Engineer (HQ/PG)/Rural/NA, Electricity Department, Port Blair.
2. The Assistant Engineer (Works) Electricity Department, Port Blair.
3. The Assistant Engineer (PR), Electricity Department, Port Blair.
For information and Necessary action at your end

Sd/-
Assistant Engineer
Member Secretary (Technical
Board)

(h). Hon'ble Supreme Court of India vide order dated-30.01.2020 in Civil Appeal No.-852 of 2020 titled Chairman/Managing Director, U.P. Power Corporation & others vs Ram Gopal , while dealing with the issue of applicability of Judgments on the similarly situated persons has observed as under:-

Quote

18. We may hasten to add that these principles may not, however, apply to judgments which are delivered in-rem. The State and its instrumentalities are expected in such category of cases to themselves extend the benefit of a judicial pronouncement to all similarly placed employees without forcing each person to individually knock the doors of courts. This distinction between operation of delay and laches to judgments delivered in-rem and in personam, is lucidly captured in State of Uttar Pradesh v. Arvind Kumar Srivastava, laying down that:

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated person need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time-to-time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in case of similarly situated persons be extended to them, and/or the acquiescence, would be valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma v Union of India [K.C. Sharma v. Union of India, (1997) 6SCC 721:1998 SCC (L&S) 226]. On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

(Emphasis applied)

Unquote

(i) Hon'ble Uttrakhand High Court in the case of M/s Hotel Urvashi vs Uttrakhand Power Corporation, in Special Appeal No-959 of 2019 , regarding the status of CGRF has held as under:-



“28. Applying the test laid down by the decisions as above mentioned, the CGRF, which is invested with judicial power as distinguished from purely administrative or executive function, while exercising the power under the Act, 2003 and the Regulations, 2007 acts as a “Tribunal”.

- (j) In view of submissions made by the Appellant during hearing, the delay in filing the Appeal is condoned. Now let us examine the contentions of the Respondents in not implementing the orders of CGRF. Their first contention is that on 09.07.2020 they were verbally advised not to release the connections to such encroachers of Government land without the NOC from the Revenue authorities. Their second contention is that they referred the CGRF orders to higher authorities for policy matter/directions to release connections to such encroachers but no decision was conveyed and later on Minutes of Meetings of Technical Board Committee were circulated vide letter dated-05.01.2022 wherein in Para(10) , it was directed not to release the connections to the encroachers till further directions / communications except the directions issued in respective judgments of Hon’ble Court Orders for providing of electric connection to encroachers in A&N Islands. Their third contention was that Appellant do not possess the required documents as per the provision enshrined in Clause No. 5.30 of JERC, Electricity Supply Code Regulation 2018, for release of new connection.

Their first contention carries no weight as verbal orders are no orders unless confirmed in writing. No document was produced which shows that any decision has been taken legally considering the provisions of the Electricity Act-2003, provisions notified by the Hon’ble Joint Electricity Regulatory Commission for Goa And UTs in the Supply Code Regulations-2018 and the dictum passed by Hon’ble High Court of Calcutta, Circuit Bench at Port Blair vide Order dated -11.02.2011 in bunch of Writ Petitions as stated in para (d) above and namely Abhimanayu Muzamdar vs Superintending Engineer ,Electricity Department ,Andaman Nicobar Islands or considered the policy decision taken by the Govt. of India.

Their second contention that Technical Board Committee vide Minutes of Meetings circulated vide letter -dated-05.01.2022 has taken a conscious decision, not to release the connections to encroachers has no force in it. The Consumer Grievance Redressal Forum (CGRF) is constituted under section 42(5) of the Electricity Act-2003 and is a quasi-judicial body as held by Hon’ble Uttrakhand High Court in the case of M/s Hotel Urvashi vs Uttrakhand Power Corporation, in Special Appeal No-959 of 2019. The Licensee can challenge the orders of CGRF in the competent Court only in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019. Therefore, the Technical Board Committee or any officer of the Licensee is not competent to overrule the orders of the CGRF and therefore Para (10) of such Minutes of Meetings are required to be quashed and are hereby quashed.

Their third contention is also misleading as they are conveniently ignoring the provisions in Regulation 5.30(8) of the Electricity Supply Code Regulation 2018, in which it is

clearly provided that connection to such encroachers or other areas with no specific municipal address, the Licensee may accept either ration card or electoral identity card mandatorily having the same address as a proof of occupancy of the premises only for the purpose of releasing electricity connection and not for any other purpose, provided further that the electricity bill shall be only for electricity supply to the premises occupied by the consumer and shall not be treated as having rights or title over the premises. Even a Aadhar Card, Islander Card issued by Andaman and Nicobar Administration or any similar document issued by the Govt. having the same address can be accepted as a proof of occupancy of the premises. It has not been contested before CGRF that application of the Appellant has been rejected on this contention.

The release of electricity connections to the encroachers is certainly a policy matter and Govt. of India had to take policy decision to release connections. Therefore, being a welfare State, the benefits of policy decision and further directions by Hon'ble High Court of Calcutta, Circuit Bench at Port Blair vide Order dated -11.02.2011 in bunch of Writ Petitions as stated in para (d) above and namely Abhimanayu Muzamdar vs Superintending Engineer ,Electricity Department ,Andaman Nicobar Islands, should have been extended to all similarly situated persons in the Island as held by Hon'ble Supreme Court of India vide order dated-30.01.2020 in Civil Appeal No.-852 of 2020 titled Chairman/Managing Director, U.P. Power Corporation & others vs Ram Gopal. Hon'ble Punjab and Haryana High Court in CWP N0-10299, 10808, 11120 of 2022 titled Davinder and others vs Union Territory Chandigarh, vide their order dated-01.06.2022 has also observed that being human beings and citizens of India, such encroachers are also entitled to the right of life in terms of Article 21 of the Constitution of India as stated in para (f) above.

Therefore, in my considered opinion ,none of the contentions of Respondents are legally sustainable and are hereby rejected, in view of explicit provisions in the Electricity Supply Code Regulation 2018, dictum of Hon'ble High Court of Calcutta, Circuit Bench at Port Blair vide Order dated -11.02.2011 in bunch of Writ Petitions as stated in para (d) above and namely Abhimanayu Muzamdar vs Superintending Engineer, Electricity Department ,Andaman Nicobar Islands and the policy decision taken by the Govt. of India to release electric connections to such encroacher . Moreover it has been made clear in Electricity Supply Code Regulation 2018 as well as by Hon'ble High Court of Calcutta, Circuit Bench at Port Blair, that the release of electricity connection will not confer any right or equity in favour of the trespasser in occupation to defeat the title of the lawful owner.

5. Regarding issue no 3(ii) as above, as to whether the Appellant is entitled for penalty/compensation as prayed for?

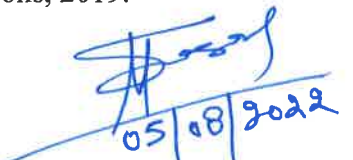
(a). As per Section- 43(3) of the Electricity Act-2003, a penalty which may extend to one thousand rupees for each day of default can be imposed, but for the implementation of this provision, one needs to take necessary action as per Section -143 of the Electricity Act-2003. Similarly, as per Section -57 of the Electricity Act-2003, the power to levy compensation vests with the Appropriate Commission.



Therefore, the Appellant needs to approach the appropriate bodies for imposition of penalty/ grant of compensation as prayed for.

(E) DECISION

1. For the reasons discussed above, the appeal of the Appellant is allowed without any cost.
2. The Orders passed by Ld. CGRF-ANI dated 22.09.2021 are upheld.
3. The para-(10) of the Minutes of Meeting of Technical Board Committee, issued vide F. No. EL/PL/17-3(a)/2022/dated-05.01.2021, regarding release of connections to encroachers in A&N Island are hereby quashed.
4. The Respondents/Licensee is hereby directed to release the electricity connection to the Appellant within 15 days. Further considering the safety considerations in releasing connection to the Appellant/such encroachers, a Single Phase, 2- Pole, Earth Leakage Circuit Breaker (ELCB) or a Circuit Breaker with better specifications should be installed on the outgoing side of the electricity supply by the Respondents at their cost.
5. Further, it is made clear that release of electricity connection to the Appellant will not confer any right or equity in favour of the trespasser/encroacher in occupation to defeat the title of the lawful owner and shall not be treated as having rights or title over the premises.
6. 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.
7. 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.
8. 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.
9. The appeal is disposed of accordingly.


05/08/2022

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

Dated: 05.08.2022