

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,

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Appeal No-212 of 2024

Date of Video Conferencing: 24th April, 2024

Date of Order: 26 April, 2024

In the matter of: -

Mrs Veena Ghode

.... Appellant

Versus

Assistant Engineer, Electricity Department, Goa

.... Respondent

Parties present:

Appellant(s)

Ms Gautami Kamat

....for Appellant

Respondent

Mr Savio B Fernandez,

Assistant Engineer,

Electricity Department, Goa

ORDER

This representation was filed on 22nd April, 2024 by Ms Veena Ghode, occupant of shop No 207, 2nd Floor Block No B Saldana Business Tower, Mapusa, Goa under Section 42(6) of the Electricity Act 2003 read with Regulations 32 & 33 of Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulation against the order in case No.03/2024/238 passed by the Ld. Consumer Grievance Redressal Forum (CGRF), Goa on 23.02.2024.

The appellant is in receipt of a 15 days disconnection notice issued by Electricity Department Goa. Since the matter relates to continuity of electricity to her premise she has requested for an urgent hearing in the matter as she is aggrieved by the disconnection notice issued by the Electricity Department Goa. She has filed all the complaint along with annexure and supporting documents. Following a thorough review of the documents supporting the representation the urgent hearing in the matter is allowed on 24.04.2024. The Respondent has also been informed telephonically to attend the hearing on the scheduled date through video conference.

A. Submissions of the Appellant in brief are as under: -

The appellant is the occupier of Shop No 207, 2nd Floor Block No B Saldana Business Tower, Mapusa, Goa since 2019.

On 4th January, 2024 the appellant found that the electricity supply to her shop has been disconnected and electricity meter has also been removed. On inquiry with the department, she has been informed that the registered consumer Mr Virupaksh Betagiri had requested for Temporary disconnection of electricity to shop No 207, 2nd Floor Block B Saldana Business Tower, Mapusa, Goa vide request dated 27.12.2023 mentioning the reason as "Repair in shop". However, no disconnection notice was issued by the department to Ms Veena Ghode who is the actual user on the date of disconnection nor any verification of user has been carried out by the Respondent.

When the connection was not restored by the Electricity Department till 7th January, 2024 the matter was escalated to Chief Electrical Engineer on 9th January, 2024. On the intervention of Chief Electrical Engineer, the connection was restored on 10th January, 2024.

The Assistant Engineer had sent a letter via post on 10th January, 2024 which was received by the Appellant on 13th January, 2024 stating that



"Chief Electricity Engineer, Panaji Goa in the mail had given direction to send the Appellant notice not less than 15 days to present her case with legally enforceable documents".

The Appellant states that she has filed a complaint bearing no 03/2024/238 before the Consumer Grievance Redressal Forum (CGRF) Government of Goa at Vidhyu Bhavan Vasco, sub-divisional engineer on 23.1.2024, raising all the aforementioned grounds and illegal disconnection of the Appellant's electricity connection without giving her a prior notice.

The Appellant submits that the CGRF, although gave all findings in favour of the Appellant and held that electricity is a basic amenity and that the occupant of premises cannot be refused electricity connection merely on ground on non-availability of consent of the landlord, disposed my complaint by holding that the Forum is not empowered to Cart Blanche directions as continuation of the supply depends on several factors.

The Appellant states that the CGRF has grossly erred in not issuing notice for disconnection of her electricity supply in spite of there being documents on records which had to be considered before passing any such order.

The CGRF finally stated in its order that several factors had to be considered by it for continuation of electricity however without going into the material placed before it.

The CGRF in its order had given directions to the Respondent to be diligent in such matters and not to disconnect power supply unless a 15 days' notice is given to the occupant, the Respondent however took it as a cart blanche direction to issue me the alleged notice of disconnection and on 12.4.2024 issued me the alleged notice for temporary disconnection of my electricity connection without giving any reasons for the same or asking me to show cause for not disconnecting it.

The Appellant states that she is in possession and occupying the said office premises since January 2019. The Appellant states that she is paying monthly rent of Rs. 10,000/- (Rupees Ten thousand only) and Rs. 500/- (Rupees Five hundred only) towards society maintenance. The Appellant states that she has been paying the electricity bill and that there is no outstanding/ arrears of the same. The Appellant states that the said fact was brought to the notice of CRGF however the CRGF failed to peruse the said documents and did not direct the Respondent to refrain from disconnecting power Supply.



The Appellant states that the basic human rights are sought to be violated and therefore the Appellant is forced to file the present appeal before this authority to seek withdrawal of the alleged impugned notice of temporary disconnection dated 12.4.2024 sent by the Assistant Engineer Mr Savio Fernandes and to quash and set aside the order passed by the CGRF dated 23.2.2024 and pass appropriate orders for protecting my human rights & fundamental rights guaranteed under article 21 and 14 of the Constitution of India and Electricity Act 2003.

The Appellant therefore prays that

- a) Quash and set aside the order passed by the CGRF dated 23.2.2024 and pass appropriate orders for protecting my human rights & fundamental rights guaranteed under article 21 and 14 of the constitution of India and Electricity Act 2003
- b) Quash and set aside the impugned alleged notice dated 12.4.2024 sent to the Appellant by the Assistant Engineer Mr Savio Fernandes
- c) Direct the Respondent not to disconnect the electricity connection of my Office.

B. Submissions of the Respondent in brief are as under: -

It is their case that on 27.12.2023, the consumer Virupaksh Betagiri requested temporary disconnection of his premises Shop No 207, 2nd Floor Block No B Saldana Business Tower, Mapusa, Goa. The supply was disconnected on 04.01.2024. The Respondent received a letter dated 05.01.2024 from the complainant stating that she was the occupant of the office and requested reconnection. She was informed that the disconnection had been done on instructions of the consumer Virupaksh Betigiri.

The Respondent received an email from the Office of Chief Electrical Engineer on 09.01.2024 to reconnect the supply and give 15 days' time to the complainant to submit directives from the competent authority to maintain supply failing which the supply was to be disconnected without further notice. The supply was restored around 5pm on 10.01.2024. Thereafter, the appellant was issued a disconnection notice on 10.01.2024 to get an order from the competent authority. The appellant failed to get any directions from the court of law, the electricity supply was again disconnected on 29.01.2024 however, the same was reconnected again on the following day after directions from the Chief Electrical Engineer.

Thereafter, the appellant preferred a complaint with Ld. CGRF Goa vide complaint No 03/2024/238 on 23.01.2024. Ld. CGRF while passing the order on 23.02.2024 stated that

"This Forum cannot issue Carte Blanche directions, as continuation of supply by the Department is dependent on several factors.

However, the Department is directed to be diligent in this and all similar cases of disconnection requests received in respect of premises occupied by lessee/third parties; disconnection should not effect unless 15 days' notice is given to the occupant."

C. Hearing on 24.04.2024

Present:

Ms Gautami Kamat For Appellant

Mr Savio Fernandez for respondent

Ms Gautami Kamat representing the appellant has submitted that she is in receipt of a disconnection notice dated 12.04.2024 issued by the Respondent ED Goa stating that the electricity supply to her shop No 207, 2nd Floor Block No B Saldana Business Tower, Mapusa, Goa shall be disconnected after 15 days from the receipt of disconnection notice vide letter No AE-I(U)/VI/O&M/2024-25/Tech-48/66 dated 12/04/2024. She has submitted that she has not been given an opportunity to be heard by the Electricity Department. Earlier also the electricity supply to her shop has been disconnected twice by the department and it is only on the intervention of Chief Electrical Engineer Electricity Department Goa the electricity supply was restored back.

Respondent, Assistant Engineer submitted that the disconnection notice has been issued on the instructions of Executive Engineer and further submitted that the appellant can seek the relief from the court of law for getting the disconnection stayed.

D. Analysis and Findings:

Having perused the documents in record and relying on the statements recorded in the orders of Ld CGRF it is observed that the department is in total disregard to the provisions of section 9 (Disconnection and Reconnection) of JERC Supply Code 2018 and in violation of section 56 of Electricity Act 2003.

The registered consumer requested for Temporary disconnection of supply on 27.12.2023. The Electricity Department Goa did not issue a notice of 15 days before

disconnecting the supply. As per section 56 (1) of the Electricity Act and section 9.4 of JERC Supply Code 2018 which states as under: -

Section 56 (1) of Electricity Act 2003

Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

an amount equal to the sum claimed from him, or

the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

Section 9.4 of JERC Supply Code 2018 provides as under:

"The supply shall be disconnected after giving a notice period of minimum 15 days. The supply shall be disconnected only if the cause of the disconnection is not removed within the notice period."

As per section 9.1 of JERC Supply code 2018 which states as under: -

"The supply may be disconnected temporarily or on a permanent basis as per



the procedure described below. The Licensee shall remove service line, meter, etc., after permanent disconnection. However, the Licensee may not remove service line, meter, etc., in case of temporary disconnection."

In the present case the consumer requested for Temporary disconnection but permanent disconnection was done and that too in less than 15 days time on 4th January, is a clear violation of section 9.4, section 9.1 of the JERC Supply Code 2018. As per the statement of Assistant Engineer ED Goa, at the time of inspection of premise by the JE the premise was locked, he did not issue any notice but preferred to remove the meter. This is gross violation of the JERC Supply Code 2018.

On perusal of the records, it is found that the disconnection notice issued by Assistant Engineer, Electrical Sub-Division-I(U) vide his letter No AE-I(U)/VI/O&M/2024-25/Tech-48/66 dated 12/04/2024 is only for Temporary disconnection and the purpose for disconnection is on account of some repair work. When the shop is occupied by the appellant and registered consumer is Mr Virupaks Betagiri the onus of verification lies with the department so that no one should be deprived of electricity as long as she is in possession of shop/premise in question. Further, no opportunity is given to the user/occupier of the premise to seek any other alternative for applying a fresh electricity connection in her name or take any other legal remedy available to her as per law.

In this case the landlord has applied for disconnection to intimidate the occupier/user of this premise to vacate the premise but the department cannot act as a facilitation resource for the same. The vacation of any premise can either be with a mutual consent, on termination of agreement or on the directions of Civil Court but Electricity department cannot be used as a facilitation resource.

In case the registered consumer requests for disconnection for any purpose permitted as per supply code 2018, a disconnection notice must be issued to the user (in case other than the Registered Consumer) so that he can apply for a new connection in her name.



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

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

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

Applying the literal rule, there appears to be no doubt that an occupier of a premises meaning thereby a person in possession thereof, in terms of section 43 of the new Act, is entitled to supply of electricity on request being made to the licensee and once electricity is supplied and he bears the charges therefore, he becomes a consumer of electricity. The duty of the licensee is to supply electricity, ie, sell electricity. However, duty and/or obligation of the licensee to ascertain whether the prospective consumer is in lawful occupation or not is not discerned in the statutory provisions.

- E. In view of the above the said appeal is allowed.
- F. The order passed by the Ld. CGRF Goa in case No 03/2024/238 is set aside to the extent.
- G. The Electricity Department Goa is directed to cancel the disconnection notice issued to the appellant as the premise is under appellant's possession. She will be without electricity once the disconnection is done inspite of the fact that she is paying all the



dues to the department and also paying the rent to the owner of the premise. The electricity is an essential service for all the occupants of a premise whether he/she is the owner/tenant/occupier. It is a matter of Civil Court to decide on the occupation whether it is lawful or not.

- H. There has been wrong submission by the Registered Consumer Mr Virupaks Betagiri that he wanted to carry out some repair work because the premise is occupied by the appellant on which the owner had applied for disconnection.
- I. In case the Registered consumer still wants disconnection on some valid grounds as per the Supply Code 2018, an equal opportunity be given to the occupier to seek a fresh connection in her own name for her bonafide use.
- J. The Chief Electrical Engineer Electricity Department Goa may to look into the conduct of Assistant Engineer Mr Savio Fernandez and JE Mr Gaonkar as they have been found to be in gross violation of Supply Code 2018. Due to their conduct in present case the Ms Veena Ghode had been harassed when the disconnection is done on 04.01.2024 without issuing a disconnection notice and thereafter took almost one week to get the electricity supply restored. Under what circumstances, Assistant Engineer accepted the application for restoration when the supply has been disconnected illegally.
- K. A certified copy of this order be sent to Chief Electrical Engineer, Electricity Department Goa, and Nodal Officer, Electricity Department Goa.
- L. The Respondent/Licensee (ED) is directed to submit compliance report within 15 days from the date of issue of receipt of this order as per JERC Regulation No. 26/2019 under Clause 27(1)

The appeal is disposed of accordingly.

Dated: 26 April, 2024



(C M SHARMA)

Electricity Ombudsman
For Goa & UTs (Except Delhi)