

**BEFORE THE ELECTRICITY OMBUDSMAN**  
**For the State of Goa and Union Territories (Except Delhi)**

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**APPEAL No. 106/2018.** 771-772

**Date of Hearing: 19.02.2019 at Port Blair**

**Sh. Sushil Dixit**  
**R/o Radha Nagar,**  
**Havelok Island**  
**South Andaman, Port Blair**

**..... Appellant**

**Versus**

**The Superintending Engineer**  
**Electricity Department,**  
**Andaman and Nicobar Administration**  
**Port Blair – 744101.**

**.....Respondent**

**Parties present:**

Appellant

1. Shri Sushil Dixit
2. Shri Sanjay Balan, representative of Shri Sushil Dixit

Respondents

1. Shri Ramesh Chander, Executive Engineer, South Andaman
2. Shri Shahaje, Junior Engineer (Technical), South Andaman

**Date of Order: 12.03.2019**

The Appellant has preferred an Appeal against order of the Consumer Grievances Redressal Forum, Andaman & Nicobar dated 19.09.2018. The Appeal was admitted on 18.10.2018 as appeal No. 106 of 2018.

**A. Submissions by the Appellant:**

1. The Appellant had applied for domestic electricity connection vide letter dated 23.01.2017.



2. The Appellant had not been provided with a domestic electricity connection till date.
3. Electricity is a basic human right and is also a legal right.
4. Section 43 of the Act begins with words "duty to the supply on the request". As per this Section, the licensee is duty bound to provide electricity connection on receipt of application within a period of 01 month.
5. Section 44 of the Act relates to 'exceptions from duty to supply electricity'. It stipulates that the only exceptions from duty to supply electricity by a distributor licensee are by floods, storms or other occurrence which is beyond his control (Force Majeure).
6. Thus, denial of electricity is a basic violation of human rights. In light of various legal pronouncements, Section 43 in the Act and the Regulations framed under, have to be construed as mandatory, to provide electricity supply, to the owner or occupiers of the premises and to those who reside even on the government land, where electricity is used or intended to be used. The only exceptions are those as provided under Section 44 of the Act or a specific order by any Court.
7. Vide the impugned order of Electricity CGRF, the application for providing electricity connection filed by the appellant during 2017, has been kept pending till disposal of the Title suit. The Electricity CGRF has come to this conclusion because of an order passed in Title suit by a Civil Court in the year 2013 ( as produced by the licensee) which is stated to be to maintain status quo as regards the nature, character and possession in the suit property till disposal of the suit. Here, it may be pertinent to add that electricity CGRF has not found any exception provided under Section 44 in the Act to deny electricity connection to the Appellant and has totally rejected such claims by the licensee before the Electricity CGRF.



8. It is apparent on bare perusal of the order of the Electricity CGRF that the Licensee has got the said order from a third party.
9. It is also a fact that Electricity being a basic right (as is food and water), cannot be denied without the specific order of the court. Providing electricity connection, therefore, will not have any effect as regards order of a Civil Court in an unrelated matter (regarding dispute of Title) to maintain status quo as regards the nature, character and possession of suit property. If it is construed to be so, then, in that event even bringing into the disputed premises another type of food grain or a water pipe line etc. can be construed to have changed nature and character and possession over the land. In fact the Learned Counsel of the licensee had correctly submitted that the title suit lying with the Civil Court is not the subject matter in this case. This fact has also been recorded at page 3 (highlighted by yellow wash ) of the impugned order of Electricity CGRF.
10. The Hon'ble High Court at Calcutta, Circuit Bench at Port Blair in its Constitutional Writ Jurisdiction disposed off Writ Petitions No.s 423 of 2010 and others, clearly holding that:

*"We, therefore, hold that a person in settled possession of a property as illustrated in this case of Rama 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.*

*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 Island 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 in favour of the trespasser in occupation to defeat the title of the lawful owner.

PRAYER:

- (1) the impugned order may be set aside and the licensee may be directed to provide electricity connection immediately; and that
- (2) the licensee has neither provided electricity nor rejected the request within 01 month as provided under Section 43 and has never intimated fate of the application made by the Appellant. Therefore, (irrespective of the fate of instant case) the licensee is liable to pay penalty of Rs.1000/-

for each default for each day after the expiry of the one month period.

Penalty to the said extent till date may also be awarded to the Appellant.

**B. Submissions by the Respondent:**

1. The Respondent has submitted that they are unable to provide connection due order of status quo with regard to nature, character and possession till disposal of dispute by Civil Judge (Senior Division) in T.S. No.36/2012.

**C. CGRF order preferred for Appeal:**

**Consumer Grievances Redressal Forum, A&N in its order dated 19.09.2018 has decided as under:-**

1. *That present application will be kept in abeyance till disposal of the Title Suit No.36/2012 pending before the Learned Civil Judge, Senior Division, Port Blair.*
2. *No specific direction is given to the Licensee/Respondent in this case No.131 filed with the Electricity Consumer Grievance Redressal Forum vide R.D. No.2414 dated 22.08.2018.*
3. *That the Complaint No.ANI/CGRF/131/18-19/7 dated 22.08.2018 (i.e. Case No.131) is hereby partially admitted, and is kept in abeyance till the disposal of T.S.No.36/2012 pending before the Ld. Civil Judge, Senior Division, Port Blair.*
4. *Shri Susheel Dixit having approached this Forum for settlement of grievance shall not be harassed overtly or covertly by the respondent in any manner whatsoever.*

**D. Discussions during hearing:-**

- 1 In addition to the earlier submission, the Appellant submitted that in terms of judgement of W.P. No. 25482(W) of 2010 in Sk.Samsud Doha v/s The West Bengal State Electricity Distribution Co.Ltd. & Ors. wherein the facts and circumstances of the case were similar to his case and the Writ petitioner was allowed the electricity connection to the disputed property. The Hon'ble High Court has pointed out as under:-

.....

*A bare perusal of the aforesaid provision would show that it is a mandatory statutory duty on the part of the licensee to provide electricity to any premises within the area of its operation. Sub-section (3) of Section 43 of Electricity Act, 2003 provides that a failure to affect such supply within specified period would entail penal consequences. It is therefore, untenable in law to suggest that the statutory duty on the part of the licensee can be avoided on the specious plea that the applicant has failed to provide necessary access for supply of electric energy.*

.....

*The Appellant has a statutory right to apply for and obtain supply of electricity from the distribution licensee and the distribution licensee has a corresponding statutory obligation to supply electricity to the appellant.*

.....

*The other contention relating to pendency of the civil suit and the order of status quo as to nature and character of the suit property also does not stand in the way of WBSEDCL to discharge its statutory duty and provide electric connection to the petitioner who is admittedly an occupier and co-sharer of*

the premises in question. The order of injunction directs to maintain status quo as to nature, character and possession would not be violated in any way if the electric connection is provided in the said premises. That apart, the WBSEDCL is not a party to the said proceeding.

In view of above judgment of Hon'ble High Court at Calcutta, Appellant is entitled for electricity connection being occupier of said property.

2. On the contention by the Respondent regarding non-availability of right of way, the appellant submitted that there is no such problem regarding right of way as he has been using the public way/passage through which he has been enjoying the occupation of said premises and connection can be provided through that public way.

#### **E. Analysis & Decision:**

1. Clause 5.30 of Joint Electricity Regulatory Commission for the State of Goa and UTs (Electricity Supply Code ) Regulations 2018"( hereinafter referred to as 'the Supply Code 2018') provides as under:

*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 / khata nakal;*
- (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.

2. Annexure-1 (Application form- New Connection) of the Supply Code 2018 provides the following declarations to be given by the applicant:-

.....



e) I/We further agree that the connection given to me/us is only for availing electricity during my occupancy and shall not be used in any way to show ownership of premises.

3. Clause 5.19 of the Supply Code 2018 provides

*Connection to any applicant residing in unauthorized colonies/areas or disputed property shall not be granted where a restraining/prohibition order has been issued by any Indian court and/or a restraining/prohibition order has been issued by any competent authority.*

4. The Judgment in W.P. No. 25482(W) of 2010 in Sk.Samsud Doha v/s The West Bengal State Electricity Distribution Co.Ltd. & Ors, Hon'ble High Court at Calcutta has decided:

The other contention relating to pendency of the civil suit and the order of status quo as to nature and character of the suit property also does not stand in the way of WBSEDCL to discharge its statutory duty and provide electric connection to the petitioner who is admittedly an occupier

5. Section 43 of Electricity Act,2003 provides:

*(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:*

....

Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

In view of above as there is no restraining/prohibition order for release of Electricity connection to the said premises, it is decided as under:-

- i) The Appellant needs to apply in prescribed form provided in Supply Code 2018.
- ii) The respondent may release the Electricity connection to the Appellant occupier in accordance to the provisions of Supply Code 2018 & Electricity Act, 2003.
- iii) In view of explanation of Section 43 of Electricity Act 2003, the earlier application by appellant for new connection cannot be accepted as the same has not been applied in appropriate form and is without payment of necessary charges and other compliances.
- iv) The said connection/ shall only be for enjoyment of Electricity by the Occupier appellant.
- v) This order or the Electricity bill/connection in no way whatsoever affect the right of parties in title suit No.36/2012 pending before the Learned Civil Judge, Senior Division, Port Blair.

The Appeal stands disposed off accordingly.



(Rajesh Dangi)  
Electricity Ombudsman  
12.03.2019

1. Sh. Sushil Dixit  
R/o Radha Nagar,  
Havelok Island  
South Andaman, Port Blair
2. The Superintending Engineer  
Electricity Department,  
Andaman and Nicobar Administration  
Port Blair – 744101.

Copies to:

1. The Secretary, JERC
2. The Chairman, CGRF, Electricity Department, Andaman & Nicobar.
3. Sh Arvind , Sr. Assistant, JERC for uploading the Order on JERC website

