

Before the Electricity Ombudsman

(Appointed by the Joint Electricity Regulatory Commission
for the State of Goa and UTs, under Section 42 (6) of the Electricity Act, 2003)
Second Floor, HSIIDC Office Complex, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon (Haryana)
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Appeal/ Representation No. 17/2013

Representation/ Appeal Before the Electricity Ombudsman for JERC for the State of Goa and UTs against the order dated 22nd March, 2013 of CGRF, Chandigarh by Shri Kulbhushan, Booth No. 814, DMC, Sector- 38-West, Chandigarh on the matter of release of electricity connection for booth No. 814, Sector 38, West, DMC, Chandigarh.

Shri Kulbhushan,
House No. 1642, Dadu Majra Colony
38-West, Chandigarh

Appellant

V/s

The Executive Engineer,
Electricity Department,
Operation Division No. 4,
Sector 34, UT Chandigarh

The Sub-Division Officer (SDO),
Electy. 'OP' Sub-Division No. 10,
UT, Chandigarh

Mr. Brij Bhushan
House No. 3680, Sector 25-D
Chandigarh

Respondent

Hearing on Friday, the 19th July, 2013

Present: Mr. R. K. Kaul, Electricity Ombudsman for JERC for Goa and UTS.

On behalf of the Appellant:

Shri Kulbhushan,
House No. 1642, Dadu Majra Colony
38-West, Chandigarh

On behalf of the Respondent:

1. Er. Deepak Bansal
Executive Engineer,
OP Div No. 4, Electricity Department,
UT Chandigarh

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2. Er. Gurnam Singh
Sub-Division Officer (SDO),
Electy. 'OP' Sub-Division No. 10,
UT, Chandigarh
3. Shri Narinder Kumar
Asstt. Revenue, Accountant
OP Sub Division No. 10
4. Mr. Brij Bhushan
House No. 3680, Sector 25-D
Chandigarh

Date 24.07.2013

ORDER

1. The appeal/ representation cited above received in the Office of Electricity Ombudsman for the State of Goa and UTs was admitted on 17th June, 2013. A copy of the same as received was forwarded to the Respondent on the same very day with the direction to submit their remarks/ counterstatement on each of the points relating to the matter of this representation supported by copies of relevant documents, latest by 12th July, 2013, with a copy also to the Appellant. The point wise reply of the Respondent has been received in the Office of Ombudsman on 12th July, 2013. Hearing in the matter was held at 11:00 AM on 19.07.2013 in Chandigarh.

Brief Facts of the Case

2. Shri Jaswant Singh was an allottee of Booth No. 814, Sector 38, Chandigarh. An electric connection existed in his name. Lately he was not in a position to make the payment for electricity bills. Accordingly for non payments of govt. Dues (electricity bills), the electricity connection in the name of Shri Jaswant Singh was disconnected in 2003.
3. The Electricity Department in the year 2004 released an electricity connection in favour of Shri Kulbhushan S/o Shri Jaswant Singh after obtaining the indemnity bond from him along with the electricity arrears pertaining to Shri Jaswant Singh, father of Shri Kulbhushan, who requested licensee for grant of electric connection.

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4. Shri Brij Bhushan S/o Late Shri Jaswant Singh resident of House No. 3680, Sector 25 D, Chandigarh lodged a complaint dated 18.05.2012 with the Consumer Grievance Redressal Forum for non-release of a electricity connection for Booth No. 814, Sector 38, DMC, Chandigarh by the licensee. He stated that his father died on 08.05.2005 and left a will in his favour. On that basis he had requested Electricity Department for release of connection but the connection was denied to him, although he submitted all relevant papers needed for getting an electricity connection.
5. The Electricity Department did not release the electric connection in favour of Shri Brij Bhushan as there existed already an electric connection in the name of Shri Kulbhushan (Brother of Shri Brij Bhushan) in the same booth No. 814, Sector 38, Chandigarh.
6. CGRF vide its order dated 09.07.2012 ordered the Executive Engineer, Electricity Department to disconnect the electric connection which already existed in the name of Shri Kulbhushan as it was granted illegally. The licensee was ordered to charge Shri Kulbhushan for actual consumption till his supply was disconnected. It was also ordered to release connection in the name of Shri Brij Bhushan for booth No. 814, DMC, Chandigarh, in view of the will executed by Shri Jaswant Singh in his favour and disowning of the other three sons including Shri Kulbhushan vide public notice which appeared in the issue of Danik Tribune on 22.11.1998. The licensee was cautioned to be more vigilant and dutiful while granting electricity connection failing which penalty under Section 43(3) of Electricity Act, 2003 could be imposed for any delay.
7. Aggrieved with the decision/ order of the CGRF dated 09.07.2012, Shri Kulbhushan S/o Late Shri Jaswant Singh approached CGRF with a representation dated 02.01.2013 and 14.01.2012 for release of connection at his booth No. 814 as he was occupying the booth and paying electricity bills regularly.
8. The CGRF vide its order dated 22.03.2013 rejected the appeal of Shri Kulbhushan to retain the existing electricity connection released in 2004 or to have a new electricity connection.
9. Aggrieved with the decision of the CGRF, the Appellant filed this appeal/ representation before the Electricity Ombudsman for JERC for the State of Goa and UTs, with the following prayer.



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Prayer

- a) To allow the appeal
- b) To set aside the order's of CGRF (dated 09.07.2012 and dated 22.03.2013)
- c) To restore the electricity connection in favour of Shri Kulbhushan.
- d) Any other relief deemed fit and proper

Settlement by Agreement

10. Both the parties under this appeal/ representation, were informed on 15.07.2013 to appear before the Ombudsman for the hearing on 19.07.2013 at 11:00 AM in the conference room of UT State Guest House, Chandigarh. It was indicated to them to put forth and explain their position in person or by an authorised representative and produce documentary evidence relating to all the points on the matter of this representation. It was also informed through the notice that the Ombudsman's efforts, in the first instance, during the hearing would be to facilitate settlement through mediation and conciliation.
11. Both the parties appeared before the Ombudsman as scheduled and were heard. Efforts were made to reach an agreement 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 pleadings on the matter.

Pleading by the parties and Responses to the Issues

The Appellant

12. The Appellant reiterated the points as detailed in his representation (Point No. 1 to Point No. 9). It was stated that he was doing the job of Tailoring for the last more than 20 years at booth No. 814, Sector 38, Chandigarh. The booth was allotted to his father late Shri Jaswant Singh and half of it was being used by him and other half by his brother Shri Brij Bhushan. An electricity connection was granted to his father in 1987 but the same was disconnected on 21.02.2002 because of non payment of bills/arrears of electricity. He deposited the entire amount and got an electric connection in his name in 2004 after submitting the indemnity bond. Since then he has been paying the electricity bills regularly.

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13. That in the year 2011, his brother Shri Brij Bhushan filed a complaint to the licensee to disconnect his connection and to release a new connection in his favour on the basis of a will alleged to have been executed by his father in favour of Shri Brij Bhushan.
14. When the licensee did not release the connection in favour of Shri Brij Bhushan, he filed a complaint to the Consumer Grievance Redressal Forum (CGRF), UT Chandigarh on 21.05.2012, who vide its order dated 09.07.2012 ordered the disconnection of electricity connection of the Appellant and ordered for a fresh connection in favour of Respondent No. 4 (Shri Brij Bhushan).
15. Thereafter the Appellant moved an application dated 02.01.2013 before CGRF, Chandigarh for setting aside the order dated 09.07.2012 passed against him but the forum dismissed the application of the Appellant vide order dated 22.03.2013.
16. The Appellant argued that the fictitious will paper available with his brother Shri Brij Bhushan did not exist when he was allotted connection. On the basis of the will papers Shri Brij Bhushan tried to transfer the Booth No. 814, Sector 38, Chandigarh in his name but could not as the original allotment letters in the name of Shri Jaswant Singh were not available in the record. Their mother late Smt. Saroj Rani even approached Civil Court, Chandigarh against the affidavit signed by their father (Shri Jaswant Singh) disowning Shri Kulbhushan and his two brothers except Shri Brij Bhushan and got the stay from the Court.

The Respondent (Shri Brij Bhushan)

17. Responding to the above, Shri Brij Bhushan stated that his brother Shri Kulbhushan, in connivance with the Electricity Department got the electricity connection on 29.01.2004, illegally. According to him, the Appellant is not the lawful owner of booth no. 814, Sector 38, Chandigarh.
18. His father Shri Jaswant Singh registered a will dated 29.04.2003 in his favour. He also wrote two letters dated 16.06.2004 & 23.06.2004 to the Chief Engineer, Department of Electricity, Chandigarh for removal of illegal electricity connection given to Shri Kulbhushan, the brother of Shri Brij Bhushan but the licensee did not pay any heed and even then issued the electricity connection in the name of Shri Kulbhushan. The Respondent (Licensee) however showed their ignorance of any such letters having received from Shri Jaswant Singh. The Licensee went to the extent to say that these letters are not available in their records as they have already searched for these.

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19. The Respondent (Shri Brij Bhushan) submitted on record a copy of the public notice published in the Dainik Tribune dated 22.11.1998 disowning three sons, namely Shri Kulbhushan, Shri Shiv Kumar and Shri Ashwani Kumar (brothers of Shri Brij Bhushan) from his movable and immovable property and copies of letters written by his father to Electricity Department.
20. Referring to his application submitted to the Department of electricity in the month of Sept, 2011 for release of connection, it was pointed out that his application remained pending with the electricity Department. He had to approach the Consumer Grievance Redressal Forum for release of connection in his favour.

The Respondent (Licensee)

21. It was submitted that Booth No. 814 have two portion by erecting wall and at present there are two electric connections in the name of Shri Brij Bhushan and second in the name of Shri Kulbhushan. The electric connection to Shri Kulbhushan was released vide application No. 29584 on furnishing indemnity bond on 29.01.2004 and second electric connection was released to Shri Brij Bhushan vide application No. 42053 dated 23.07.2012 on the directions of Hon'ble CGRF vide order dated 09.07.2012.
22. The electric connection, sought by Shri Kulbhushan vide Application No. 29584 and A/c no. DC41/0181400 was allotted to him after he submitted the indemnity bond.

Findings

23. On the basis of the paper submitted by the parties and on the basis of pleading by the parties, the following emerges:
- a) The Respondent (licensee) issued service connection order No. 1/71 dated 29.01.2004 in favour of the Appellant (Shri Kulbhushan) being the son of Shri Jaswant Singh on production of Indemnity Bond, payment of arrears of the bill for the connection which earlier existed in the name of Shri Jaswant Singh, father of Shri Kulbhushan and Shri Brij Bhushan and was disconnected for non payment of the bills. While issuing the permanent disconnection order in respect of Shri Jaswant Singh, the licensee should have followed the proper procedure of serving atleast 15 clear days advance notice, *required under regulation 9.1 of Regulations on Electricity Supply Code governing supply of electricity effective 20.05.2010 read with Section 50 of Electricity Act, 2003.*

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- b) Unwarranted delay for release of connection in favour of Shri Brij Bhushan who approached the licensee in Sept 2011 and submitted all relevant papers. The licensee should have abided by the following:

Section 43(1) of Electricity Act, 2003 provides that the

"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."

Section 43(3) of Electricity Act, 2003 states

"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."

- c) CGRFs order dated 09.07.2012 regarding the disconnection of supply already existing since 2004 in the name of Shri Kulbhushan who has been paying regularly the electricity bills is not covered under any Section of Electricity Act, 2003/ Regulations of Electricity Supply Code. The relevant sections of Electricity Act, 2003/ Regulations on Electricity Supply Code regarding **Disconnection of Supply** are reproduced below. Therefore disconnection order is against the law and hence CGRF order dated 09.07.2012 to the extent of disconnection of supply in respect of Shri Kulbhushan is set aside

- d) Section 50 of Electricity Act, 2003 states as follows:

*"The State Commission specify an Electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, **disconnection of supply of electricity for non-payment thereof**....."*

- e) Regulation 6.6 of JERC, Electricity Supply Code Regulation governing supply of electricity effective 20.05.2010 states as follows:

"Permanent Disconnection

The supply shall be disconnected permanently in following cases:

- (a) *With the termination of the agreement.*
(b) *If the cause for which the supply was temporarily disconnected is not removed within the notice period specified in the agreement for termination of agreement or initial period of agreement whichever is later.*

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(c) *On request of consumer.*

(d) *On non payment of bills as provided in regulation 9.1 below."*

f) *Further Regulations 9.1 and 9.2 of JERC . Electricity Supply Code Regulation governing supply of electricity effective 20.05.2010 provides as follow:*

9.1 Disconnection due to non-payment of bill amount

"Where a person neglects to pay any charge for electricity or any other sum due from him to a Licensee, by the due date mentioned in the bill, in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee may, after giving not less than fifteen (15) clear days notice in writing to such person, without prejudice to his rights to recover such charge or other sum due by suit, cut off supply of electricity, until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid."

9.2 Disconnection on other reasons:

"The licensee may also disconnect power supply to a consumer on any of the following grounds after serving proper notice as per Annexure - 3

- (1) At the request of consumer*
- (2) Mandated the Licensee to do so by a person with legal authority to issue such notice.*
- (3) Entitled the Licensee to do so under an agreement with the consumer.*
- (4) The Licensee reasonably believes that the consumer has contravened any of the provisions of this code, which entitle the Licensee to disconnect the supply.*
- (5) If the Licensee reasonably believes that failure to disconnect may or likely to cause a health hazard or safety risk or damage to property or to the consumer or to any other person; such as excessive leakage current as provided under Rule 49 of the I.E. Rules, 1956.*
- (6) If the Licensee reasonably believes that the consumers installation does not satisfy the applicable rules or any other reasonable requirements prescribed by the Licensee.*
- (7) If the security deposit provided by the consumer has become insufficient or the consumer has to provide additional security deposit, which the consumer has failed to deposit within time limit prescribed.*

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(8) If default in payment or detection of theft of electricity under Regulation 10.3 (e)(i) and Regulation 10.5 (a) (vii) respectively supply will be disconnected immediately without giving notice.

(9) For not providing access to the Licensee or its authorized representative under Regulation 4.12 (4).

(10) Where any consumer having more than one connection defaults in payment of dues relating to one of the connections."

ORDER

24. Based on the above, the representation/ appeal of the Appellant is disposed off with the following orders:

- 1) **The CGRF order dated 09.07.2012 to grant / release electric connection in favour of Shri Brij Bhushan (the Respondent) is upheld.**
- 2) **CGRF order dated 09.07.2012 for disconnection of electric connection already existing in the name of Shri Kulbhushan (the Appellant) since 2004, who is paying the electricity bill regularly is set aside. The licensee is ordered not to disconnect the supply already existing in favour of Shri Kulbhushan (the Appellant).**

Dated the 24th of July, 2013



(R. K. Kaul)
Electricity Ombudsman for JERC
for the State of Goa and UTS
Mob: 9871588333

Ref. No. 1/28/2012-EO
Forwarded to:

1. Shri Kulbhushan,
House No. 1642,
Dadu Majra Colony
38-West, Chandigarh
2. Executive Engineer,
OP Div No. 4, Electricity Department,
UT Chandigarh

The Respondent shall comply with the award/ order within 15 days of its receipt. Non- compliance shall constitute violation of JERC Regulations and may attract remedial action under Sections 142 and 146 read with Section 149 of the Electricity Act, 2003.

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Copy to:

1. The Secretary, Joint Electricity Regulatory Commission for the State of Goa and UTs.
2. The Finance Secretary, 4th floor, UT Secretariat, Sector-9, Chandigarh- 160009
3. The Chairman, CGRF, Chandigarh

Copy also to:

1. Sub-Division Officer (SDO), Electy. 'OP' Sub-Division No. 10, UT, Chandigarh
2. Shri Narinder Kumar, Asstt. Revenue, Accountant, OP Sub Division No. 10
3. Mr. Brij Bhushan, House No. 3680, Sector 25-D, Chandigarh

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