

BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM
(Under the Electricity Act, 2003)
PUDUCHERRY

PRESENT:

THIRU T. GOPALAKRISHNAN, B.E.,
CHAIRMAN

THIRU A.S. JITENDRA RAO, B. Tech., M.B.A.,
LICENSEE MEMBER

THIRU R. KRISHNAMURTHY, B.Com., LLB., PGDFL.,
JERC NOMINATED MEMBER

FRIDAY, THE 4TH DAY OF FEBRUARY 2022

CONSUMER CASE No.130/2021

V. Jayalatchoumy,
No.5, First Cross,
Asokan Street,
Nethaji Nagar-I,
Puducherry – 605001.

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Complainant

Vs.

- 1) The Executive Engineer-Urban O&M,
Electricity Department,
Puducherry.
- 2) The Assistant Executive Engineer –Town-I,
Electricity Department,
Puducherry.
- 3) The Junior Accounts Officer – Rev-I,
Electricity Department,
Puducherry.
- 4) The Junior Engineer – Town South Central,
Electricity Department,
Puducherry.

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Respondents

This case in C.C. No.130/2021 came up before this Forum for final hearing on 25/01/2022. After hearing both sides and having stood over till this date for consideration this Forum has delivered the following:

The case of the Complainant is as follows:

1. A Complaint was received on 20.12.2021 from V. Jayalatchoumy, having service connection with policy code 01-05-04-0347. In the Complaint the Complainant stated that on 17/08/2021 she had applied for disconnection of the above service connection as per JERC Regulation 9.8 along with undertaking to bear the arrears, last bill received, receipt copy and ownership documents. On examination of the application the Assistant Executive Engineer-Town-I told that the house is occupied by some person. He requested to cancel the rental agreement executed by her. Then only the service connection could be disconnected as per letter No.374/ED/AEE/T.I-U4/F.7/2021-22 dated 19/08/2021. As per the Electricity Supply Code Regulations 2018 of the JERC, it is against the rights of the consumers. The issue was taken up with the Executive Engineer, Urban on 01/09/2021. Based on the letter No.490/Ed/AEE/T.1-U4/F.7/2021-22 dated 30/09/2021, the complainant was requested to furnish the following documents.

- i. Copy of the cancellation lease deed with Tmt. Djealatchoumy between Elambarithi
- ii. Clarification on the petition given to the District Collector, Puducherry
- iii. Copy of the Encumbrance certificate.

The complainant stated that the application given to the District Collector is of civil nature and the Department is not having right to interfere in the matter as it is beyond the consumers rights. On 01/10/2021 she enclosed the Encumbrance Certificate along with her explanation to the Department. Even then the service connection was not disconnected after more than 120 days as per her application. The Complainant prayed for disconnection of the service connection. Hence, the Complaint.

2. The complaint has been registered as C.C. No.130/2021 on 21/12/2021 and the copy of the complaint was sent to the Executive Engineer, Urban O&M and

others to furnish reply by 03.01.2022. Reply from the Respondents was received on 11/01/2022 and copy of the same was forwarded to the Complainant. Hearing was posted on 25/01/2022. Hearing was attended by both the Complainant and Respondents.

3. In the Affidavit dated 10/01/2022, the Assistant Executive Engineer, Town-I / Respondent No.2 on behalf of first and fourth Respondents had stated that, V. Jayalatchoumy had applied along with registered documents for cancellation of existing service connection bearing Policy code 01-05-04-0347/A2 standing in her name at No.29, Desamuthu Mariamman Koil Street, Nethaji Nagar-II, Uppalam, Puducherry. Based on the request, the Junior Engineer/ Town-South Central O&M has inspected and reported that one person is living with his family and upto date current consumption charges also paid. Further, it is to inform that there exists some legal dispute between them.

4. Further, it is informed that, based on this, a notice was served to the Petitioner V. Jayalatchoumy, vide letter No.374/ED/AEE/T.I-U4/F.7/2021-22 dated 19/08/2021 to clearing of the tenant / occupier, and the same may be intimated to this office for further process. But as on date, no letter correspondence was received from the Petitioner on vacating the Occupier. Meanwhile, the Petitioner gave a letter along with documents on 01/09/2021 to the Respondent No.1 to disconnect the service connection. In this connection, again a notice was issued to the Petitioner on 30/09/2021. Based on the letter, reply has been received from the Petitioner on 01/10/2021 along with some legal documents to support her claim. Based on the reply, a detailed report along with all the documents was sent to the Law Officer through Respondent No.1 seeking legal opinion to the request for disconnection of power supply. The Department Law Officer scrutinized and opined the above said case. Based on the opinion, the Respondent No.1 sent reply letter to the petitioner vide Letter No. 3343/ED/EE-UR/JE/F.30-A/2021-22 dated 10/01/2022.

5. The Respondent No.2 also enclosed copy of the above letter sent to the Petitioner and reported that the premises is occupied by some person and upto date current consumption charges bill are also paid. Moreover, power in the existing service connection is under usage condition. After clearing the Tenant / Occupier, the same may be intimated to this Office for further process.

6. A copy of the extract of the reply of Law Officer has also been communicated.

It was opined as follows:

i. Upon field inspection carried out on 18/08/2021 by the Assistant Engineer-Town-I and the Junior Engineer-South-Central O&M, Thiru Arulmozhi Veerapan along with his 3 family members are presently residing at the premises bearing Policy code No. 01-05-04-0347/A2. Hence, Thiru Arulmozhi Veerapan along with his 3 family members may be treated as 'consumer / user' since they are the persons who are really enjoying the Electricity supplied by the Electricity Department, Puducherry being the Distribution Licensee.

ii. AS per Chapter 2 (22) of the JERC Regulations 2018, the consumer premises means land, building or structure or part of combination thereof in respect of which a separate meter or metering arrangements have been made by the Licensee for supply of Electricity. Hence, the limit of authorising powers being exercised by the Electricity Department, being the Distribution Licensee is squarely applicable in the premises, where the electric power supply is being utilized. As such, the Electricity Department, Puducherry being the Distribution Licensee has the right to exercise its authority over the premises by considering the fact that Thiru Arulmozhi Veerapan along with his 3 family members are the Occupier in the premises as per the stipulated Regulations.

iii. Furthermore, Tmt. V. Djealatchoumy has submitted vide his letter that in respect of land comprised of Ward-F, Block 23, TS No.96, RS No.350 of

Puducherry Revenue Village, the matter was already taken by the Revenue Department, Puducherry and the same is pending. In view of the above, nevertheless Tmt. V. Djealatchoumy has sought disconnection of power supply as an owner, the significance of actual enjoyer Thiru Arulmozhi Veerapan, of electricity supplied by the Distribution Licensee⁴ has to be considered since the Hon'ble Apex Court as well as various Hon'ble High Court has held that Electricity is basic amenity to human life and comes under Article 21 enshrining "Right to Live" of Constitution of India.

iv. The same status quo may be maintained for the existing domestic service connection bearing Policy code 01-05-04-0347/A2 at No.29, Desamuthumariamman Koil Street, Nethaji Nagar-II, Uppalam, Puducherry until the disposal of petition in her favour filed by Tmt. V. Djealatchoumy challenging the said tenancy before the Revenue Department, Puducherry or Eviction Order, if any, may be issued by the Competent Authority to evict the Occupier Thiru Arulmozhi Veerapan.

7. In the Affidavit dated 28/12/2021 filed by the Respondent No.3 / Junior Accounts Officer-Revenue-I has stated that, providing of Electricity service connection / reconnection and disconnection to the applicants / consumers, comes under the jurisdiction of the Assistant Engineer, Town-I. After disconnection and if the service is to be cancelled, proposal would be received from the field and service cancelled after collection of cancellation charges.

8. In the hearing held on 25/01/2022, the Complainant stated that she is residing in Nethaji Nagar-I and the service connection required for disconnection is in Nethaji Nagar-II. The premises is let out to relatives and already taken up the matter with Hon'ble District Court for eviction of the occupant. But without waiting for the outcome of the case, rushed to this forum and under the definition of 'Consumer Rights' applied for disconnection of the power supply. She had applied

for disconnection as per Regulation 9.8 of the Electricity Supply Code 2018 of JERC which states that:

“In case a consumer desires his meter to be permanently disconnected, the consumer shall apply for the same in the format prescribed in Annexure XV to this Supply Code 2018. The Licensee shall give a written acknowledgement of receipt of such request, on the spot”

9. Whereas, in this case, the Complainant has not fulfilled the definition of the consumer as she is living somewhere else and power from the service connection is being utilised by the occupant and there is no due as on date.

Observation:

1. The definition of consumer as given in Supply code 2018 is reproduced below:-

“Consumer” means any person who is supplied with electricity for his/her own use by a Licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, the Government or such other person, as the case may be including temporarily disconnected premises”. The complainant had informed during hearing that she is not residing in the premisses where disconnection has been sought. This established the fact that the complainant is neither in possession of the premises nor enjoying the power supplied by the respondents. As such the complainant cannot claim the status of ‘consumer’ and cannot submit application under Sec.9.8 of Supply Code, 2018 by exercising the power of the consumer.

2. The Complainant’s ultimate motive is to vacate the tenant from her property had given the application to the Department under Regulation 9.8 of the Supply Code 2018 praying for disconnection. Whereas, the Department officials stated that the building is being occupied by some person and disconnection of power would cause difficulties to the Tenant and “Right to Live” enshrined in the Constitution

of India would be violated. In similar context, In the Debendra Jha vs Smt. Minakshi Das, in the Hon'ble Orissa High court judgment dt.06.04.2005 in AIR 2005 Ori172, 2005 II OLR5, “ the petitioner continues to be a tenant even after termination of tenancy by way of notice or by efflux of time and is in lawful possession of the suit premises, he become a tenant holding over or tenancy in sufferance. In any event his possession as a tenant is legal and he cannot be evicted by force and even a rank trespasser cannot be evicted without due process of law.....”. The Apex court in the case of Krishna Ram Mahale Vs Sobha Venhat Rao reported in AIR 1989 Supreme court 2097 has clearly held that even a rank trespasser cannot be evicted without due process of law”. Apart from the above, it further appears that electricity and water supply to the suit premises had been disconnected deliberately by the defendant/opposite party to force the plaintiff-petitioner to vacate the suit premises and therefore the trial court was justified in directing restoration of the electricity and water.

3. The Hon'ble Supreme court and High courts have decided in many cases as follows:-

Electricity is an integral part of Right to Life within the meaning of Article 21 of the constitution. To strengthen the same, the Hon'ble Supreme court of India, has observed in Chameli Singh Vs State of UP., in Civil Appeal No.12122 of 1995 as under:-

“Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and

decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like road etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right".

4. On perusal of records and on hearing the parties, it is true that someone is residing and using Electricity and paying the C.C. charges regularly without default. Since the complainant is neither residing nor using electricity for her own use of the said premises wherein disconnection is sought for, the complainant is not entitled to get any relief as prayed for in the complaint at this stage and hence the complaint is not allowed. In the light of the above, the stand of the Respondent in not disconnecting the power supply is correct.

ORDER

1. In view of the above observations, the complaint is not allowed.
2. The Complainant is at liberty to prefer an appeal against this Order before the Ombudsman, Joint Electricity Regulatory Commission for the state of Goa and Union Territories, 3rd Floor, Plot No. 55-56, Pathkind Lab Building, Service Lane, Udyog Vihar, Phase IV, Sector -18 Gurugram, Haryana-122015 within 30 days from the date of this Order under intimation to this Forum and the Respondents.

Dated at Puducherry on this the 4th day of February, 2022

Sd/-

(R. KRISHNAMURTHY)
JERC NOMINATED MEMBER

Sd/-

(A.S. JITENDRA RAO)
LICENSEE MEMBER

Sd/-

(T. GOPALAKRISHNAN)
CHAIRMAN