

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

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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

MONDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2023

**CONSUMER CASE No.185/2022**

S. Sivagamasundari, W/o  
(Late) Sivapalani,  
No.12, D-Lane,  
Vedhabureeswarar Nagar,  
Thattanchavady,  
Puducherry-9

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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-Central,  
Electricity Department,  
Puducherry.

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Respondents

This case in C.C. No.185/2022 came up before this Forum for final hearing on 29/12/2022. 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 from S. Sivagamasundari W/o (Late) Sivapalani on 28/11/2022. In the complaint, the Complainant had stated that she has approached CGRF based on the directions given by Hon'ble High Court of Madras vide W.P. No.29265 of 2014. The gist of the complaint is as follows:
2. The Complainant had submitted that her deceased husband Sivapalani and his brother Muruvappan had entered into a partnership business under the Partnership agreement dated 06/03/1995 and ever since they have carried out business in the name and style of MURUGANS. The Complainant's husband Sivapalani(Late) was provided with electricity power under two policies one 03-12-02-0160/A1 for the premises at No.265-265 Jawaharlal Nehru Street, Puducherry in which his brother Thiru Muruvappan has been carrying out business in the name of MURUGANS and another policy 03-12-05-0627/A1 for the premises at No.32, Jawaharlal Nehru Street, Puducherry which is 100 meters away from Muruvappan's shop and is presently occupied by the Complainant. The Complainant submitted that while the partners have carried out business there is no hindrance in remitting electricity charges to the Department. While carrying out the partnership business, some misunderstanding arose between the partners and as jointly agreed the partnership has been dissolved. There were several issues in settlement of Partnership Deed. In spite of the break in partnership, the premises was occupied by Muruvappan and the power supply in Policy No.03-12-02-0160/A1 was enjoyed only by Thiru Muruvappan. Later the Department filed statement in respect of this Policy, when Thiru Muruvappan filed a Civil Suit in the Principal District Munsif Court, Puducherry in OS No.234 of 2013 and sought permanent injunction against Respondent 1 to 4 from enforcing Revenue Recovery proceedings in respect of the said policy. The Electricity Department in their Affidavit filed by Junior Accounts Officer-Revenue has stated that ("Further it is significant to mention that the Plaintiff

Muruvappan only operating the business at the above said premises and he is liable to pay the total dues of Rs.17,48,148/-. Eventhough the policy No. 03-12-02-0160/A1 is standing in the name of Sivapalani, the person who is liable to pay the dues” but Contrary to the statement and Sivapalani received notice on 14/10/2014 demanding arrears of Rs.14,41,286/- as on 23/09/2014 and Sivapalani send a detailed reply to the Department also. Since there is a threat of disconnection of other service in the name of Sivapalani, he moved to Hon’ble High Court and filed a Writ Petition No.29265/2014, in which the Hon’ble High Court directed to deposit Rs.1,44,000/- which was paid through banker’s cheque on 28/11/2014. Under this circumstances, the Respondents have issued another notice dated 10/11/2022 claiming arrears of Rs.22,52,734/- as on September 2022. Based on the Order from Hon’ble High Court in WP 29265 of 2014, the Complainant prayed for stay of the operation of the notices dated 14/10/2014 and 10/11/2022 issued by Respondent No.3 and not to disconnect the consumer policy No.03-12-05-0627/A1 standing in the name of Sivapalani as per clause 9.2(10) of JERC Supply Code 2010 and pass necessary Orders. Hence, the Complaint.

3. The complaint was registered as C.C. No.185/2022 on 30/11/2022 and copy of the complaint was sent to the Executive Engineer, Urban O&M and others to furnish reply by 12/12/2022. Reply received from the Respondents belatedly on 19/12/2022 and a copy of the same was communicated to the Complainant. The case was posted for hearing on 29/12/2022.

4. In the Affidavit dated 14/10/2022, the Assistant Executive Engineer, Town-I/ Respondent No.2 for himself and on behalf of Respondent No.1, 3 and 4 had stated that, the Complainant’s deceased husband Sivapalani and his brother Muruvappan have been carrying on the business under the name and style of ‘Murugans’. The said policy holder has also executed a deed of Indemnity on 18/05/1995 wherein the Indemnifier has requested the Department to transfer the service connection bearing

policy No. 03-12-02-0160/A1 in his name subject to executive of an indemnity bond by him indemnifying the Department in respect of the service connection to his name. Wherein, the indemnifier hereby agrees to indemnify the Department against all proceedings and also undertakes to make good any sum that may be found to be and become payable to the Department with regard to all liabilities and claims personally as well as by means of both movable and immovable properties and the Indemnifier further under takes that the Department shall be at liberty to disconnect the service connection given to him and also for loading the dues remaining unpaid by him to other service connection(s) that may stand in his name.

5. Due to non-payment of current consumption charges in respect of Policy No. 03-12-02-0160/A1 an outstanding arrears of Rs.14,41,286/- was pending due for payment as on 23/09/2014. Hence a 30 days notice dated 14/10/2014 for cancellation of service connection was issued / served for non-payment of outstanding arrears of Rs.14,41,286/- and wherein it was also informed that failure to pay the said arrears, the other service connection bearing No.03-12-05-0627/A1 standing in the name of Sivapalani, will also be disconnected without further notice as per clause 9.2(10) of the JERC Supply Code 2010. Consequently, the consumer filed a case in the Hon'ble High Court of Madras M.P.No.1 of 2014 in WP No29265 of 2014 and as a result of Writ Petition, the Hon'ble Court directed Thiru Sivapalani to pay 10% of the above outstanding amount of current consumption charges in respect of Policy No. 03-12-02-0160/A1. In compliance with the Order of Hon'ble Court, the Petitioner Sivapalani remitted 10% of the said amount through cheque and remitted vide receipt No.01-37343 dated 18/12/2014 for Rs.1,44,129/-. The above policy was existing in the name of Thiru Sivapalani. Due to irregular payment of current consumption charges the arrears has accumulated. The Department has issued several disconnection notice under Section 56 of the Electricity Act 2003 seeking payment on 14/10/2014, 19/09/2022 and 10/11/2022 but the Occupier did not

respond to the action taken. When the official of the Department went to disconnect the service connection on 20/11/2014, in pursuant to the notice dated 01/11/2014, they were obstructed from doing so and entry was denied to them. However the service connection of the defaulter was disconnected. The owner of the policy No. 03-12-02-0160/A1 Thiru Sivapalani, cannot absolve himself of the responsibility of ensuring that prompt payment is made in respect of the electricity connection held in the name as the contractual obligation for purchase and sale of electricity is only between the Petitioner herein Thiru S. Sivapalani and the Electricity Department in respect of policy No. 03-12-02-0160/A1 for the energy consumed in the premises. Hence, demand notice issued in respect of policy No. 03-12-02-0160/A1 being the outstanding arrears amount, standing in the name of S. Sivapalani vide notice dated 10/11/2022 for Rs.22,52,734/- is in order. It is denied that any action has been taken by the Department to recover the dues under Revenue Recovery Act as alleged in Para 23 of the complaint filed by the Complainant. The Hon'ble High Court of Madras has also disposed of the W.P. 29265 of 2014 filed by the Complainant and no injunction exists.

6. Hearing was held on 29/12/2022. Both the Complainant and Respondents were present. During the hearing, the Complainant had again reiterated that since the Department taken the stand that the arrears should be collected from Muruvappan in OS No.234 of 2013, they had not taken any action in ensuring payment of current consumption charges in the Policy under dispute. The present notice of the Department is contrary to this statement and needs to be set aside and the amount has to be recovered from Muruvappan who had enjoyed the power. On questioning, it was stated the Complainant's husband Sivapalani had not intimated the Department in writing on the breaching of partnership deed and the service connected in his name. The Respondent No.3 was asked to explain under which rules the Affidavit in OS 234/2013 was filed and who has approved it and also directed to provide a copy of the file notings and authority who approved it. The Respondent

No.2 was asked whether the service is live or in disconnected condition. The Respondent No.2 stated that it is under disconnection. The Respondent No.3 was asked to file additional Affidavit within a week. The Respondent No.2 was not in a position to explain why the Department not taken any effective action in earlier stage itself when the arrears accumulated to such a huge level. There was no proper response from Respondent No.2.

7. The Respondent No.3 filed additional Affidavit on 04/01/2022 for herself and on behalf of Respondent No.1,2 and 4. In the Affidavit the Junior Accounts Officer-Rev.I / Respondent No.3 had stated that the Policy bearing No.03-12-02-0160/A1, was transferred from one Thiru A.M. Joseph to Thiru S. Sivapalani, based on the document / application for transfer of services dated Nil. On remittance of Rs.630/- as Security Deposit vide receipt dated 30/05/1995 by S. Sivapalani, the name transfer was effected from May 1995 by this Department vide Transfer Order dated 05/06/1995. Moreover, it is also intimated in the Order that “the transferee will be fully responsible for all the liabilities relating to this Policy from the date of transfer. The policy holder Thiru S. Sivapalani, has also executed a Deed of Indemnity to the Department duly signed by him on 18<sup>th</sup> day of May 1995 agreeing to take full responsible for all the liabilities against any damage or loss caused to the Department in respect of the service connection to his name. In the written reply affidavit filed by 6<sup>th</sup> Respondent, the Junior Accounts Officer-Rev.I in O.S. No.234/2013 as pointed out by the Petitioner that it was Thiru Muruvappan, who is duty bound to pay dues to the Department for Policy No.03-12-02-0160/A1. Detailed explanation furnished hereunder:

This is the case pertaining between Thiru Muruvappan Vs Union of India and other 6 Respondents and the 7<sup>th</sup> being Thiru Sivapalani. At that time all the three services were being enjoyed by Thiru Muruvappan and since Thiru Sivapalani was not the Petitioner and this was the case pertaining to recovery of arrears due from the consumer, this Department took a stand to recover the arrears pertaining to Policy

No.03-12-02-0159/A1, 03-12-02-0160/A1 and 03-12-03-02-0161/A1 which were utilized by both Muruappan and Sivapalani based on the agreement between them for which the Department was not a party. Taking cue from the reply affidavit it is totally irrelevant and non-maintainable by stating that claiming of arrears due by Thiru Sivapalani, pertaining to Policy No. 03-12-02-0160/A1 should be claimed from Muruvappan. Further upon serving of notice to Thiru Sivapalani, for recovery of arrears due of Rs.14,41,286/- they have approached Hon'ble High Court vide W.P. No.29265 of 2014 and M.P. 1 of 2014 on which the Hon'ble High Court of Madras has directed the Petitioner Sivapalani to pay an amount of 10% of the outstanding arrears of Rs.14,41,286/- in respect of the policy No. 03-12-02-0160/A1 to restore the service, which clearly indicates that the Policy No. 03-12-02-0160/A1 pertains to the applicant Sivapalani and they are liable to pay the arrears due to the Department as per the Indemnity Bond executed by the Policy Holder and the Department at the time of obtaining the above service connection. Further the action taken by the Department to recover the arrears due from the consumer service connection Policy No. 03-12-02-0160/A1 by serving notice to the same consumer having a service connection at 10(32) JN Street, Puducherry with Policy No.03-12-05-0627/A1 is just as per clause 9.2(1) of JERC Supply Code 2010. Hence requested the Forum to pass necessary orders directing the petitioner to pay the arrears due of Rs.22,52,734/- as on September 2022 in the wake of dismissal of the Writ Petition No. 29265 of 2014 and M.P. 1 of 2014 by the Hon 'ble High Court.

Observation: (i) On perusal of the case it is observed that it is purely enforcement of Partnership Act and to decide who has to pay the current consumption charges arrears etc., CGRF has no jurisdiction in deciding the civil dispute and it is the parties to settle themselves or by any other competent authority to settle the issue who has to pay the arrear. The Forum is confining itself to the issues to examine whether the Department has taken sufficient steps in accordance with the rules in

realisation of arrears in Policy No. 03-12-02-0160/A1 and whether it could take shelter under the provision of 9.2(10) under JERC Supply Code 2010.

(ii) Since the Department has supplied power to the policy which is presently under dispute, the Department has every right to collect the arrears and the Complainant will have to settle the matter themselves, who has to clear the arrears in the policy.

(iii) As per the Affidavit of the Respondent No.2 the arrears as per Notice dated 14/10/2014 of Junior Accounts Officer(Rev.I) is Rs.14,41,486/-. When the Department takes action to disconnect the service for mere accumulation of arrears Rs.5,000 to Rs.10,000, why no action was taken by the Department to disconnect the said service connection and how the arrears were allowed to be accumulated to that level. There are reviews at several levels to monitor the arrears collection. In spite of that, the accumulation of arrears shows collective failure of the Respondents in enforcing proper rules and procedures. The Respondent No.1 should conduct an enquiry and to find out who are responsible for accumulation of arrears to that extent, and it is to be noted that there was no case pending before November 2014 and the Department was free to take action as per rules. The non-disconnection and non-issue of notice prior to 14/10/2014 can be treated as circumstantial evidence to prove the statement of the Complainant that Muruvappan and Respondents are in collusion.

(iv) When the Hon'ble High Court issue directions to collect 10% of arrears, the Department ought to have moved Hon'ble High Court through appropriate petition to increase the payment of arrears from 10% to some other higher levels, in order to have better revenue collection. But the Department had not taken any action either to get increased arrears amount to be payable by Sivapalani or to cancel the injunction order passed by the Hon'ble Court. The officials simply kept quiet with folded hands without taking any action for recovery of arrears as per rules and now threatening the Complainant to disconnect other policy No. 03-12-05-0627/A1 under the powers of Section 9.2(10) of JERC Supply Code 2010, is nothing but misusing of



the powers given by the JERC . Had the Department taken action to collect arrears before November 2014 then, there would be some meaning in enforcing of Section 9.2(10). Further the case No.O.S.234 /2013 was disposed on 12/01/2016 itself as “Dismissed for Default”

### ORDER

- i. In view of the observation made, the Respondents are directed
  - (1) Not to disconnect the policy No.03-12-05-0627/A1 by exercising powers under Section 9.2(10) of JERC Supply Code 2010.
  - (2) The Department shall take action in accordance with the provisions of Supply Code, first to cancel the disconnected service ie., 03-12-020160/A1, revise the arrears as per provision of Supply Code of JERC and to collect the arrears as per the provisions available to the Respondents.
- ii. The Complainant is informed that since the policy is standing in the name of Thiru Sivapalani, the Department can initiate action only against Thiru Sivapalani as per the rules in force and it is for the Complainant to prove otherwise based on the Orders of the Competent Authority.
- iii. The Respondents are directed to take action in respect of policy No. 03-12-02-0160/A1 strictly in accordance with the provisions of Supply Code and action taken shall be reported to this Forum.
- iv. Thus the complaint is allowed to the extent indicated.
- v. The Complainant, if aggrieved, by non-redressal of his / her grievance by the Forum or non-implementation of CGRF Order by the Licensee, may make an Appeal in prescribed Annexure-IV to the Electricity Ombudsman, Joint Electricity Regulatory Commission for the state of Goa and Union Territories, 3rd Floor, Plot No. 55-56, Pathkind Lab Building, Service Road, Udyog Vihar, Phase IV, Sector -18 Gurugram, Haryana-122015; Phone 0124-4684708; email [ombudsman.jercuts@gov.in](mailto:ombudsman.jercuts@gov.in) within 30 days from the date of this Order under intimation to this Forum and the Respondents.

vi. Non-compliance with the directions of Forum by the Licensee shall attract remedial action under Sections 142 and 146, of the Electricity Act 2003.

Dated at Puducherry on this the 9<sup>th</sup> day of January, 2023

**Sd/-**

**(R. KRISHNAMURTHY)**  
**JERC NOMINATED MEMBER**

**Sd/-**

**(A.S. JITENDRA RAO)**  
**LICENSEE MEMBER**

**Sd/-**

**(T. GOPALAKRISHNAN)**  
**CHAIRMAN**