

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

PRESENT:

THIRU T. GOPALAKRISHNAN, B.E.,
CHAIRMAN

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

THURSDAY, THE 7TH DAY OF JULY 2022

CONSUMER CASE No.97/2022

S. Dhanalatchoumy,
'Rajapet',
No.128/A, Varkalodai,
Manapattu,
Puducherry.

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Complainant

Vs.

- 1) The Executive Engineer, Rural-South(O&M),
Electricity Department,
Puducherry
- 2) The Assistant Engineer – Bahour,
Electricity Department,
Puducherry.
- 3) The Junior Accounts Officer-Rev.III,
Electricity Department,
Puducherry.
- 4) The Junior Engineer- Kirumampakkam,
Electricity Department,
Puducherry.

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Respondents

This case in C.C. No.97/2022 came up before this Forum for final hearing on 01/07/2022. 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. Dhanalatchoumy during the public interaction programme of this Forum held at Kirumampakkam on 31/05/2022. In the complaint, the Complainant had stated that she is running a Pet bottling unit under the name and style of “Rajapet” at Varkalodai village from the year 2013 with policy No.168189. The current consumption bills were paid in the name of Ganesh Polymer. She had enclosed copy of the letter addressed to the Department in which she had stated that she had purchased the shed on 07/09/2011. But the shed got damaged due to ‘Thane’ Cyclone in December 2011. She started running the unit from September 2013. The unit upto August 2011 was run by Tmt. Vachala W/o Sampathkumar and dues upto that date was to be paid by her. In response, she was informed by the Department that the matter is in process in Revenue section and advised to remit Rs.5,39,510/- in the first instance for the period from September 2011 to October 2016. She had paid the dues as demanded. She has requested several times for name transfer of the policy; but the Department has not taken action till date. The Complainant had also applied for new service connection on 06/02/2019, but there was no response. Therefore, the Complainant prayed to necessary directions to the Respondents for name transfer of existing service connection or extend new service in favour of Rajapet. Hence, the Complaint.

2. The complaint was registered as C.C. No.97/2022 on 31/05/2022 and copy of the Complaint was handed over to the Executive Engineer, Rural-South O&M and others to furnish reply by 10/06/2022. The Junior Accounts Officer -Rev-III sought for extension of time till 17/06/2022. Reply from the Respondent No.3 was received on 20/06/2022 and a copy of the same were the communicated to the Complainant. The case was posted for hearing on 28/06/2022.

3. In the Affidavit dated 20/06/2022, the Junior Accounts Officer-Rev.III / Respondent No.3 had stated that, an application for industrial service connection has been applied by R.K. Ganeshan and Shanthi Ganeshan (in partnership) under the

industrial name of M/s Ganesh Polymers on 24/08/2005 and the service connection as energized on 07/07/2007 vide policy No.168189 /C1 having Policy code 43-28-05-0359 (now the code has been changed as 43-28-05-0771 due to administrative reasons during November 2017) in the name of M/s Ganesh Polymers. Meanwhile the ownership of the said industry has been transferred to R.S. Vatchala on 11/06/2006 without knowledge of this Department. Thereafter, the ownership / partnership of the said premises has been transferred to S. Dhanalakshmi with effect from 07/09/2021 without knowledge of this Department. The current consumption bills have been served upto the billing month of February 2010. Moreover, S. Dhanalakshmi has kept the premises idle due to the damage caused by Thane cyclone upto March 2013. Thereafter, the said industry has been running in the name of M/s Rajapet, with initial reading of 40965 in the same service connection without any intimation to this Department for transfer of ownership. Meanwhile, the Department has been enforced to start the spot billing system during 2011-13 for the Kirumampakkam O&M. Whereas, the first provisional spot bill for an amount of Rs.37,319/- was issued to M/s Ganesh Polymers on April 2013 without proper reading, old arrears, BPSC and other charges as per the ledger has been issued for payment with the clause 'CC subject to revision'. Further, the bill was revised for an amount of Rs.32,01,607/- with proper reading and other charges admissible upto March 2014 and issued to the consumer vide letter dated 16/06/2014. In response, the Complainant had submitted a letter dated 20/06/2014 wherein she has stated that she has not accepted the said bill amount and requested to revise the bill from the date from which she took the premises into her possession. But she has paid an amount of Rs.6,00,000/- as first instalment. Further, the Complainant has submitted letters dated 29/09/2014, 25/05/2015 wherein she has requested to split the outstanding arrears as admissible based on the consumption made according to the ownership period (from 09/2011 to till date). Moreover, the Complainant has requested to recover the outstanding arrears for the previous period i.e., upto

08/2011 from the first owner who is running a factory in the name of M/s Raam & Raam located at No.D.8-Industrial area, Thattanchavady. In response to the request made by the Complainant and based on the Order of High Court of Madras WP.31201 of 2014 (Mr. M. Barathkumar Vs Tahsildar Villianur), the outstanding amount has been splitted up as follows:

Ownership	Amount
I Owner	Rs.54,47,215/-
II Owner	Rs.20,79,589/-

Accordingly, Tmt. R.S. Vachala W/o Sampathkumar has been intimated to pay an amount of Rs.54,47,215/- as outstanding arrears of current consumption charges vide letter dated 22/11/2016, which has not been settled till date. But the Complainant has settled the amount of her bill as on date. The pending arrears belong to R.S. Vachala W/o Sampathkumar (First Owner) still pending in the name of M/s Ganesh Polymers. Hence, 'No due certificate' cannot be issued for name transfer under the circumstances.

4. Hearing was held on 28/06/2022. The Complainant was represented by one Thiru S. Selvaraj to attend the hearing. Respondents were also present. During the hearing, the Complainant was directed to file additional documents alongwith sale deed / Rental Agreement, receipts for making payment for the period upto November 2013 and the Bills received thereafter. The Respondents were directed to file copy of policy file for taking proof of arrears for erstwhile owner and present owner. Approval for assigning new computer code for the same policy and copy of Court Order dated 05/01/2015 and copy of new service connection application in the name of Rajapet. The case was posted for next hearing on 01/07/2022.

5. Final hearing was held on 01/07/2022. The Complainant filed authorisation letter along with additional documents. The Respondents have also filed additional Affidavit.

Case law:

In the matter of Isha Marbles vs Bihar State Electricity Board and three others, the Supreme Court has held that Bihar State Electricity Board is a 'State' within the meaning of Article-12 of the Constitution of India and therefore its action must pass the test of fairness and reasonableness, and a purchaser therein(Isha Marbles), the writ petitioner therein, was not expected to make an enquiry from the Board so as to know whether any dues were outstanding to the Board from the previous consumer; nor is it possible for the auction-purchaser to find out the personal liability of the debtor. It further held that the electricity dues by the previous industry is a contractual liability between the industry and the Respondent-Board. It is not statutory in nature since, electricity is consumed by consumer on the basis of written contract as prescribed in Form EB-70 approved by Section 26 of the Indian Electricity Act, 1910. It also held that neither under the scheme of the Electricity Act nor the Electricity (Supply) Act 1948, is there any concept of the premises of the consumer being liable for the electricity dues dehors the consumer, whose premises it is. The Supreme Court finally held that the auction-purchaser of the premises who has purchased the property under Section 29(1) of the State Financial Corporation Act 1951, would not be liable to meet the liability of the previous consumer in order to secure reconnection.

Observation: i. On perusal of the documents and on hearing both parties, and based on the verdict of the judgement in W.P.31201 of 2014 and M.P.1&2 of 2014 dated 05/01/2015, of Hon'ble High Court of judicature at Madras, it is observed that the Respondent have bounden duty to recover the arrears of the electricity charges from the erstwhile owner of M/s Ganesh Polymers, namely Tmt. R.S. Vachala, W/o Sampathkumar and hence the Complainant is not liable to pay arrears of current consumption charges of erstwhile owner.

ii. The Department had made policy decision to split up the arrears in respect of erstwhile owner and present owner. As per the above decision, intimation has also been sent to the erstwhile owner to pay a sum of Rs. 54,47,215/- and the present owner Rs.20,79,589/-. The present owner remitted the amount due for her part and thereafter the Department had claimed only present bill based on the present consumption since 2014. As per Section 56(2) of Indian Electricity Rules:

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of electricity”.

The Department had not shown the arrears due to the present owner for more than 2 years continuously and as such the present owner is not liable to pay the dues of the erstwhile owner Tmt. Vachala W/o Sampathkumar.

iii. Further the Department not pursued to the logical end to collect dues from the erstwhile owner, either by Revenue Recovery Act or any other legal measures. The Department stated that the post of Junior Accounts Officer / Labour Officer is lying vacant and hence no action was taken under Revenue Recovery Act is not accepted. Further not pursuing legal case, due to high stamp duty cost is also not accepted. The Department should seek proper action to collect the dues.

iv. Further, the present Owner applied for new service connection on 06/02/2019 which has not been processed as per the Supply Code 2018, which shows the deficiency in service of the Department and the Complainant was made to run from pillar to post for more than 3 years.

v. Further, ‘No due Certificate’ applied by the present owner on 15/02/2015 was also not processed even till 2018 and as per the Regulation 5.21 of the Electricity Supply Code 2018,

“In case the Licensee does not intimate the outstanding dues or issue a “no dues certificate within this time, new connection to the premises shall not be denied on grounds of outstanding dues of the previous consumer. In such an event, the Licensee shall have to recover the dues if any, from previous consumer as per provisions of law”.

In view of the above, action be taken by the Department to extend power supply based on the new service connection from the Consumer within the time frame stipulated by the Standards of Performance. During the transition of power supply

from the present policy code to the new policy code interruption should be of minimum duration, without hampering production of the existing unit

ORDER

- i. The Respondents are directed to recover the arrears from the erstwhile owner of M/s Ganesh Polymers viz., R.S. Vachala W/o Sampathkumar through the Revenue Recovery Act or through other provisions of law immediately under intimation to this Forum.
- ii. The Complainant is directed to file fresh application for new service connection in the name of M/s Rajapet with relevant documents and pay prescribed fee on the advice of the Respondents. The Respondents are directed to process the application by adhering the provisions of the Electricity Supply Code 2018.
- iii. Thus, the complaint is allowed.
- iv. Non-compliance with the directions of Forum by the Licensee shall attract remedial action under Sections 142 and 146, of the Electricity Act 2003.
- 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 within 30 days from the date of this Order under intimation to this Forum and the Respondents.

Dated at Puducherry on this the 7th day of July, 2022

Sd/-

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

Sd/-

**(T. GOPALAKRISHNAN)
CHAIRMAN**