

ELECTRICITY CGRF
(Under The Electricity Act, 2003)
ANDAMAN & NICOBAR ISLANDS
PORT BLAIR

Before :

Shri. R. Ravichandar, Chairman.
Shri. Narayan Chandra Baroi, Member (Licensee).
Smt. Biji Thomas, Independent Member (JERC Nominated).

In the matter of :

Shri. Harish Chandra Rai, S/o Shri. Hariman Rai, R/o Shadipur, Port Blair.

.....Complainant

Versus

The Electricity Department, A & N Administration, Port Blair.

.....Respondent

Complaint No. : ANI/CGRF/309/23-24/41 dated 11/12/2023
Complaint : Providing New Connection (Domestic)
Date of Hearing : 22/12/2023
Date of Order : 29/02/2024



ORDER

Background

The complainant Shri. Harish Chandra Rai, S/o Shri. Hariman Rai, R/o Shadipur, Port Blair, South Andaman, filed a complaint vide R.D. No. 325 dated 11/12/2023 regarding new electricity connection (Domestic).

The complaint was registered as Case No. 309 and forwarded on 11/12/2023 vide letter No. ANI/CGRF/10-309/321 to the Nodal Officer (CGRF), Executive Engineer (HQ) and Assistant Engineer-II(HQ), Electricity Department for submitting reply/comments and attending the Hearing fixed on 22/12/2023 at 10:30 a.m. in the Hearing Hall in the Office of the Electricity (CGRF), A&N Islands, Horticulture Road, Haddo, Port Blair with relevant documents to depose before the Forum. A copy of this letter was also endorsed to the complainant for attending the Hearing on 22/12/2023 at 10.30 a.m.

The Assistant Engineer-II(HQ), Electricity Department vide his letter No. EL/AE/SD-II/1-29/2023-24/601 dated 14/12/2023 submitted reply/comments on behalf of the Licensee/Respondent (ED), which was received by the Forum vide R.D No. 342 dated 14/12/2023 (the letter is kept in case file (Exbt.-1).

Hearing on 22/12/2023

The Hearing was held on 22/12/2023 in the Hearing Hall, Electricity CGRF at 10:30 a.m. The following were present: -

- (i) Shri. Harish Chandra Rai, Complainant.
- (ii) Shri. Suresh Kumar, AE (W/shop), Nodal Officer, Elect. Dept.
- (iii) Shri. Deepak Mondal, AE-II(HQ), Elect. Dept.

Statement of the Complainant

The complainant Shri. Shri. Harish Chandra Rai, S/o Shri. Hariman Rai, R/o Shadipur, Port Blair stated in his complaint letter dated 11/12/2023 that *"I have applied to domestic electricity meter connection through online vide application No. 17266 dated 15/09/2023 for my residential house standing on the encroachment land bearing Survey No. 2645/P situated at Shadipur village under Port Blair Tehsil. But I have not yet been provided electric connection to my residential house till date due to my school going children are facing much difficulty during night hours for their study.*

It is therefore, requested your goodself that necessary direction/order may kindly be passed/given to Executive Engineer/Assistant Engineer, Electricity Department for providing domestic electric meter connection at the earliest please.

The complainant enclosed photocopies of online application form bearing No. 17266 dated 15/09/2023, Affidavit for Declaration/Undertaking, Affidavit for Undertaking, Affidavit for Encroachment Land and Aadhaar Card as ID & address proof, which is kept in the case file (Exbt.-2).

Reply of the Respondent/Licensee (ED)

The Assistant Engineer-II(HQ), submitted para-wise comments on behalf of the Respondent/Licensee(ED) vide letter No. EL/AE/SD-II/1-29/2023-24/601 dated 14/12/2023 stated that *"the applicant Shri. Harish Chandra Rai, S/o Shri. Hariman Rai resident of Shadipur had applied online application for obtaining the electric connection on encroached revenue land at Shadipur on dated 15/09/2023. On receipt of the application this sub division office forwarded the same to site office online. In the meantime the Andaman and Nicobar Administration issued the circular dated 09/10/2023 in which it is stated that the confirmation may be obtained from the concerned Tehsildar/Revenue Authority for obtaining the confirmation of the settled possession before further procession the case of encroachment land.*

Hence the application was forwarded to the Tehsildar Port Blair vide this office letter no. EL/AE/SD-II/2-8/2023-24/498 dated 03/11/2023 for obtaining



the confirmation of settled possession as per the Andaman & Nicobar administration circular no. 4-3/21/2015-Power dated 09/10/2023 (Copy enclosed). Again this office sent the Reminder to Tehsildar Port Blair vide this office letter No. EL/AE/SD-II/2-8/2023-24/583 dated 07/12/2023 (copy enclosed) for early issuing of confirmation of settled possession certificate.

The confirmation of the Tehsildar is not received by this office till date. As and when the confirmation of the settled possession received from the Tehsildar, Port Blair. The case of the applicant will be processed further for providing the electric connection in accordance to the JERC (Electricity Supply Code) Regulation 2018".

The AE-II(HQ), Electricity Department enclosed photocopies of Circular No. 4-3/21/2015-Power dated 09/10/2023, AE-II's letter No. EL/AE/SD-II/2-8/2023-24/583 dated 07/12/2023 and No. EL/AE/SD-II/2-8/2023-24/498 dated 03/11/2023, which is kept in the case file (Exbt.-3).

Submission of the Complainant

The complainant Shri. Harish Chandra Rai, R/o Shadipur stated that he had applied for new electric connection through online vide application No. 17266 dated 15/09/2023 alongwith supporting documents of his encroached constructed house in the Govt. Revenue land. Even after a lapse of two (2) months, he did not receive any reply/response from the Electricity Department and hence, he approached Electricity CGRF to get electricity connection.

Submission of the Respondent (Licensee)

The Assistant Engineer (W/shop), Nodal Officer and Assistant Engineer-II(HQ), on behalf of the Respondent/Licensee (ED), stated that after receiving online application, the department has not yet inspected the premises due to the directions of higher authority, yet to be received order, for providing electricity connection on encroached land. Since, in the similar case, the Hon'ble Forum had set aside the Circular dated 09/10/2023 of the Andaman & Nicobar Administration regarding obtaining confirmation from the concerned Tehsildar/Revenue Authority for settled possession before releasing electricity connection. Hence, instruction from higher authority are being awaited to release electricity connection.

Forum's Observation

The Forum going through the documents submitted by the Respondent/Licensee(ED) meticulously and also on statements submitted before the Forum. The complainant, Shri. Harish Chandra Rai, R/o Shadipur is an encroacher who had applied for Electricity connection through online vide application No. 17266 dated 15/09/2023 with supporting documents i.e. Aadhaar Card as Identity & Address proof, Affidavits for Undertaking/

Declaration etc. The Licensee/Respondent (ED) failed to provide the new connection on time, due to lack of jurisdiction from the Andaman & Nicobar Administration.

The Forum going through the para-wise comments/reply submitted by the AE-II(HQ) stating that a Circular dated 09/10/2023 was issued by the Assistant Secretary (Power), A&N Administration wherein it was said that confirmation could be obtained from the concerned Tehsildar/Revenue Authority against **'settled possession'** of encroached land. The Forum had already quashed the Circular dated 09/10/2023 seeking confirmation regarding **'settled possession'** from the Tehsildar, Port Blair in earlier order dated 05/12/2023 in the matter of Smti. Gita Rani Mahato-Vs-Electricity Department vide No. ANI/CGRF/303/23-24/35 dated 21/11/2023, which does not arise any further clarification/justification require from the Tehsildar, Port Blair, but, once again the Respondent/Licensee (ED) requested to the Tehsildar, Port Blair on 07/12/2023 for want of confirmation **'settled possession'**, which shows that the Order of the Forum dated 05/12/2023 has not been seriously implemented by the Respondent/ Licensee(ED). In this juncture, the encroachers are going to the court for justices to get electricity connection wherein **JERC Regulation No. 23/2018 (Electricity Supply Code) has already clarified for want of documents to get electricity connection. Further, it is clear that release of electricity connection to the applicant will not confer any right or equity in favour of the trespasser/encroacher/ occupier to default the title of the lawful owner and shall not be treated as having rights or title over the premises.**

The Forum observed AE-II's letter No. EL/AE/SD-II/2-8/2023-24/498 dated 03/11/2023 attached with the reply/comments on behalf of the Respondent/Licensee (ED), in which 35 applications was forwarded to the Tehsildar, Port Blair for want of confirmation of **'settled possession'** for obtaining electricity connection in the encroached land, which has to be inspected by the Respondent/Licensee (ED) immediately for want of confirmation of **'settled possession'** and if found, in **'settled possession'** as per JERC Regulation No. 23/2018 (Electricity Supply Code), the electricity connection should be released without any delay to avoid any future litigation.

The Forum observed that the Respondent/Licensee (ED) failed to comply JERC Regulations No. 23/2018 (Electricity Supply Code) for providing electricity connection as per the time line prescribed in the Regulation. The complainant had applied for online electricity connection on 15/09/2023, but, the department did not take any action on his application as per Regulations.

The Forum observes that the **Processing of Application Form** for providing new connection was not followed under various clause of **JERC Regulation No. 23/2018 (Electricity Supply Code)** read as :-



Processing Application Forms

5.35 For all application forms pertaining to release of supply of new connections, the Licensee shall verify the application form along with enclosed documents and if found deficient, shall issue a written note on the spot regarding shortcomings in the application form. If the application form is complete, the Licensee shall acknowledge its receipt on the spot. In case the application is submitted online, the Licensee shall issue a written note regarding shortcomings in the application within 3 working days from the date of submission of application.

5.37 The Licensee shall deal with application forms in each tariff category on the broad principle of "first come, first served" basis as per serial priority in the Application Register/ Database.

The Licensee shall maintain a waiting list of applicants seeking new connections, area-wise information about new connections released, and updated status of the waiting list shall be displayed on the Licensee's website or the Notice Board at the local office of the Licensee, to be updated weekly.

5.38 An application form shall be deemed to be received on the date of receipt of consumer's application in the prescribed format of the application form, complete in all respects and attached with all relevant documents.

5.39 An application shall be deemed to be received on the date of receipt of all applicable charges including the security deposit in accordance with Annexure-XVIII of this Supply Code, 2018, after receipt of the application form.

5.40 The Licensee shall, at the time of receipt of application form, specify a date for inspection of applicant's premises in mutual consultation with the applicant, under written acknowledgment. The date of inspection must be scheduled within 3 working days in urban areas and 5 working days in rural areas from the date of receipt of application form. If the applicant wishes, the inspection can be scheduled on a non-working day for the Licensee (i.e., Sunday, gazetted holidays, etc.) on payment of inspection fee of Rs. 500.

5.43 The applicant shall get all defects removed within 30 working days from receipt of intimation of defects as specified in Regulation 5 of this Supply Code, 2018 and inform the Licensee in writing under acknowledgement. In case the applicant fails to remove such defects or fails to inform the Licensee about removal of defects, the application form shall stand lapsed and the applicant will have to apply afresh. The Licensee may grant additional time to the applicant for completion of works, in case the applicant submits a written request for the same within 10 working days from receipt of intimation of defects.



5.44 On receipt of information from the applicant about removal of defects, the Licensee shall stipulate a date for re-inspection of applicant's premises in mutual consultation with the applicant, under written acknowledgment. The date of re-inspection must be scheduled within 3 working days in urban areas and 5 working days in rural areas from the date of receipt of such information.

5.45 If on re-inspection, the defects pointed out earlier are found to persist, the Licensee shall again record the same in the format given in Annexure -IX to this Supply Code, 2018 and hand over a copy of the same to the applicant or his authorized representative available on site. The application form shall then stand lapsed and the applicant shall be informed accordingly in writing under acknowledgement:

Provided that if the applicant feels aggrieved by the Licensee's action or omission, the applicant may file a representation to the concerned Consumer Grievance Redressal Forum (CGRF) for redressal of grievance:

5.46 If on inspection, there are no defects found, or on re-inspection the defects noticed earlier are found to have been removed, the Licensee shall sanction the load determined in accordance with Annexure -VIII to this Supply Code, 2018 or the load applied for, whichever is higher, and issue a demand note in writing, under acknowledgment, within the timeline specified below:

Table 2: Timeline for issue of demand note:

Particulars	No. of working days from receipt of application	
	Urban Areas	Rural Areas
Extension of distribution mains not required	Within 7 working days	Within 10 working days
Extension of distribution mains / system required		
1. In case of LT service connections	Within 7 working days	Within 10 working days
2. In case of HT service connections	Within 15 working days	Within 20 working days
3. In case of EHT service connections	Within 30 working days	Within 30 working days

Provided that the time taken by applicant in rectifying the defects/deficiencies found at the applicant's premises shall not be included in the timeline specified above:

Provided further that wherever the Transmission Licensee's involvement is required in the process for time and cost estimation, the time taken by the Transmission Licensee shall not be included in the timeline specified above.

5.47 The demand note shall contain the following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;



(2) Charges for the abovementioned works to be paid by the applicant in accordance with the schedule of charges specified by the Licensee as approved by the Commission:

Provided that if the applicant wishes to carry out the works himself, the same shall be permitted under supervision by the Licensee's official. Adhering to the estimate and layout approved by the Licensee, the applicant can get the work of drawing of service line from the Licensee's distribution mains up to his premises through a 'C' or higherclass Licensed Electrical Contractor (LEC), and the work of extension of HT/EHT line, Distribution or HT substation and LT line only through an 'A' class LEC. In such case the consumer shall procure the materials. The Licensee will issue a list of empanelled manufacturers for procuring material to be used by the consumer. The consumers can purchase materials of any make from the list of empanelled manufacturers. The Licensee may ask for documentary evidence to verify the quality of materials used:

Provided further that if the applicant is getting the work done by himself, Licensee can charge Supervision Charges on the labour component of the work at the rate of 15%. The Goods and Services Tax (GST) on the Supervision Charges, if any, shall be recovered from the applicant:

Provided also that if the applicant chooses to get the extension work done on his own, the applicant shall get the work done within the timeframe specified in Regulation 5.52 of this Supply Code, 2018, failing which the Licensee may, on giving 15 days' notice, treat the application form for supply as cancelled.

(3) Amount of security deposit as specified in Annexure -XVIII to this Supply Code, 2018.

5.48 The applicant shall make the payment within 15 days of receipt of demand note, failing which the application form shall stand lapsed and the applicant shall be informed accordingly in writing under acknowledgement. The Licensee's obligation to energize the connection shall arise only after receipt of full payment. The Licensee may grant additional time to the applicant for payment of charges in case the applicant submits a written request for the same, within the 15-day payment period.

5.51 If as per this Supply Code, 2018, provision of supply requires installation of a distribution transformer within the applicant's premises, the applicant shall make available to the Licensee a suitable room or portion of land within his premises for the period of supply for installation of the distribution transformer.

5.52 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as under:



Table 3: Timeline for releasing new electricity connection (energization):

Activity	Island areas		Mainland areas	
New connection /additional load where supply can be provided from existing network	Urban area: 30 days from receipt of complete application		Urban area: 16 days from receipt of complete application	
	Rural area: 30 days from receipt of complete application		Rural area: 24 days from receipt of complete application	
Extension work or enhancement of transformer capacity is required	Urban area:	Rural area:	Urban area:	Rural area:
	a) LT-60 days	a) LT-90 days	a) LT-30 days	a) LT-45 days
	b) HT-120 days	b) HT-120 days	b) HT-90 days	b) HT-90 days
	c) EHT-180 days	c) EHT-180 days	c) EHT-180 days	c) EHT-180 days
Erection of substation to extend supply	On case to case basis as per approval of the Commission		On case to case basis as per approval of the Commission	

Provided that the Licensee may approach the Commission for extension of time specified above, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the Licensee shall inform the consumer about the likely time of completion of works.

5.54 The Licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which Licensee has no reasonable control.

Further, Procedure for releasing of new connection and modification was not followed under various clause of **JERC Regulation No. 23/2018 (Electricity Supply Code)** read as :-

Chapter-5

5. PROCEDURE FOR RELEASE OF NEW CONNECTION AND MODIFICATION IN EXISTING CONNECTION

Licensee's obligation to supply

5.1 The Licensee shall, on an application by the **owner or occupier of any premises** located in his area of supply, give supply of electricity to such premises within the time specified in this Supply Code, 2018, provided that

(1) The supply of power is technically feasible. Where it is found to be not feasible, the Licensee shall endeavour to improve the feasibility at the earliest and release connection as per this Supply Code, 2018.

(2) The applicant has observed the procedure specified in this Supply Code, 2018; and

(3) The applicant agrees to bear the cost of supply and services as specified in this Supply Code, 2018.

5.2 The system of supply and voltage shall depend on the category of the consumer and the load as per details given in Regulations 4.1 and 4.3, subject to Regulation 4.6 of this Supply Code, 2018.

5.3 The Licensee shall examine the technical feasibility of the connection applied for from their distribution mains and conduct the inspection within 5 working days of the receipt of application.

5.4 In case the connection is not found technically feasible, the Licensee shall intimate to the applicant in writing within 10 (ten) days of receipt of application giving reason for the same and estimated time that it will take to provide the connection, which shall not exceed the timelines specified under Supply Code, 2018:

Provided that no connection up to 20 kW from the existing network can be delayed only on technical grounds for domestic and commercial consumers and for such connections, feasibility report will not be required. However, for load exceeding 20 kW Licensee shall provide connection after augmentation (if required) of the existing network as specified in Supply Code, 2018.

Licensee's obligation to extend the distribution system and consumer's share in the cost

5.8 The Licensee shall have obligation for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. Wherever the existing transformation capacity at sub-station end is loaded up to 70% of its capacity, the Licensee shall prepare a scheme for augmentation of such transformation capacity after factoring in (N-1) contingency. The Licensee shall display the monthly updated status of transformation capacity for each sub-stations on its website.

5.9 The Licensee shall meet the cost for strengthening/upgradation of the distribution system to meet the demand of the existing consumers as well as future growth in demand through its annual revenues or funds arranged by the Licensee and this cost shall be allowed to be recovered from the consumers through tariff by the Commission subject to prudence check.

5.10 In all cases of new connections, the consumer shall bear the Service Connection Charges, that is the cost of service connection from the Distribution Mains to the point of supply, as approved by the Commission from time to time.

5.11 For uniformity and simplification in calculating the actual cost of extension, the Licensee shall prepare a ready reckoner and get the same approved by the Commission to show the per-unit material cost of LT line, HT line, substation of different capacities, etc., within 6 months from the date of notification of these Regulations. The Licensee shall update the ready reckoner every year, under intimation to the Commission.

5.17 The consumer shall get the work done within the timeframe provided under this Supply Code, 2018 and if consumer needs more time, the consumer shall represent to the Licensee with reasonable ground for extension of time and the Licensee shall communicate his approval of the same to the Consumer.



Conditions for Grant of Connection

5.18 The Licensee shall prominently display on its website and wherever feasible, in its offices, the updated status of applications for new connections in that area/circle, detailed procedure for grant of new connection, and the complete list of documents required to be furnished along with such applications. Normally no document, which has not been so listed, will be required for processing application forms for new connection. Security amount and cost of service line to be deposited by applicant in accordance with Annexure- XVIII to this Supply Code, 2018 shall also be prominently displayed.

Procedure for providing New Electricity Connection

Application Form

*5.24 The applicant shall apply for release of new connection in the following format as given in the Annexure to this Supply Code, 2018:

Application form for release of new connection (Low Tension) – Annexure- I

Application form for release of new connection (High Tension/ Extra High Tension) - Annexure -II

Format for declaration/undertaking to be signed at the time of receiving electricity supply - Annexure -III

5.25 Application forms shall be available at the local office of the Licensee free of cost. The Licensee shall also put up all application forms on its website for free download. Legible photocopies of a blank form may be made by the applicant, which shall be accepted by the Licensee. The Licensee shall clearly display on its website; the address and telephone numbers of offices where filled-up application form can be submitted. The Licensee shall also display in each office, the address and telephone numbers of offices in the respective area of supply where filled-up application form pertaining to that particular area can be submitted. Any assistance or information required in filling up the form shall be provided to applicants at the local office of the Licensee.

5.26 The Licensee shall also provide new avenues for applying for new connection or modification in existing connection through website, call centres, etc., which minimize the applicant's interface with the utility during the process.

5.27 Application forms for new connection must be accompanied with a photograph of the applicant, identity proof of the applicant, proof of applicant's ownership or occupancy over the premises for which new connection is being sought, proof of applicant's current address, and in specific cases, certain other documents as detailed in Regulation 5.29- 5.34 of this Supply Code, 2018.

5.28 Non-Refundable Registration-cum-processing fees of Rs. 20,000/- for HT and Rs. 1,00,000/- for EHT shall be levied while applying for new connection. These charges shall be adjusted by the Licensee while issuing the demand note.



5.29 Any of the following documents shall be considered as acceptable proof of identity:

If the applicant is an individual:

- (1) Electoral Identity Card
- (2) Passport
- (3) Driving Licence
- (4) Photo Identity card issued by Government agency
- (5) PAN Card
- (6) Photo Certificate from village Pradhan or any village level Government functionary like Patwari/ Lekhpal/ village level worker/ village chowkidar/ Primary school teacher/ in-charge of primary health centre, etc.
- (7) Aadhaar Card.

5.30 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.



5.31 All communications shall be sent at the address where the connection has been released. However, till release of connection, communication may be sent at the address provided by the applicant for this purpose.

Interest on Security Deposit

5.135 The Licensee shall pay interest to the consumer at the State Bank of India Base Rate prevailing on the 1st of April for the year, payable annually on the consumer's security deposit with effect from date of such deposit in case of new connections energized after the date of this notification, or in other cases, from the date of notification of this Supply Code, 2018. The interest accrued during the year shall be adjusted in the consumer's bill for the first billing cycle of the ensuing financial year. If the Security Deposit is submitted in the form of Bank Guarantee or by providing lien against fixed deposits, no interest shall be payable to the consumer.

Review of Security Deposit

5.136 At the beginning of the financial year, the Licensee shall review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year. Consumer is required to maintain a sum equivalent to his average payment for the period of one billing cycle plus one month, where 'average payment' shall be equal to the average of actual bills paid in the last financial year:

Provided that for a consumer whose electricity connection is less than 1 year old, the security deposit shall not be revised at the beginning of the financial year.

5.137 The security deposit available with the Licensee in respect of each consumer shall be shown in the bill issued to the consumer. Refund of security to the consumer by the Licensee, as and when arises, shall be made through maximum of two electricity bills.

In this pretext it is also opt to quote the observation and explanation given be Hon'ble High Court, Calcutta which follows:

"The question of 'Settled Possession' was answered by the Hon'ble Bench of Calcutta High Court comprising of Justice Jainarayan Patel, Justice Bhaskar Bhattacharya and Justice Pinaki Chandra Ghose in their Order dated 11.02.2011 in various analogues writ petitions. Quoting observations of the Hon'ble Supreme Court in the case of Rama Gouda (D) by LR's V.M. Varadappa Naidu (D) by LR's and another reported in AIR 2004 SC 4609. "It is thus clear that so far Indian Law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the



property belonging to the rightful owner, the rightful owner shall have to take recourse to law It is the settled possession of a person without title which would entitle him to protect his possession even against the true owner". On the basis of this observation the Calcutta HC said that "According to the law in India, a person in settled possession of immovable property cannot be dispossessed otherwise than by due process of law and such a person in settled possession, although the commencement of such possession was unlawful can restrain even the lawful owner from disturbing his settled possession otherwise than in due process of law.

Section 43 of the Indian Electricity Act 2003 is read as, 'Every Distribution Licensee, shall, on an application by the owner or occupier of any premises, give supply of such electricity of such premises within one month after the receipt of the application of such supply'.

The HC Order has observed that in the Electricity Act 2003 there is no definition of the word 'occupier'. But the works of Licensee Rule 2006 framed under the aforesaid Act came to force in the year 2006 and according to the definition of 'occupier' as provided in Rule 2(b) unless the context otherwise requires the occupier of any building or land means a person in lawful occupation of that building or land. It quoted the case of *Puran Singh and Ors Vs. The State of Punjab* (1975) 4 SCC 518 in which the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective (ii) undisturbed (iii) to the knowledge of the owner or without any attempt and concealment by the trespasser. The Court laid down certain tests for adoption as a working rule for determining settled possession in AIR 1968 SC 702, AIR 1975 SC 1674, AIR 1977, SC 619. It suggested:

- That the trespasser must be in actual physical possession of the property over a sufficiently long period;
- That the possession must be to the knowledge (either express or implied) of the owner or without attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case.
- The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner.

The learned judges in their Order dated 11.02.2011 quoting Supreme Court which introduced the definition of the word 'occupier' as lawful occupier without defining the word 'lawful' therein have said 'Therefore, in the absence of any definition of the word 'lawful' in the Rules of 2006, we



should apply the principle of '**settled possession**' laid down by the Supreme Court to the phrase '**lawful occupier**' appearing in the Rules for implementation of the object of the Electricity Act 2013 to construe the same as a person in '**settled possession**' whose possession can be defended against the threat of dispossession otherwise than due process of law even by the lawful owner.

We therefore hold that a person in settled possession of a property 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".

In this instant case, the Respondent/Licensee (ED) has not inspected the premises of the complainant and hence, the Forum decided to inspect the premises of the complainant for want of confirmation of '**settled possession**'. On 13/12/2023, the Forum inspected the complainant premises and found that there is a single room without any proper approach road to the premises and earlier unauthorized extension of electricity supply was used by the complainant which was now under disconnection. Further, the Forum noted that wiring has been done while the occupancy is missing and hence, settled possession will not found during inspection.

The Forum has come to the conclusion that the complainant's submitted online application alongwith supporting documents i.e. Aadhaar Card as Address & Identity proof, Affidavit for Declaration, Affidavit for Undertaking and Affidavit for obtaining electric connection is sufficient to provide electricity connection but in this instant case, the complainant is not in '**settled possession**' at present. The Respondent/Licensee (ED) has not inspected the premises in this instant case, hence, the Respondent/Licensee (ED) should inspect the complainant premises to ensure/check whether the complainant is in '**settled possession or not**', as per JERC Regulation No. 23/2018 (Electricity Supply Code), if found, in '**settle possession**', electricity supply will be released accordingly, until the complaint will be kept in abeyance or rejected as per JERC Regulation.

Further, it is clear that release of electricity connection to the applicant will not confer any right or equity in favour of the trespasser/encroacher/occupier to default the title of the lawful owner and shall not be treated as having rights or title over the premises, which was mentioned in JERC Regulation No. 23/2018 (Electricity Supply Code).

Hence,

It is Ordered:

After detailed deliberations, submissions, site inspection and documents produced before the Forum, and on the basis of the observation so reached, the following Order is passed:-



1. The Forum inspected the complainant premises were not found to be in '**settle possession**'. Therefore, the Respondent/Licensee (ED) is directed to inspect the complainant premises to be ensure/check whether the complainant is in '**settled possession or not**', as per **JERC Regulation No. 23/2018 (Electricity Supply Code)**, if found, in '**settle possession**', electricity supply will be released accordingly, till the complaint will be kept in abeyance or rejected as per JERC Regulation.
2. Further, if the electricity supply is released, it is clear that release of electricity connection to the applicant will not confer any right or equity in favour of the trespasser/encroacher/occupier to default the title of the lawful owner and shall not be treated as having rights or title over the premises
3. The Respondent/Licensee (ED) is directed to comply the **JERC Regulation No. 23/2028 under Section 5.135, 5.136 & 5.137** against '**Interest on Security Deposit and Review of Security Deposit**' as stated above.
4. The Respondent/Licensee (ED) is directed to inspect all 35 applications forwarded to the Tehsildar, Port Blair immediately for want of confirmation of '**settled possession**' on the encroached land vide AE-II's letter No. EL/AE/SD-II/2-8/2023-24/498 dated 03/11/2023, if found in '**settled possession**' as per JERC Regulation No. 23/2018 (Electricity Supply Code), the electricity connection should be released without any delay to avoid in future litigation.
5. The Respondent/Licensee (ED) is directed to follow the '**Processing of Application Form**' after receiving the application for new connection as per **JERC Regulation No. 23/2028 under Section 5.35**, which has not been done in this instant case.
6. The Respondent/Licensee (ED) is directed to issue a proper notice in writing to the applicant whatsoever is require by the **JERC Regulation No. 23/2028 before releasing electricity connection or rejection**, which has not been done in this instant case.
7. The Respondent/Licensee (ED) is directed to follow the **JERC Regulation No. 23/2018 (ESC) and No. 06/2009 (SOP)** for providing new connection as per norms/guidelines, which is not done in this instant case.



8. The Respondent/Licensee (ED) is directed to submit **compliance report within 15 days** from the date of receipt of this order as per JERC Regulation No. 26/2019 under Clause 27(1). **Further, from SL No. 1, 3 & 4 of the above said directions of compliance should be provide with supporting documents, if any.**
9. As per JERC Regulation No. 26/2019 under Chapter-IV of 27, non-compliance of the Forum Order shall be treated as violation of the Regulations of the Commission and accordingly liable for action under Section 142 of the Electricity Act 2003.
10. The complainant shall not be harassed overtly or covertly in any manner whatsoever in future for exercising his right by availing the redressal within his jurisdiction.

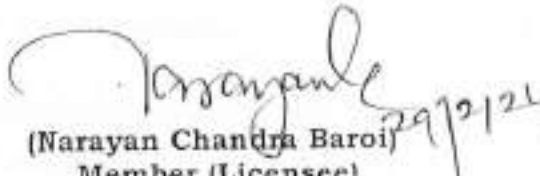
"The complainant, if aggrieved, by non-redressal of his / her grievance by the Forum or non-implementation of CGRF order by the Licensee, may make an Appeal prescribed Annexure-IV, to the **Electricity Ombudsman, Joint Electricity Regulatory Commission for the State of Goa and UTs**, 3rd Floor, Plot No. 55-56, Service Road, Udyog Vihar, Phase-IV, Sector-18, Gurugram - 122015 (Haryana). Phone - 0124-4684708, E-mail : ombudsman.jercuts@gov.in **within one month from the date of receipt of this order**".

[Annexure – IV Appeal Form can be collected from the office of the Forum on any of the working days].

A certified copy of this Order be sent to the Superintending Engineer (Licensee/Respondent), Executive Engineer (HQ), Nodal Officer (CGRF), Assistant Engineer-II(HQ), Assistant Engineer (IT), Electricity Department, Complainant and the Electricity Ombudsman, JERC for the State of Goa & UTs, Gurugram, (Haryana).


(Biji Thomas)
Independent Member
Electricity CGRF


(R. Ravichandar)
Chairman
Electricity CGRF


(Narayan Chandra Baroi)
Member (Licensee)
Electricity CGRF

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