

BEFORE THE ELECTRICITY OMBUDSMAN, JHARHAND
(4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001)

R A N C H I

Present- Prem Prakash Pandey
Electricity Ombudsman

Case No. EOJ/03/2017

Ranchi, dated, 2nd day of May 2017

Mahendra Choudhary, S/o- Late Shiv Shankar Choudhary, R/o- Panchgadhi Bazar,
P.O. & P.S.- Katras, District- Dhanbad

..... Appellant

Versus

1. Jharkhand Urja Vikas Nigam Limited, having its office at Engineers' Bhawan, HEC, Dhurwa, P.O. & P.S. Dhurwa, District- Ranchi through its Chairman-cum-Managing Director at Engineers' Bhawan, HEC, Dhurwa, P.O. & P.S. Dhurwa, District- Ranchi
2. The Assistant Electrical Engineer, Electric Supply Sub Division, Jharkhand Bijli Vitran Nigam Limited, P.O. & P.S.- Katras, District- Dhanbad
3. Brajesh Kedia, son of Late Ashok Kumar Kedia, resident of Rani Bazar, Katras, P.O.+ P.S.- Katras, District- Dhanbad

..... Respondent(s)

For the Appellant:-

Sri. Saket Upadhyay, Advocate

Sri. Naveen Kumar, Advocate

For the Respondent no.1&2

Sri. Rahul Kumar (Standing Counsel)

Sri. Prabhat Singh (Additional Counsel)

For the Respondent.3-

None

(Arising out of Judgement and order dated 27/02/2017, passed in complaint case no. 22 of 2016 by the Learned V.U.S.N.F., Hazaribag)

J U D G E M E N T

1. The instant appeal is directed against the impugned judgment and order dated 27/02/2017, passed in complaint case no. 22 of 2016, by the Learned Upbhokta Shikayat Niwaran Forum, here in after called V.U.S.N.F., Hazaribag, whereby and whereunder, the learned forum has ordered to release the electricity connection in the shop built up in the land purchased by Sri. Ashok Kumar Kedia, after the decision in Title Suit No. 139 of 2014 in the Court of Civil Judge Junior Division II, Dhanbad. The interim order dated 11.01.2016 has also withdrawn by the Learned Forum.

2. The appellant's case, in brief, as contained in complaint petition as well as in memo of appeal, is that he is a businessman, working in the trade of Kirloskar Motor Pump and allied hardware stores, working for gain and livelihood for himself and his family members and entire family is depending upon the income derived from this business, namely- M/s Swastik Traders Ltd.

3. The further case of the appellant's is that the Appellant made an application with respondent Nigam for a new commercial electric connection, which was acknowledged and issued money receipt bearing SL. No. JB1256800 for Rs. 1240/- dated 20.10.2014, receipt No. Nil dated 10.07.2014 for Rs. 20/- and receipt No. 346 dated 20.10.2014 for Rs. 155/- and a receipt of Rs. 40/- on account of Service connection no. 486074 dated 20.10.2014 and accordingly; a meter has been allotted, which was further installed within the premises and thereby admitted as consumer but since then and until now no Electrical connection has been provided, although electrical pole to meter wire has also been erected causing huge loss to appellant's business. Thereafter, appellant approached to the Respondents on

several occasions for providing electrical connection but unfortunately no heed or proper reply was conveyed in this regard. Thereupon, appellant not being addressed to his grievances filed his representation by way of application on 31.07.2015 and on 11.08.2015 by speed post but having no alternative choice, appellant preferred a legal notice, dated 10.10.2015, through his legal law firm M/s A.A. Kumar & Co. Dhanbad, which was not at all replied by respondent except a letter from the respondents vide their memo no. 203 dated 28.10.2015, which was posted on 26.11.2015 and further it was received by the advocate of appellant on 27.11.2015. The reply made by Respondent is partly correct and partly admitted but it is totally denied that appellant has ever been default from his side in the light of the fact that he is simply tenant and is no way connected in the internal dispute within the family of landlord and therefore debarring a person from essential commodity, like electricity connection, can not be straightaway declined and it is also affect that there is no law as such to deprive a consumer from electrical power.

4. Further case of the appellant is that on enquiry from the successors of the land lord, Late Ashok Kedia, it was conveyed to the Appellant that the property, described as aforesaid, has been procured by Late Ashok Kumar Kedia in the name of his son- Brajesh Kedia(Respondent no 3), while, Brajesh Kedia was at the age of 16 year and thereafter Brajesh Kedia married at his own will and wishes and thereafter from the last 20 years he is residing in Delhi and has never returned back to claim his right title or interest in the said property during the life time of his demised father Ashok Kedia. Ashok Kumar Kedia was disturbed by the behavior and approach of Respondent No. 3 and feared that nuisance will be created against the entire family. Apprehending the same, he reported the matter to the police and

filed an informatory petition under section 39 of CrPC bearing Case No. 375/2012.

5. Further case of the appellant is that the Appellant and Late Ashok Kedia had entered into a rent agreement on 9-3-2014 for a period of three years and the same document was submitted before the Respondent Nigam to procure the electric supply but on sad demise of Ashok Kedia on 15.06.2015, Respondent No. 3 sprang of and made diverse act of making disputes in the family in various ways, including a Title Suit no. 139/2014, which is pending and subjudice before competent court of law at Dhanbad and therefore in order to make an objection, it needs to be obtained necessary restraining order from the court of law for making objection before the respondents which not yet provided to respondents. . As matter of fact, after the death of the Late Ashok Kumar Kedia, his widow namely Kaushalya Devi permitted the Appellant to occupy the shop and gave her consent in writing.

6. That in light of the aforesaid fact and circumstances the unilateral action taken by the Nigam for not supplying electricity upon objection, is arbitrary and is a gross act of deficiency in service by not providing electrical connection without obtaining judicial order from the competent court of law and also in absence of any standing order of law or in view of any judicial order from the Hon'ble Apex court of the land. Out of the same shop and agreement, the appellant has obtained telephone connection from BSNL without any agitation and protest.

7. Further case of the appellant that he even wrote the Respondent on 31.07.2015 to supply the electricity as he was facing serious adversity for no fault on his part. But as mentioned earlier the Respondent have not bothered to redress the grievances of the appellant. Hence being aggrieved by the

inaction of the Respondent Nigam, the appellant was compelled to move before the Learned VUSNF, Hazaribag for redressal of his grievance by filing CC No. 22/2016. which was heard on admission and after being satisfied with the contention of the Appellant vide order dated 11.01.2016 an interim relief was granted to provide electrical supply to the Appellant and accordingly; the electricity supply was made to the Appellant and electric bills were raised by the Respondent Nigam as per the consumption and the payment was accordingly made for electrical supply. For electrical connection, lease/rent agreement was a pre-requisite and the same was entered into by the Appellant with Ashok Kedia and during the entire episode, the Respondent No. 3 was nowhere in the picture. The appellant is fulfilling all the criteria which has been mentioned in his rent agreement and all the property is the joint property of Ashok Kedia. As a matter of fact neither the Learned forum nor the Respondent Nigam has any jurisdiction to declare the title of parties. So the objection petition filed by Brajesh Kedia (Respondent no 3) before Respondent no 1 is not maintainable.

8. Respondent no 2 for himself and on behalf of Respondent no 1 appeared before the learned forum and filed their written statement, stating there in that the appellant has not approached to this learned forum with clean hands and suppressed the truth and material facts from and as such on this score only the present complaint petition is liable to be dismissed. It is further alleged that the present complaint petition involved determination of complex question of law and facts, which cannot be adjudicated upon in a summary proceeding as envisaged in the Hon'ble forum. The complaint petition is bad for misjoinder and non joinder of necessary party i.e. Brajesh Kedia, who is the land lord of the premises and is the necessary party. Thus the notice hereby is required to be served to Brajesh Kedia, S/o Late Ashok

Kedia R/o E-5/50, 1st floor, Sector-16, Rohini Delhi-89. Unless and until they made parties the complaint petition cannot proceed and it is fit to be dismissed. It is further alleged that no meter has been installed in the premises as alleged and as such the complainant is not the consumer of this respondent no. 1 & 2. The statement and allegation made in para-9 of the complaint petition is self explanatory, why the electricity connection was not given to the complainant. It is submitted and asserted that the Appellant has deposited the requisition for supply of energy and annexed an affidavit, Kirayanama along with map. From perusal of the affidavit it transpires that the complainant is the tenant of Ashok Kumar Kedia and the premises is situated over Khata No.- 29 Plot No.- 347 Ward No.- 01 Mauza- Katras and from perusal of map, it shows that the land bearing Khata No.- 27 & 26 Plot No.- 347 of Mauza- Katras Thana No.- 239 P.S.- Katras Distt:- Dhanbad belongs to Brajesh Kumar Kedia R/o- Panchgrahi Bazar, Katrasgarh P.S.- Katras Dhanbad and as such Appellant was playing a fraud and wanted supply of electricity. That the Appellant filed the wrong details in the official books is an offence that has been committed by complainant. That Brajesh Kedia, the owner of house had sent a fax on 29.06.2015 to the Managing Director, JBVNL and requested the respondent to not supply the electricity in his premises without his consent and after enquiry this respondent came to know that the statement of Brajesh Kedia is true and correct. That the father of Brajesh Kedia has been impersonated to be the land lord in place of his son, who tender in written objection to the respondent Nigam, citing the illegality committed by the complainant. It is further submitted that application dated 08.08.2015 was received by EEE (Syst. Opt. & Estt.) from Brajesh Kedia and then on 19.08.2015 another application alongwith sale deed no. 6159 and letter dated 04.01.2016 were received by SDO Supply

Division, Dhanbad and as such Respondent Nigam have got no option rather not to supply electricity. Thus non supply of energy to the appellant by the respondent Nigam has been done as per norms of board. Thus, from the submission made above it is crystal clear that the respondent Nigam render proper service in accordance with provisions of law/norms and as such this respondent is not liable to pay any compensation and cost It is therefore, prayed that the case may be rejected/dismissed and recalled the interim order dated 11.01.2016 passed by this forum. In support of above statements respondent has submitted photo copy of requisition form duly filled in, copy of agreement, copy of affidavit, copy of sale deed alongwith map of the concerned land and letters of correspondence on dated 04.04.2016.

9. It is relevant to mention at very outset that shri Brajesh Kumar kedia filed a petition on 16-8-2016 to impleaded him as party and accordingly, his petition was allowed by the learned VUSNF and he has been made Respondent no 3 in this case.

10. Respondent No.- 3 also filed his detailed written statement stating therein that the document ,as filled, by the complainant before the forum, is the forged and fabricated only with view to grab the land with the shop of respondent no. 3 Brajesh Kumar Kedia. The instant case is full of false statement of facts, baseless and concocted. Ashok Kumar Kedia was not entitled to execute agreement with Mahendra Choudhary because the present property/shop is the purchased property of Brajesh Kedia, the respondent no. 3 and he is the real owner of the property situated in Mauza-Katras Khata No.- 27 Plot No.-347 Area 0.04 Acres vide registered sale deed bearing no. 6159 dated 07.08.1992 executed by Sri. Ramchandra Prasad Bhagat. Photo copy of registered sale deed and current receipt is enclosed. It is further stated that he (respondent no. 3) has given application to electric department

many times (Photo copy placed at page 144,145,146,147,149 & 150) to not provide the electric connection in his premises in the name of Sri. Mahendra Choudhary or any other person. It is further alleged that on 01.08.2015 Mahendra Choudhary(Appellant) and other three persons had broken the lock of the premises, as given in this case and entered illegally in the premises and committed theft of his property and insulted to his wife- Smt. Shobha Kedia, and after that Smt. Shobha Kedia has lodged an F.I.R. against them, vide Katras P.S., Case no. 257/2015 u/s 341, 323, 354, 452, 379, 304/34 I.P.C. and chargesheet also been submitted against the accused persons.

11. Further it is submitted that the present property/shop area 0.04 acres, is purchased by him, which is situated in the corner of road and adjacent with this property, in northern side, is the purchased land area 0.04 acres of Ashok Kumar Kedia, who was his father. The further case Respondent no 3 is that his father died on 15.06.2015 leaving behind two sons namely Sri. Vikas Kumar Kedia and Sri. Brajesh Kumar Kedia (the Respondent No. 3) and after his death the half portion of the property adjacent with the property of Respondent No. 3 is in his possession as legal heir. Therefore, Appellant is not entitled to take electric connection in the premises of the Respondent No. 3 Brajesh Kedia hence the interim order dated 11.01.2016 of this forum may kindly be cancelled.

12. After hearing the learned counsels of both sides and after perusal of the entire material available on the record the learned forum observed that the present case is related with dispute in releasing electric connection under NDS-2 category to the Appellant in a shop, where in, ownership of premise is being disputed. It is further held that a petition was filed by the petitioner(Appellant) on 7-1-16 for to pass order of electric connection,

whereupon ,considering the urgency of electric connection and relying upon the petition and documents, issued interim order on 11-1-2016 for releasing electrical connection and accordingly, electric connection was released on 25-1 2016. It is further observed by the learned Forum that the Appellant has also not submitted the copy of application form submitted by him to electricity office for getting electric connection. Only receipt granted by electricity office for releasing electric connection and some letters of correspondence has been submitted. Thus, for claiming his grievance the Appellant has tried to conceal the facts and filed petition before forum. On 19-5-2016 learned counsel for Nigam filed copy of W.P. (C) no 633 of 2016, Mahendra Choudhary Vrs. JUVNL to show that the dispute for which this case has been filed in this forum, has also been filed before Hon'ble Jharkhand High Court, Ranchi on 02.02.2016.Which shows that after filing this case before forum Hazaribag on 07.01.2016 by appellant, the appellant filed a writ before Hon'ble High Court, Ranchi on 02.02.2016 for same remedy and relief. After disclosure of this fact before forum the Appellant has withdrawn writ petition filed before Hon'ble High Court vide order 5/04.06.2016 in W.P. (C) no. 633 of 2016. Lastly , it is observation of the learned Forum thatthere are two parts of land, each measuring 0.04 acres in plot no. 347 (part) under Khata no. 27-26. The north portion of land is in the name of Sri. Ashok Kumar Kedia. Whereas adjacent to this south side portion of land is in the name of Sri. Brajesh Kumar Kedia. Above two portions of land were purchased by Sri. Ashok Kumar Kedia and Sri. Brajesh Kumar Kedia, respectively. The boundary given in rent agreement of Appellant do not match with either portion of land. The Appellant has not filed the petition with clean intention and concealed the facts and documents. While filing writ petition on 02.02.2016 before Hon'ble High

Court, Ranchi in WP(C) no. 633 of 2016, the appellant concealed the fact that for same remedy and relief, a case has already been filed by appellant before Vidyut Upbhokta Shikayat Niwaran Forum, Hazaribag on 07.01.2016. Sri. Ashok Kumar Kedia can lend shop/land on rent which is either purchased by him or obtained by virtue of ancestors. Sri. Ashok Kumar Kedia has no right to lend a shop/land on rent which is purchased by his son. Based on agreement the appellant is entitled to get electric connection in the north portion of land measuring 0.04 acres, which has been purchased by and is in the name of Ashok Kumar Kedia. It is further observed that by providing false information through petition filed by appellant in this forum and concealment of facts by petition interim order was issued for release of electric connection which is liable to be withdrawn. As per sec. 5.5.8 of the electricity supply code 2015, no objection certificate is required from the owner of the premises. But the land for which application demands for electric connection appears to be disputed and ownership of any immovable propriety can be decided only by competent Civil Court and not by this forum. Hence in our firm opinion appellant can get electric connection after decision of civil court over the disputed property.

13. Assailing the impugned judgment and order, it has been submitted by the learned counsel for the Appellant that learned VUSNF has erred while directing Respondent Nigam to release the electrical line for an indefinite period without reasonable cause or any cogent reason. The Respondent Nigam have acted beyond the scope and purview of the Electricity Act, 2003 and Electric supply code Regulation 2015, while considering the application for grant of electric connection, therefore, the action of the Respondents Nigam are totally arbitrary, malafide, untenable in

the eye of Law and without jurisdiction as well as contrary to the provision of Art.14 and Art.19 (1) (g) of the constitution of India. Hence, Respondent Nigam is liable to be punished u/s 43(3) of the Electricity Act, because Respondent have acted beyond the prescribed procedure and norms enshrined and laid down in clause(6) of the Electricity Supply Code Regulation 2015. Neither Electricity Act nor Electricity supply code Regulation 2015 prescribes any provision to disconnect the electric supply of any consumer and hence the action of the Respondents as well as the impugned judgment and order by the learned VUSNF, Hazaribag is fit to be quashed. It is further submitted that the action of the Respondent in not supplying electricity on the ground that a litigation is going on, in respect of the said land, is wholly illegal, arbitrary and without jurisdiction.

14. The learned counsel for the appellant has further submitted that Respondent no 3 can not raise his title or ownership over the said piece of land when he is not even the party to the lease agreement dated 9-7-14. As matter of fact Respondent no 3 has tried to mislead the learned VUSNF by objecting and agitating his title and ownership over the said piece of land before a wrong forum of law, especially, when he himself has preferred Title suit no.139/2014 before the competent court of Law at Dhanbad. However, the determination of title over the said piece of land can not be a binding factor to restrain the distribution licensee for not granting electrical connection. Thus, in view of the fact that the lease of agreement is to be expire in the month of July 2017, prayer of the Appellant for consideration of grant of electrical connection should have been considered, sympathetically.

15. The learned counsel for the Appellant has further drew my attention towards section 2 (3) ,(15), (17),section 12,14,15,42,43,44 and 56

of the Electricity Act and also the provisions of The Electricity Supply Code Regulation 2015 and submitted that impugned order is silent about the statutory provisions of the Electricity Act. In other words, Respondent Nigam has admitted that distribution licensee is bound to supply electricity, when an application is made to the distribution licensee by an applicant. It has further been submitted that Learned VUSNF and Respondents have misinterpreted the pendency of the suit with respect to the suit property in dispute. The transaction, however, is not void altogether but is subject to result of the suit and is void only so far as it affects the rights of any party to the suit. Consequently, pendente lite purchaser would be entitled to sever some legal rights and obligation to the vendors as may be eventually determined by the court. The same proposition has been dealt in the judgment by Hon'ble Apex court, reported in (2012) 7 SCC 738. It is further submitted that as held by the Hon'ble Apex Court that Electricity Act, 2003 is a complete code in respect of supply of electricity and the provisions of Electricity has to be given way regarding supply of electricity. Thus, doctrine of Lispendence is operative in future transaction, though the provision of Electricity Act governs present transaction is section 52 takes place only in the event any decree/order passed by the court later on. Therefore, at this juncture, no plea can be taken by the licensee under the Electricity Act, not to supply the electricity to the consumer. The learned counsel further submitted that there are number of cases of the different Hon'ble high court that even if ,trespasser, who trespasses on the land, is entitled for supply of electricity and water, Electricity is necessary and essential civil amenities, a constitutional right guaranteed under Article 21 of the Constitution of India. Under the scheme of the Electricity Act, Nigam is

a trader to trade the electricity to the person, who can not withheld supply of electricity to any person and on the ground that the land is disputed.

16. Refuting the contention advanced on behalf the appellant ,it has been submitted by the learned counsel for Respondent no 1 and 2 that Respondent no 3 , though not appeared before this present forum, claimed himself to be the owner of the house in question and raised objection not to provide electricity connection to the appellant and it was the reason that electricity connection has not been provided to the appellant but after instituting this case before learnedVUSNF, an interim order dated 11-1-2016 was passed, in their absence, with direction to this Respondents to provide electric supply after receiving the legal and proper fee from the appellant till further order. The order of the learnedVUSNF has been complied but after passing impugned order, the learned VUSNF has withdrawn its interim order with direction that electric connection may be released in the shop built up in the land purchased by shri Ashok Kumar Kedia, after the decision, in the title suit no 139/2014 in court of civil judge Jr. division no II Dhanbad and accordingly, the electrical line of the appellant has been disconnected. Learned counsel further submitted that electricity line of this appellant has again restored by the order dated 07-04-2017 of this forum on 19-4-2017. Thus, at present, Appellant is enjoying the electricity connection in his shop.

17. The learned counsel has further submitted that at the time of hearing urgent petition of the Appellant for restoration of electricity connection I shop in question. It is fairly submitted and admitted by him that appellant claims himself to be tenant in premises in question; therefore, he comes within the meaning of “occupier” under section 43 of the Electricity Act. Therefore, as per settled principal of law, in Amarendra Singh vs.

Calcutta Electric supply, AIR 2008 cal 2008, Appellant is entitled to get electrical connection in his shop in question.

18. It will admit of no doubt that appellant is a tenant in the premises in question. According to the Appellant he was inducted as tenant by shri Ashok Kumar Kedia, the father of the Respondent no 3, and after the death of Ashok Kumar Kedia, Respondent no 3 has started to create trouble with the Appellant, resultantly; he had filed objection before the Respondent no 1 and 2 for not connecting electricity connection and also lodged an FIR by his wife against him with others. Admittedly, Appellant is doing his small business, engaged in the trade of Kirloskar Motor Pump and its allied hardware stores for livelihood of his family members, and all of them dependent upon the income of his business namely M/S Swastik Traders. It is admitted fact between the parties that a Title suit no 139/14 has already been filed by the respondent no 3, with regard shop in question , for declaration of his right, title and interest over the land in dispute , which is pending before the court of civil judge Jr division Dhanbad.

19. Having considered the entire facts and circumstances of the case , as stated above and arguments advanced on behalf of both sides, I do find that Appellant is a tenant in shop in question, doing the business of trade of Kirloskar Motor Pump and its allied hardware stores and he is in occupation of the shop in question. It is settled principle of law by the Hon'ble Apex court in case of Chameli Singh and ors vs. State of U.P. and ors, right to life include to live with human dignity. It is specifically observed by the Hon'ble Apex Court that right to live guaranteed in any civilized society implies the right to shelter, which includes electricity, which is undisputedly an essential service to the shelter for human beings. In State of Karnataka Vs Narsimhamurthy SCC page 526 ,it is held by the Hon'ble Apex Court that

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 others civic amenities like roads etc. Further I do find that Hon'ble Calcutta High court in case of Amarendra Singh, it is held that “after discussing the aforesaid case law ,observed that in the circumstances, request for supply of electricity at the premises in question, occupied by the tenant can not be refused, Thus ,taking in to consideration of the aforesaid facts and circumstances of the case in hands and principle of law, as mentioned above, I am not inclined to approve the impugned judgment and order under appeal and same is therefore set aside”.

20. Thus, taking into the consideration of entire facts including annexures filed by the parties, on the record, I do find that Learned Forum has committed manifest error in coming to the finding and also travelled beyond his jurisdiction and held that boundary given in rent agreement of petitioner do not match with either portion of land and petitioner has not filed the petition with clean intention and concealed the facts and documents and also concealed the fact that he had filed writ petition before the Hon'ble High court for the same relief and later on withdrawn the same. Learned forum further held that based on agreement the petitioner is entitled to get electric connection in the north portion of land, which was purchased by Ashok Kumar Kedia and as per section 5.5.8 of the electricity supply code 2015, no objection certificate is required from the owner of the premises, but the land for which applicants demands for electric connection appears to be disputed & ownership of any immovable property can be decided only by competent civil court and not by this forum, therefore, the petitioner can get electric connection after decision of civil court over the disputed property. Thus I find and hold that learned forum ought to have consider that

Appellant has clearly come forward only on the basis of tenancy and claimed for electricity connection. There was no question to decide the right, title and interest of the parties over the land in question.

21. Therefore, the impugned judgment and order suffers with manifest illegalities. The learned VUSNF did not properly and meticulously scrutinize the real facts available on the record with due care and caution and has committed a manifest error in coming to the finding of withdrawal of the interim order dated 11-1-2016 and electric connection may be released in the shop built up in the land purchased by shri Ashok Kumar Kedia, after the decision, in Title suit 139/2014 by civil Judge Jr, division Dhanbad. As such, the impugned judgment is unsustainable.

22. I see merit in this appeal and it succeeds. The appeal is hereby allowed and impugned judgment and order is hereby set aside.

23. It is important to mention at this juncture that electrical connection in shop in question has already been restored by Respondent No 1 &2 vide order dated 07-04-2017, passed by this forum and Appellant is enjoying electricity connection till July 2017, as per his deed of agreement of rent.

24. Needless to mention here that deed of agreement of rent is going to end in the month of July 2017. If his agreement of rent is further extended then, it is duty of Appellant to inform the Respondent for its continuity. There will be, however, no order as to cost.

Sd/-
Prem Prakash Pandey
Electricity Ombudsman