

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND
4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001

Appeal No. EOJ/01/2011

Dated- 25th April, 2011

Pradeep Kumar	Appellant(s)
	Versus	
Sushil Kumar & JSEB & others	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Manish Kumar	Counsel for appellant
Shri R. Ranjan	Counsel for appellant
Shri Sudhir Kr. Pushkar,	Counsel for the respondent (No. 1)
Shri Rajesh Shankar	Counsel for respondent Board (No. 2)
Shri Dheeraj Kumar	Addl. Counsel for respondent Board (No. 2)

J U D G E M E N T

1. This appeal has been filed by the appellant/Pradeep Kumar against Sri Sushil Kumar, respondent no.1 and Jharkhand State Electricity Board ((In short to be referred as J.S.E.B) and others for setting aside the Judgement/order dated 17/01/2011 passed in case No. 15/2009 by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi by which the learned VUSNF of JSEB, Ranchi has directed the JSEB (respondents No. 2) to disconnect the D/S connection provided to appellant/ Pradeep Kumar within 15 days after receipt of the order.

2. The brief fact leading to file this case by Sri Sushil Kumar (respondent no. 1) before the learned VUSNF of JSEB, Ranchi is that the land bearing No. C/15 Harmu Housing Colony was allotted in the year 1977 to late Radha Raman Prasad who was the father of complainant. After construction of the house in the year 1983 the father of complainant got a domestic electricity connection in the year 1983 and the entire bills has been paid to the JSEB without default by late Radha Raman Prasad. The father of the respondent No. 1 had kept the appellant/ Pradeep Kumar as tenant in one portion of his

house as tenant in the year 2002 and further case of respondent no.1 is that the respondent no.1 was posted at New Delhi since 1997 to January, 2009 whereas his father used to reside in his house. The complainant (respondent no.1) submitted an application before the JSEB (respondent no. 2) for transfer of the connection in his name after the death of his father. Thereafter the complainant (respondent no.1) came to know that the appellant /Pradeep Kumar who was the tenant has taken a new connection in his name and the electric connection and service wire of the respondent no.1 was disconnected by the JSEB (respondents no. 2) without any information to him and without any reason whatsoever. After coming to know this fact the complainant (respondent no.1) had submitted an application on 06/07/2009 before the JSEB (respondent no.2) for disconnection of illegal meter which was connected in the name of tenant Sri Pradeep Kumar. When no action was taken by the concerned authority the appellant had submitted another application on 26/08/2009 before the higher authorities of JSEB of Ranchi for disconnection of illegal meter of appellant/Sri Pradeep Kumar. According to respondent no. 1 Sri Sushil Kumar, the appellant/Sri Pradeep Kumar has taken illegal electric connection in his name by submitting an application for new connection of electricity with false and fabricated no objection certificate before the concerned authority of JSEB whereas complainant Sri Sushil Kumar respondent no.1 has not issued any no objection certificate to the tenant Sri Pradeep Kumar/appellant for taking new connection in his name nor he has sent any no objection certificate which was submitted to the JSEB/respondent no.2 by which the appellant Sri Pradeep Kumar was taking new connection in his name. Therefore the complainant Sri Sushil Kumar respondent no.1 has prayed before the VUSNF of JSEB, Ranchi to direct the JSEB opposite parties to disconnect illegal meter of tenant Sri Pradeep Kumar/appellant and to restore old connected meter bearing consumer 5294 Book No. HE-14.

3. The learned VUSNF of JSEB, Ranchi has allowed the complaint of the complainant Sri Sushil Kumar respondent no. 1 and directed the JSEB respondents no. 2 to disconnect the D/S connection provided to appellant Sri Pradeep Kumar within 15 days after receipt of the order.

4. Being aggrieved by and dissatisfied with the aforesaid Judgement/order dated 17/01/2011 passed in case No. 15/2009 by the VUSNF of JSEB, Ranchi the appellant has filed this appeal before this Forum alleging therein that the learned VUSNF had no

jurisdiction to entertain the grievance of the respondent no.1 namely Sri Sushil Kumar because he is neither “Consumer” nor his grievance falls within the meaning of “Consumer dispute” nor his grievance can be treated as complaint within the meaning of “Complaint” and “Consumer dispute” as defined in the Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC) Regulations, 2005 According to appellant Section 43 of the Electricity Act, 2003 also provides that electrical connection may be provided to owner and occupier of any premises because the appellant has to be treated as occupier even if not an owner of the premises.

5. Further case of the appellant is that the house in question had been gifted to the appellant by the father of the respondent no.1 by a deed of will dated 28/03/2007 which is the subject matter of Probate Case No. 155/2007 which has been converted into Probate Title Suit No. 04/2009 which is pending for disposal before the Judicial Commissioner, Ranchi. Beside the aforesaid case there are many others civil and criminal cases in between both the parties which has led the respondent no.1 to file the complaint with malicious intention for harassing the appellant and to debar him from the basic amenities for living in the house in question so that the appellant and his family may be compelled to leave or evict from the house. According to appellant the occupancy of the appellant in the house in question is not disputed and according to the appellant he is seeking title over the house in question through a will and the respondent no.1 is disputing the aforesaid will and claims to be the owner. Even if the appellant is treated as a tenant according to the case of respondent no.1, the learned VUSNF ought to have been taken reference of the tenancy laws which also does not permit withdrawal of amenities of a tenant while pendency of the disputes or eviction proceeding.

6. According to the appellant the learned VUSNF had no jurisdiction to declare any document as forged which can be done only by a competent Civil Court after adducing proper evidences in accordance with the Indian Evidence Act and even if the concerned letter was not relied upon , it hardly makes any difference in view of the clear provision of Section 43 of the Electricity Act, 2003 and chapter 5 of the Supply Code Regulations because in view of the Electricity Supply Code Regulations the consent of an owner is not necessary for grant of electrical connection.

7. On the aforesaid grounds the appellant has prayed to set aside the Judgement/order dated 17/01/2011 passed by the VUSNF of JSEB, Ranchi in case No. 15/2009.

8. The case of JSEB (respondents no.2 & others) in brief is that the service connection of late Radha Raman Prasad being Consumer No. H.E.-14S-294 bill No. 28 was not disconnected till filing of the case before the VUSNF and the billing continues on 'LOC' basis. The electrical connection to the tenant Sri Pradeep Kumar was given on the basis of 'Vasiatnama' dated 28/03/2007 executed by the owner of the premises Radha Raman Prasad and also on the basis of no objection certificate which was given by Sri Pradeep Kumar at the time of applying for new service connection, which was given by the respondents No.1 Sri Sushil Kumar son of late Radha Raman Prasad. The officials of the concerned division of the JSEB could not know that the documents presented by Sri Pradeep Kumar were forged and fabricated documents as have been held by the learned VUSNF of JSEB, Ranchi.

FINDINGS

9. Sri Manish Kumar, the learned Counsel appearing on behalf of appellant Sri Pradeep Kumar has contended that the learned VUSNF should not have entertained the complaint /representation of the respondent no.1 Sri Sushil Kumar because the grievance neither falls within the meaning of consumer nor his grievance falls within the meaning of consumer dispute nor even the complaint made by him falls within the meaning of complaint as given in the regulations. The learned Counsel of appellant has referred Clause 2(e)(i) in which it is stated that " A consumer of electricity including applicants for new connections who has a complaint against the licensee". It has been further contended by the learned Counsel of appellant that the respondent no. 1 has filed his grievance before the VUSNF with a prayer for disconnection of electricity of appellant Sri Pradeep Kumar. As such it is a dispute in between the two consumers which is not maintainable by the learned VUSNF nor the respondent no.1 comes within the definition of complainant as defined under Clause 2(e)(i) of the regulations, 2005. According to learned Counsel of appellant the respondent no. 1 does not come within the meaning of consumer as defined under Clause 2(j) because under Clause 2 (j) of regulations, 2005 of JSERC that the "consumer" means any person who is supplied with electricity for his

own use by a distribution licensee or the Government or by any other person engaged in the business of supplying electricity to the public.” As such respondent no. 1 was not supplied with electricity by the JSEB; therefore respondent no.1 is not a consumer as defined under Clause 2(j) of JSERC Regulations, 2005. The learned Counsel further submitted that the grievance of the respondent no.1 also does not come under definition of consumer dispute as defined under Clause 2(k) of the regulations of JSERC. The consumer dispute has been defined as “ Consumer dispute” means a dispute where the person/licensee against whom complaint has been made, denies or disputes the allegation contained in the complaint”. Therefore according to learned Counsel of the appellant, the learned VUSNF has passed the impugned Judgement/order beyond its jurisdiction and as such the Judgement/order of the learned VUSNF is fit to be set aside.

10. On the other hand it has been submitted by the Sri Bhanu Kumar the learned Counsel appearing on behalf of respondent No.1 that Clause 2(e)(v) lays down that “ in case of death of a consumer, his legal heir or authorized representative who makes the complaint”. Therefore according to Sri Bhanu Kumar the respondent no.1 is the complainant because after the death of his father late Radha Raman Prasad as legal heir namely Sri Sushil Kumar becomes the complainant as being the only son of late Radha Raman Prasad who was the consumer of JSEB. Beside it respondent no.1 had grievance against the licensee (JSEB) because the new connection has been given to appellant on the basis of forged and fabricated Vasiatnama and forged and fabricated no objection certificate. The learned Counsel of the respondent no.1 has also referred Clause 2 (h) (i) & (ii) and has thus submitted that the grievance of respondent no.1 came within the definition of complaint under clause (2h) (i) & (ii) of the JSERC regulations because there exists defect or deficiency in electricity service provided by the distribution licensee, here JSEB and “Unfair Restrictive Trade Practices” has been adopted by the distribution licensee in providing electricity services. Here the electricity provided to appellant by JSEB on the basis of forged and fabricated Vasiatnama and no objection certificate. As such the grievance of the respondent no.1 comes within the definition of complaint as defined under Clause 2 (h) (i) & (ii). The learned Counsel of respondent no.1 has also submitted that the respondent no.1 is also a consumer as defined under Clause 2(j) and consumer dispute as defined under Clause 2(k) because as the father of respondent no.1 was the consumer of JSEB (respondent no.2) and after death of his father

respondent no.1 being the son and legal heir of his father becomes “Consumer” and he had also applied for change the name of his father in his name as his father has died. The dispute of respondent no.1 is also a consumer dispute as defined under Clause 2(k) because the respondent no.1 has filed a complaint against the licensee for giving illegal connection to appellant on the basis of forged and fabricated Vasiatnama and no objection certification.

11. The learned Counsel of respondent No.1 has drawn my attention towards an explanation of Section 43 of the Electricity Act, 2003 which has come into force from 15/06/2007 which provides that “Application” means application complete in all respects in the appropriate form as required by distribution licensee, alongwith documents showing payment of necessary charges and other compliances. Further the Electrical Supply Code Regulations, 2005 provides in Para 6.2.7 as follows:- “notwithstanding anything contained in these regulations an application shall be deemed to be received on the date of receipt of duly completed application containing all necessary information and documents and consents/permissions as required under any law for the time being in force along with the payment of charges and security amount as per these regulations”. On the basis of aforesaid provisions of law it has been submitted by the learned counsel of respondent no.1 with a non obstante clause. “Notwithstanding” meaning thereby that the aforesaid provision has an overriding effect over all other provisions and as such duly completed application form is a sine qua non for getting electric connection from the Board and the appellant has deliberately and with evil design submitted an incomplete application form in vital respects therefore the appellant did not fulfill the condition in accordance with the Section 43 of the Electricity Act, 2003 and also not in accordance with the Clause 6.2.7 of the Electrical Supply Code Regulations, 2005 of JSERC.

12. From the perusal of the applications forms/requisition which was submitted by the appellant to the Assistant Electrical Engineer, Electrical Supply Sub-Division, it is found that columns 3b, 3c and 3d have not been filled up by the appellant and this appears to have been left deliberately by the appellant when he was knowing fully well the name of the owner of the premises and nature of right title and position of the consumer of above giving premises to get undue advantage in probate case and therefore I am also led to hold that the application has not been properly and completely filled up as required under explanation of Section 43 of the Electricity Act, 2003 and Clause 6.2.7. I also do not find

any force in the contention of the learned counsel of appellant that the learned VUSNF had no jurisdiction to entertain the complaint of the respondent no.1 because the respondent no.1 is neither complainant nor his grievance comes within complaint nor respondent no.1 is a consumer nor the grievance of the respondent no.1 comes within the definition of consumer dispute as defined under Clause 2(e)(h)(j) & (k) of regulations, 2005 of JSERC and I find myself in agreement with the submissions of the learned Counsel of responded no.1 that the respondent no. 1 comes under the definition of complainant as defined under Clause 2(e)(v) because the respondent no.1 is the legal heir of earlier consumer late Radh Raman Prasad who was the father of respondent no.1. The grievance of respondent no.1 also comes within definition of complaint as defined under clause 2(h)(i)&(ii) because there exists defect or deficiency in electricity service provided to appellant by the distribution licensee in providing new electricity service and an unfair or restrictive practices has also been adopted by the distribution licensee (JSEB) respondent no.2 as have been defined under 2(v) and (y) of the JSERC Regulations, 2005 because the distribution licensee has provided a new electrical connection in the name of appellant on the basis of unprobated will which has no value in the eyes of law. The respondent no.2 JSEB and others can not take the plea that the officials of the JSEB did not know the law that an unprobated will has got no value in the eyes of law because in my view ignorance of law is no excuse. This fact of restrictive practices and unfair trade practices as defined under Clause 2(v) & (y) respectively of JSERC regulations, 2005 appears on the face of it because an application which was submitted before the Assistant Electrical Engineer, Electrical Supply Sub-Division the columns 3b, 3c & 3d have not been filled up in utter disregard of explanation of Section 43 of the Indian Electricity Act, 2003 and this is also in violation of clause 6.2.7 of the JSERC regulations, 2005 because clause 6.2.7 lays down that the application should be duly completed application containing all necessary information and documents which is lacking in the application form which was submitted by the appellant for taking new connection in his name.

13. The Learned counsel of appellant has further argued that Section 43 of the Electricity Act, 2003 lays down that “Duty to supply on request”- (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring

such supply”. Thus according to the learned Counsel of appellant the aforesaid provisions of law as laid down in section 43 of the Electricity Act, 2003 even if a occupier of a premises can also claim electricity connection from the licensee. This is also the provision under chapter 5 of the Electricity Supply Code Regulations, 2005 of JSERC which lays down under clause 5.1 that “Requisition for a new supply of electricity shall be made by the owner/occupier of the premises”. Therefore, according to learned counsel of the appellant the appellant was occupying the premises in question as tenant and as such he is legally entitled to take connection in his name. On the other hand it has been submitted by the learned counsel of respondent no.1 that in this case the appellant has not applied for new connection in his name as a tenant rather to claim title over the disputed premises he had submitted a forged and fabricated Vasiatnama for which a probate case is still pending in the Court of Judicial Commissioner, Ranchi and he had also submitted a forged and fabricated no objection certificate as such I do not find any force in the contention of the learned counsel of the appellant and I find force in the contention of the learned counsel of the respondent no.1 that the filing of unprobated will and forged and fabricated no objection certification is malafide. According to the learned Counsel of appellant the VUSNF has exceeded its jurisdiction to hold that the no objection certificate is forged and fabricated which comes within the jurisdiction of Civil Court which decides the issue after going through all evidences and material on the records. It is true that it is the jurisdiction of Civil Court to decide whether a document is forged or fabricated or not but while deciding the issue in between the parties no objection certificate was taken into consideration and on perusal of NOC it appears that the signature of respondent no.1 Sri Sushil Kumar does not tally with the signature found on the Vakalatnama and counter affidavit which have been filed before this Forum and for this finding it does not require any expert opinion because this information can be gathered by even a layman with his necked eyes . This finding is only for the purpose of deciding whether the signature on NOC is of respondent no.1 Sri Sushil Kumar or not and not for any other purpose.

14. The learned counsel of the appellant has relied and filed a ruling reported in 2009(4)JCR 88 (SC) held in the case of Global Energy Limited and another (appellants) Vrs. Central Electricity Regulatory Commission (Respondent) at paragraph 18 but the aforesaid ruling is not applicable in the facts and circumstances of this case nor it helps the case of appellant that the appellant can not be denied basic amenities such as

electricity while disputing the title as an owner or as a tenant because in my view when illegal connection has been obtained and the distribution licensee has provided electricity to appellant by adopting unfair and restrictive trade practices in violation of explanation Section 43 of the Electricity Act, 2003 and also in violation of 6.2.7 of the regulations of JSERC, 2005. Therefore the electrical connection of the appellant can not be allowed to be continued any more. In this regard chapter 8 under clause 8.1 and 8.2 of JSERC's regulations can be mentioned here which provides change of name which lays down that " a connection may be transferred in the name of another person upon death of the consumer or in the case of transfer of the ownership or occupancy of the premises, upon application in the prescribed application form for change of name by the new owner or occupier under clause (8.1). The clause (8.2) of aforesaid regulation lays down that " The application for change of name shall be accompanied by (i) Consent letter of the transferor for transfer of connection in the name of transferee. In the absence of consent letter any one of the following documents in respect of premises:- (a) proof of ownership of premises (b) in the case of partition deed (c) registered deed (d) succession certificate. The aforesaid provision does not lay down that name can be changed on the basis of unprobated will or Vasiatnama but the licensee JSEB (respondent no.2 and others) has changed the name of appellant by adopting unfair and restrictive trade practices which is highly deprecated by this Forum

15. The learned lawyer of appellant has relied and filed another ruling reported in 2002 (3) JCR137(JHR) held in the case of Calcutta Pinjrapole Society Vrs. BSEB. This ruling does not support the case of appellant nor it is applicable into the facts and circumstances of the case.

16. Thus from the aforesaid discussions and findings made above I am led to hold that the learned VUSNF has rightly held and ordered for disconnection of the D/S connection of appellant Sri Pradeep Kumar by JSEB within 15 days and as such this Forum also directs the JSEB (respondent no.2 and others) to disconnect the D/S connection provided to appellant Sri Pradeep Kumar within 15 days from the receipt of this order and JSEB respondents no.2 & others are further directed to restore the electrical connection of Sri Sushil Kumar respondent no.1 within 15 days from the receipt of this order failing which the respondent no.1 will be at liberty to move this Forum for implementation of this order within one month from the receipt of the order.

17. In the result there is no merit in this appeal and the Judgement/order passed by the learned VUSNF of JSEB, Ranchi on 17/01/2011 in case No. 15/2009 is hereby confirmed without any interference and the appeal is ordered to be dismissed.

Let a copy of this order be served on both the parties.

Sd/-
Electricity Ombudsman