

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

Case No. EOJ/04/2014

Ex-Subedar Major Jayram Chauhan Appellant(s)
Versus
Jharkhand Urja Vikas Nigam Ltd. & Others Respondent(s)

Present:

Electricity Ombudsman : Sri Ramesh Chandra Prasad
Advocate for the Appellant : Sri Somit Kumar Chatterjee
Counsels of the Respondent : Sri. Rahul Kumar
: Sri Prabhat Singh
Advocate for the Intervener : Sri. Soumitro Baroi

ORDER

(Passed on this 1st day of September, 2014)

1. Brief of the case:

The appellant Ex-Subedar Major Jayram Chauhan has filed this case for disconnecting alleged illegal electric connection provided by the respondent Jharkhand Urja Vikas Nigam Limited (herein after referred to as JUVNL) to one Mrs. Kamlawati Devi, her consumer No. being 684 KRK- 8309DS-2 and for other matters mentioned in para-7 of the complaint under consideration.

2. Submissions of the Appellant:

2.1 The learned counsel for the appellant submitted that main issue in the instant Appeal is about “Willful Contravention of Jharkhand

State Electricity Regulatory Commission (herein after referred to as JSERC) (Electric Supply Code) Regulations, 2005 and explanation appended under Section 43 of Electricity Act, 2003” while giving electric service connection to the Intervener Smt. Kamlawati Devi by JUVNL. As per the Act the owner as well as occupier of a premise is entitled to electricity connection from a distribution licensee. The occupier should strictly be a legal occupier and does not mean to be trespasser or illegal occupant. The premises in question used to belong to Smt. Matishwari Devi mother of Jayram Chauhan and now owned by the appellant and his brother Bhupesh Chauhan vide sale deed no. 11171 ser. No. 11828 dt. 31.10.1991. The property in question has not been disputed by the Govt. or district administration.

2.2 The learned counsel submitted that neither the licensee JUVNL nor Vidyut Upbhokta Shikayat Niwaran Forum (in short referred to as VUSNF) have the jurisdiction to deal with lispendendense, inter-dispute, trespass, adverse possession, juridical possession or legal-illegal possession. Licensee is strictly bound to comply with the provisions contained in Jharkhand State Electricity Regulatory Commission (Electricity Supply Code), 2005. The documents mentioned and required for giving electric connection in JSERC Code, 2005 are mandatory. There is no other substitute of these documents and no exception is contained in JSERC Code. The documents submitted along with the application form for new service connection by the Intervener Smt. Kamlawati Devi, viz:

- (i) Affidavit of genealogy
- (ii) Ration card
- (iii) Plaint of Partition Suit

(iv) Correction slip in the name of Smt. Matishwari Devi

The aforesaid do not find place in JSERC Electricity Supply Code, 2005. Therefore, any affidavit, ration card or filing of a partition suit does not change an illegal occupant to a legal occupier. The same can neither create nor extinguish right, title or interest in favour of anyone whatsoever.

2.3 The premises being house no. 861/I, Haider Ali Road, Kokar, Ranchi (Jharkhand) was the self acquired properties of Smt. Matishwari Devi (appellant's mother) vide sale deed no. 11171 ser. No. 11828 dt. 31.10.1991. Smt. Matishwari Devi debarring her other children from the succession right has transferred the said house to appellant jointly with his younger brother Bhupesh Kumar Chauhan vide sale deed no. 14717, ser no. 17116 dt. 24.06.2010. She had informed the licensee JUVNL regarding such transfer of her property through an affidavit no. 5329 dated 24.09.2010 which had been acknowledged by the licensee vide their receipt nos. JB-504374 and JH-825070 both dated 26.09.2010.

2.4 The learned counsel clarified that Smt. Kamlawati Devi was permitted by the erstwhile owner of premises (Smt. Matishwari Devi) to reside in part of premises for three years. However, after transfer of the said property to the appellant, the erstwhile owner has ceased her permission given to Smt. Kamlawati Devi to possess part of the premises w.e.f. 24.06.2010. The Appellant is now owning the said property and regularly paying Government taxes as admissible. After extinguishment of the said permission Smt. Kamlawati Devi is only a ranked trespasser in the said premises completely disobeying the prevalent rules in vogue, licensee has given an electric connection

bearing Consumer No. 684/KRK-8309 DS-2 to Smt. Kamlawati Devi in the premises on 15.03.2011.

2.5 As per the explanation of Section 43 of the Electricity Act, 2003 which has come into force from 15.06.2007 provides that “Application” means application complete in all respects in the appropriate form as required by distribution licensee, along with documents showing payment of necessary charges and other compliances. Smt. Kamlawati Devi has deliberately and with evil design submitted an unspecified and incomplete application form in vital respects i.e. without furnishing the information at paras 3(b),(c), (d), para 6(2) and (3) with malafide intention to get benefit of the probate case, despite suppressing the real fact in the affidavit sworn by her, therefore, she did not fulfill the condition in accordance with the Section 43 of the Electricity Act, 2003 and Clause 6.2.7 of the Electrical Supply Code Regulations, 2005 of JSERC.

2.6 The learned counsel further submitted that for giving electric connection to Smt. Kamlawati Devi, public servants of the licensee, in collusion with Smt. Kamlawati Devi have willfully contravened provisions contained in the legislature, as such the electric connection in question is illegal and deserve disconnection forthwith. Simultaneously, named public servants involved in the instant case do not deserve incentive for willfully abetting contravention to legislation.

2.7 The husband of Smt. Kamlawati Devi has filed the said Partition Suit under Benami Transaction (Prohibition) Act, 1988. It is well settled by the Apex Court that the burden of proving that a particular sale is Benami and the apparent purchaser is not the real owner, always rests

on the person asserting it to be so. The husband of Smt. Kamlawati Devi is avoiding production witnesses before the Civil Court because he has already managed basic amenities like electricity illegally and thereby reaping the rich harvest of illegal act through the court.

2.8 On the basis of aforesaid facts and circumstances the submission of the learned Counsel is to pass appropriate order for disconnection of illegal new electric connection provided by JUVNL to Smt. Kamlawati Devi forthwith along with other relief as prayed in the petition.

3. Submissions of the Intervener:

3.1) The submission of the learned counsel for the Intervener is that the intervener along with her family is residing in the impugned premises in a legal manner and the electric connection has also been provided to her by JUVNL in a legal manner. The informations required in the application form for new electric supply connection such as point nos.3(b),3(c) and 3(d) were taken into account and information in support of Clause 3(b), the copy of plaint of Partition Suit No. 42/2010 was annexed as a supporting document with the form showing that the ownership over the premises is disputed .As far as point 3(c)and 3(d) are concerned, these points relate where a person is residing in a rented or leased property where name of the owner of the property is required to be mentioned. But in the instant case the ownership over the property is itself in dispute and for which Partition Suit is still pending. So far as Clause 6(2) and (3) is concerned the same is not required to be filled as the deponent wanted a new connection for herself in her own name for the portion of the property in her legal occupation.

3.2) He further submitted that the Intervener Smt. Kamlawati Devi happens to be the wife of Hawaldar Sitaram Chauhan residing in the impugned premises with her family in a legal manner because her possession is a legal possession. The impugned electric connection provided to the Intervener was energized on 15/03/2011 in the impugned premises by the Respondent JUVNL in a legal manner.

4. Submission of JUVNL

4.1.) The learned counsel for JUVNL submitted that the Intervener Smt Kamlawati Devi wanted a new connection for herself in her own name for portion of the property in her legal occupation for which she applied to AEE/Electric Supply Subdivision, Kokar, Ranchi on 15/03/2011 along with related documents such as photocopy of Genealogy, hand written application/letter, copy of ration card, correction slip in the name of Smt. Matishwari Devi wife of Muni Lal Chauhan, House No. 861/I, Haider Ali Road, Kokar, Ranchi who was the owner of the aforesaid property.

4.2.) JUVNL had given domestic electric service connection to Smt. Kamlawati Devi, the said occupier of the premises on the basis of sequence of events such as filing of Partition Suit at Ranchi Civil Court on 29/03/2010, whereas the sale deed of the impugned premises was executed on 24/06/2010 and also taking liberty of Section 43 of the Electricity Act, 2003. (Electricity Supply Code), 2005 of JSERC wherein the occupier is defined as person in occupation of the premises where energy is used or as proposed to be used.

4.3) The learned counsel of the respondent JUVNL further submitted that as per provisions of (Electricity Supply Code), 2005 of JSERC the occupier is defined as person in occupation of the premises where

energy is used or as proposed to be used and in view of the Partition Dispute pending before the appropriate Court of Law, the requirements for fresh new electric connection as stipulated in the (Electricity Supply Code), 2005 of JSERC, the occupier of the impugned premises, Smt. Kamlawati Devi being legal occupier did not fill the columns 3b, 3c and 3d of the application forms/requisition which was submitted to the Assistant Electrical Engineer, Electrical Supply Sub division, Kokar, Ranchi.

4.4) The contention of the learned Counsel for the respondent JUVNL is that the appellant is neither consumer nor his grievances come within the consumer dispute as defined under clause 2(e)(h)(j)&(k) of the(Guidelines For Establishment Of Forum For Redresses Of Grievances Of The Consumers And Electricity Ombudsman) Regulations,2005 of JSERC.

4.5) Pursuant to filing of application by Smt. Kamlawati Devi for grant of new service connection, the Respondents scrutinized entire documents and after site visit provided fresh electrical connection to her. The impugned electric connection was provided/energized on 15.03.2011 in the impugned premises in view of provisions made under Section 43 of the Electricity Act, 2003.

Issues:

1. Whether JSEB followed the JSERC (Electricity Supply Code) Regulations, 2005 to give a new domestic electric connection to Smt. Kamlawati Devi the Intervener in the instant petition.
2. Whether the Intervener Smt. Kamlawati Devi to whom domestic service connection given by JSEB is liable to be

disconnected or not? If it were so, what is the relief to be ordered for the petitioner Ex. Subedar Major Jayram Chauhan.?

Findings of the first issue:

The respondent JUVNL during the hearing reiterated the following points:

a) The petitioner has elaborated many things in his petition to stress the point that he is the owner of the said property. JSEB does not question the ownership of the petitioner for the house to which the service connection has been given. However, they are of the view that occupier of any premises means must be lawful occupier on the date seeking electric connection, for a trespasser cannot get statutory amenities or facilities. Therefore, there can not be any difference between the expression lawful occupier as mentioned in the earlier Act of 1910 and word occupier in the present Act of 2003.

b) The intervener Smt. Kamlawati Devi, wife of Sitaram Chauhan had applied to AEE/Electric Supply Sub division, Kokar, Ranchi for new connection on 15/03/2011 along with related documents such as photocopies of Genealogy, hand written application/letter, copy of ration card, correction slip in the name of Smt. Matishwari Devi, Partition Suit No. 42/2010 being pending before the court of Munsif, Ranchi. The JSEB scrutinized entire documents and provided fresh electrical connection to her in accordance with provisions made under Section 43 of the Electricity Act, 2003 as also in compliance of directives of JSERC and thereby only performed their duties as prescribed in the Electricity Act, 2003 and also complied the norms of JSERC. Smt. Kamlawati Devi who is an occupier of the premises is

also entitled for a fresh electric connection. Moreover she is still dwelling / residing in the said house.

c) As per clause 5.3 of the (Electricity Supply Code) Regulation, 2005 the applicant shall furnish following documents along with application for requisitions of electricity supplies:

- 1) Two photographs affixed one each in the duplicate copies of the application form,
- 2) Proof of legal occupancy in the form of copies of sale deed or partition deed or succession certificate or power of attorney or lease/rent agreement or allotment order or in case of agriculture connection Khata nakal giving khesar no.

Admittedly, JUVNL had given domestic electric service connection to Smt. Kamlawati Devi, the said occupier of the premises on the basis of sequence of events such as filing of Partition Suit at Ranch Civil Court on 29/03/2010, whereas the sale deed of the impugned premises was executed on 24/06/2010 and also taking liberty of Section 43 of the Electricity Act, 2003. (Electricity Supply Code), 2005 of JSERC wherein the occupier is defined as person in occupation of the premises where energy is used or as proposed to be used.

In view of the Partition Dispute pending before the appropriate Court of Law, the requirements for fresh new electric connection as stipulated in the (Electricity Supply Code), 2005 of JSERC, Smt. Kamlawati Devi being legal occupier did not fill the columns 3b, 3c and 3d of the application forms/requisition which was submitted to the Assistant Electrical Engineer, Electrical Supply Sub division, Kokar, Ranchi.

The facts leading to filing of this case are that the petitioner Ex-Subedar Major Jayram Chauhan and Hawaldar Sitaram Chauhan are full blood brothers being sons of Late Munni Lal Chauhan and his wife Matishwari Devi. The intervener happens to be the wife of Hawaldar Sitaram Chauhan. On going through the past history of events connected with the impugned property, the petitioner is trying to solve their civil dispute through the electric service connection.

The learned VUSNF, Ranchi in Case No.02/2014(Ex-Subedar Major Jayram Chauhan v/s JUVNL) has made the following observation:

“The Sale deed dated 24.06.2010 is hit by the principle of “Lis Pendense” and hence the petitioner and his brother co-purchaser can not claim to be the real owners of the entire impugned premises. It is also needless to mention that the sale deed dated 24.06.2010 and the correction slip issued by the concerned circle officer in favour of the said vendees of this deed are subject to the final decision in the said Partition Suit.”

In the light of findings as above it is my considered opinion that JUVNL did not err in giving the domestic electric service connection to the Intervener Smt. Kamlawati Devi after verification of the occupancy at the disputed premises ie. House No. 861/I, Haider Ali Road, Kokar, Ranchi

With the aforesaid observation the first issue is resolved.

Finding of the second issue:

Having arrived at the conclusion that the electric service connection given to the Intervener Smt. Kamlawati Devi by JUVNL is in order as per rule and regulation, the question is whether any relief

could be thought of to the appellant who claims that he was the owner of the said premises/house and the service has to be disconnected?

Based on the fact and circumstances, the service line can not be disconnected unless the owner of the service connection Smt. Kamlawati Devi herself opts for it or payment default is committed.

Hence, the second issue is also not in favour of the applicant.

Conclusion:

Based on the findings as above the appeal petition is dismissed without any cost.

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

Sd/-
Electricity Ombudsman