

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 15303 of 2012

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Smt. Kalpana Guha,
W/o- Late Rabindranath Guha,
Vill- Naripur, Plot No.59,
P.O. Bhadrak, Dist: Bhadrak.

... Petitioner

-Versus-

Northern Electrical Supply Co. (NESCO),
Odisha, represented through its'
Managing Director, Balasore
and others.

... Opp. parties

For Petitioner : M/s.P.K.Rath, P.K.Satpathy,
R.N. Parija, A.K. Rout &
S.K. Pattnaik.

For Opp. parties : Mr. S. C. Dash.

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 26.09.2012

B.N. MAHAPATRA, J. In the present writ petition challenge has been made to the action of the opp. Party-licensee in disconnecting the power supply from the premises of petitioner on the ground that the same is illegal, arbitrary and in violation of principles of natural justice and statutory provision.

2. Petitioner's case is that her deceased-husband was a consumer under the erstwhile Orissa State Electricity Board (presently

'NESCO'). The power supply to the petitioner's premises was provided during 1965. However, the petitioner is in possession of paper relating to power supply from 1977 in the name of her deceased husband which is annexed to the writ petition as Annexure-1. The husband of the petitioner expired in the year 1991. After death of her husband, the electricity authority has not changed the name of the consumer recognizing the legal heirs of her deceased husband and power supply was continuing in the name of her deceased-husband. The petitioner has paid all dues to opp. party-electricity licensee till it is disconnected on 11.04.2012. The electricity authorities have issued 'No Due Certificate' certifying that the petitioner is not liable to pay any amount up to January, 2012. While the matter stood thus, at the instance of one Nimansu Sekhar Rout-opp. Party no.5, who claims to be the Power of Attorney Holder of legal heirs of Raghunath Rout and Harekrushna Rout relying upon the false and fabricated agreement, issued the eviction notice to the petitioner through his lawyer. The petitioner is, however, denying their title and is claiming right, title and interest over the property by perfection being in possession for more than 60 years. Petitioner's son was served with a lawyer's notice dated 18.2.2012, which contains all false and incorrect statements. Another set of fabricated document was also issued to the Executive Engineer, NESCO by opp. Party no.5 requesting him to disconnect the power supply from the petitioner's premises. On receiving such notice from opp. Party no.5, the

electricity authority disconnected the power supply on 11.4.2012. The petitioner immediately protested the same by approaching the authorities. The petitioner also filed C.D. Case No.47 of 2012 before the District Consumer Redressal Forum, Bhadrak alleging deficiency in service. The Consumer Forum refused to interfere with the matter on the ground of existence of civil dispute amongst the parties. When the petitioner protested the matter, the power supply was again reconnected without any official communication or order to the petitioner. Thereafter opp. Party-Licensee again disconnected the power supply to the petitioner's premises on 4.8.2012. Hence, the present writ petition.

3. Mr. P.K. Rath, learned counsel appearing for the petitioner submits that the electricity authorities are not empowered to decide the alleged civil dispute. This is a projected dispute between opp. Party no.5 and petitioner. Disconnection of power supply to the petitioner's premises at the instance of opp. Party no.5 is arbitrary and illegal. In support of his contention, Mr.Rath relied upon the order of this Court dated 21.09.2004 passed in W.P.(C) No.9186 of 2004. The dispute with regard to the petitioner's title which has been perfected over the land by adverse possession can only be decided in the appropriate forum. Mr. Rath referring to the medical report annexed as Annexure-9 to the writ petition submitted that the petitioner is an old lady suffering from series of ailments. The electricity authorities have completely exceeded their jurisdiction while disconnecting the power supply from the petitioner's

premises. The action of opp. Parties in disconnecting the power supply from the premises of the petitioner is bad in law. Mr. Rath, referring to Regulation 103 of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004, (for short, "Code, 2004") submitted that in case of death of a consumer the legal heirs or successor-in-interest or legatee may be given recognition as a consumer in place of the deceased. Neither any show cause notice was issued nor any opportunity of hearing was afforded to the petitioner before disconnecting power supply from her premises.

4. Mr. S.C. Dash, learned counsel appearing for opp. Party-Licensee submitted that the power supply was disconnected on 11.4.2012 and that it is not at all a fact that the same was supplied thereafter and again disconnected on 4.8.2012. Referring to Annexure-4, which is an Advocate's Notice dated 18.2.2012, Mr. Dash submitted that on the strength of an agreement dated 4.5.2001 executed by Sudhansu Sekhar Rout and Pradeep Kumar Rout with the son of the petitioner Sri Santanu Guha, the petitioner occupies the schedule house and premises for a period of two years. Thereafter on the request of the son of the petitioner, they are residing in the house for a further period of six years on monthly basis. From the month of January, 2009 the petitioner has not been paying any amount towards rent. In the said notice the petitioner was asked to handover the vacant possession of the house in question. Therefore, on the request of opp. Party no.5, the Licensee

disconnected the power supply on 11.4.2012. Referring to Annexure-B/2 Mr. Dash submitted that though Sri R.N. Guha was requested for production of valid documents of his occupation of the premises in question for supply of power to the premises, he failed to produce any document in support of his occupation of the premises in question. Mr. Dash further referring to Annexure-C/2 dated 4.8.2012 submitted that the S.D.O. (Electrical) No.I Sub-division, Bhadrak wrote a letter to Inspector-in-charge, Town Police Station, Bhadrak that since the petitioner was availing power supply by unauthorized means, and her case has already been dismissed by the Disputes Redressal Forum, police help may be provided to dismantle the power supply and after dismantling of electric cable, service connection wire and energy meter, the same was intimated to the IIC, Town Police Station, Bhadrak. Concluding his argument, Mr.Dash prayed for dismissal of the writ petition.

5. On the rival contentions of both parties, the only question that arises for consideration is as to whether opp. Party-licensee authorities are justified to disconnect the power supply from the premises of the petitioner on the basis of request of opp. Party no.5-Nimansu Sekhar Rout, who claims to be the Power of Attorney Holder of legal heirs of Raghunath Rout and Harekrushna Rout particularly when power was supplied in the name of petitioner's husband since 1965 (paper for which

is available since 1977) and the petitioner is not a defaulter in paying the electricity bills.

6. The undisputed facts are that the deceased-husband of the petitioner was a consumer under the erstwhile Orissa State Electricity Board and paper relating to supply of power to the premises in question is available since 1977. The power supply was continued till it was disconnected on 11.4.2012. Even after death of the husband of the petitioner, who was the consumer and died in 1991, his legal heirs or successors-in-interest have not been given recognition as consumer in place of the deceased-husband as provided under Regulation 103 of the Code, 2004. It is also undisputed fact that the power supply has been disconnected on the request of opp. Party no.5, who claims to be the Power of Attorney holder of legal heirs of Harekrushna Rout and Raghunath Rout. As it appears, there is dispute between the petitioner and opp. Party no.5 with regard to the ownership of the premises in question. The dispute is civil in nature and the Civil Court is competent to resolve such dispute. The Consumer Disputes Redressal Forum, Bhadrak did not entertain the petitioner's application on the ground that the dispute is civil in nature. It is not the case of opp. Party-Licensee that the petitioner is a defaulter in paying the electricity dues. On the other hand, Annexure-2 dated 21.3.2012 issued from the office of the S.D.O. BNED Bhadrak is a 'No Due Certificate' certifying that the petitioner is not liable to pay any amount up to January, 2012. Now the only

question is as to whether the opp. Party-licensee is justified to disconnect power supply from the petitioner's premises on the ground that civil dispute exists between the petitioner and opp. Party no.5 with regard to ownership of the premises in question.

7. The Hon'ble Supreme Court in the case of **Chandu Khamaru v. Nayan Malik** (2011) 6 Supreme 1 referring to sub-section (1) of Section 42 and sub-Section (1) of Sec. 43 of Electricity Act, 2003 held that the provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply of electricity of the distribution licensee, if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee.

8. At this juncture, it would also be appropriate to refer here the decision of a Division Bench of this Court dated 21.09.2004 in W.P. (C) No.9186 of 2004 as well as the decision of the Andhra Pradesh High Court in the case of **M.Varalakshmi Vs. The Assistant Divisional Engineer, The Central Power Distribution Company of A.P. Limited and others**, 2003 (5) ALD 352, which more or less deals with the issues involved in the case at hand.

9. The Division Bench of this Court vide its order dated 21.9.2004 passed in W.P.(C) No.9186 of 2004 in an identical matter held as under :

“Power supply is essential for survival of a person as without electricity a person cannot manage his daily affairs. CESCO has the monopoly for supply of electricity and cannot deny supply of electricity to a person who is agreeable to enter into an agreement for supply of electricity as a consumer. CESCO may insist that a person must sign and enter into an agreement as a consumer for supply of electricity and should comply with all requirements for supply of electricity. But CESCO cannot altogether refuse to supply electricity on the ground that the landlord of the tenant has withheld such consent for supply of electricity, because if such consent is withheld by the landlord on account of a dispute between the landlord and the tenant, the tenant will be left without electricity. This is not what the rule of law contemplates.

For the aforesaid reasons, we direct that the opposite parties will enter into an agreement for supply of electricity with the petitioner as a consumer and if the petitioner complies with all the requirements including execution of agreement for such supply of electricity, CESCO will supply the electricity to the shop rooms of the petitioner under his occupation. The direction will be complied with by the opposite parties within seven days of execution of agreement for supply of electricity by the petitioner.”

10. The Andhra Pradesh High Court in the case of

M.Varalakshmi (supra), held as under:

“The dispute with regard to ownership is still brewing unabated. Steps are, admittedly, to be taken by the unofficial respondents to evict the petitioner from the flat in question. Till such time, the petitioner cannot be deprived of supply of power.”

In that case, the Court directed to the licensee to restore the power supply to the flat in question upon the undertaking to be given by the petitioner.

11. In the instant case, no step has been taken by either of the parties to recognize the legal heirs of the deceased-husband of the petitioner in terms of Regulation 103 of the Code, 2004 after death of petitioner's husband.

12. It is further noticed that neither any show cause notice was issued nor any opportunity of personal hearing was extended to the petitioner by the Licensee before disconnecting the power supply from the premises of the petitioner. Even in case of a consumer who neglects to pay the charges for electricity, Section 56 (1) of Electricity Act, 2003 read with Regulation 101 of the O.E.R.C. Distribution (Condition of Supply) Code, 2004 envisages not less than 15 days clear notice in writing to the consumer before disconnection. In the instant case, as stated above the principles of natural justice has not been complied with before disconnecting power supply from the premises of the petitioner.

13. In the above fact situation, this Court is of the view that opposite party-Licensee are not justified to disconnect the power supply from the premises of the petitioner on request of opposite party No.5-Nimansum Sekhar Rout, who claims to be the Power of Attorney Holder of legal heirs of Raghunath Rout and Harekrushna Rout particularly

when power was supplied in the name of petitioner's husband since 1965 (paper for which is available since 1977) and the petitioner is not a defaulter in paying the electricity bills.

14. Needless to say that right to shelter is a fundamental right under Art. 19(1) of the Constitution of India [See ***Chameli Singh others Vs. State of U.P. and another***, AIR 1996 SC 1051] and shelter without electricity makes the life miserable. Electricity is the basic necessity for survival of a person in modern days. Abrupt disconnection of power supply seriously affects a person's right to have his food, water and decent environment, medical care and education. Disconnection of power supply from the premises of a consumer or non-supply of power to an applicant has a drastic impact on the day-to-day life of the citizens. It affects study of children, enhances the misery of old and sick persons, endangers the safety of the houses more particularly it is unbearable in the present days of global warming.

15. The Hon'ble Supreme Court in ***Chameli Singh and others Vs. State of U.P. and another***, AIR 1996 SC 1051 held as follows:-

“7. In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society.”

16. At this juncture, it is necessary to reproduce the relevant portion of Section 42(1) and Section 43(1) of the Act, 2003 and relevant regulation of Chapter III of the Code, 2004 which deals with power supply.

Relevant portion of Sections 42(1) and 43(1) of the Act,

2003 are extracted below:

“42. (Duties of distribution licensee and open access):---

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.”

xx xx xx

“43. (Duty to supply on request) :---

(1) [Save as otherwise provided in this Act, 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.”

xx xx xx

Regulations 3,4,5 and 7 of the Code, 2004 are extracted

below:

“3. Application for Supply- Application for initial supply or subsequent additional supply of power shall be made in the format in duplicate as provided in Form Nos. 1 & 2 as the case may be. Copies of the format of the application may be obtained from the local offices of the licensee free of cost. Photocopies of a blank form or form downloaded from the web-site of the licensee may also be used as an application form.

4. (1) The application after filing in shall be signed by the owner or the lawful occupier with the consent of the owner of the premises for which supply is required and shall be submitted at the local office of

the engineer along with a non-refundable fee not exceeding the amount as fixed below together with a sketch map of the premises and documentary evidence of his ownership or occupation of the premises in question. Any assistance or information required for filling of the application may be obtained by the applicant from the local office of the engineer.

For loads at single phase	.. Rs.25/-
For Loads at three phase	.. Rs.100/-
For loads at HT	.. Rs.500/-
For loads at EHT	.. Rs.5000/-

(2) The licensee shall acknowledge the application/letter(s) of the applicant/consumer forthwith.

5. Notwithstanding anything contained in Regulation 4, the licensee may grant connection to the premises of any applicant, and the licensee's engineer may dispense with documentary evidence of lawful occupation of the premises at his discretion. In cases where such documentary evidence of lawful occupation of the premises is dispensed with, any documentary evidence regarding electricity connection or payment of bills raised by the licensee for consumption of electricity will not constitute evidence for the purpose of lawful occupation of the premises in any municipal record, revenue record or any Court of law.

6. xx xx xx

7. An applicant, who is not the owner of the premises occupied by him, shall execute an indemnity bond, indemnifying the licensee against any damages payable on account of any dispute arising out of supply of power to the premises."

17. Conjoint reading of Sections 42(1), 43(1) of the Act, 2003 and Regulations 3, 4, 5 & 7 of the Code, 2004 show that even if a person is not an owner of the premises, but in occupation of a premises can be supplied with electric power on fulfilment of certain conditions.

Regulation 5 says that notwithstanding anything contained in Regulation 4, the Licensee may grant connection to the premises of any applicant, and the engineer of Licensee may dispense with documentary evidence of lawful occupation of the premises at his discretion.

Regulation 7 further says that an applicant, who is not an owner of the premises occupied by him shall execute an indemnity bond indemnifying the Licensee against any damage payable on account of any dispute arising out of supply of power to the premises.

18. In view of the above, the writ petition is disposed of with liberty to the petitioner to make an application for supply of electricity to her premises fulfilling the statutory requirements within one week from today along with the certified copy of this order. The opp. Party-Licensee is directed to consider the petitioner's application for supply of electricity to her premises keeping in view the legal position settled by the Hon'ble Supreme Court and the High Courts including this Court and the Regulations of Code, 2004 stated above as early as possible, but not exceeding one month from the date of receipt of the application of the petitioner for supply of electricity to her premises.

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B.N.Mahapatra, J.