

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 11358 of 2012

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

Smt. S.Padma,
W/o- SRS Naidu,
At present residing AtGodamgali,
Pension Lane, PO: Buxibazar,
PS: Cantonment, Town/Dist: Cuttack.

... Petitioner

-Versus-

Central Electricity Supply Utility (CESU), Odisha,
represented through the Executive Engineer, CESU,
CDD-I, AT/PO: Ranihat, Dist: Cuttack-1.
and others.

... Opp. parties

For Petitioner : M/s.B.S.Tripathy, M.K.Rath,
J.Pati, Mr.M.Bhagat,
Miss S.A.Mishra.

For Opp. parties : Mr. B.Dash & A.K.Pandey
(For O.Ps.2 & 3).

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 30.11.2012

B.N. MAHAPATRA, J. This writ petition has been filed with a prayer for issuance of a writ of mandamus directing opposite party-Licensee to provide a new electric connection to the premises of the petitioner.

2. Petitioner's case in a nutshell is that she has occupied premises of opposite party No.4-Adari Attamulu, who is the owner of the

residential house as a tenant on 01.01.2001. Opposite party No.4 being in want of money entered into an agreement with the petitioner for sale of a portion of his premises, i.e., Ac.0.004 decimal consisting of two rooms and a deed of agreement was executed on 01.06.2007. Petitioner has paid Rs.1,50,000/- to opposite party No.4. Since opposite party No.4 violated the terms and conditions of the said agreement, petitioner filed Civil Suit No.408 of 2009 in the Court of Civil Judge (Senior Division), First Court, Cuttack against opposite party No.4, which is pending. On the other hand, opposite party No.4 has also filed a Suit seeking decree of eviction of petitioner from the suit premises, which is still pending in the Court of Civil Judge (Senior Division), First Court, Cuttack in C.S.I. No.647 of 2009. While the matter stood thus, power supply to the premises of opposite party No.4 was disconnected by the Electricity Department due to non-payment of electricity dues, which was subsequently restored. But opposite party No.4 disconnected power supply to the premises of the petitioner on grudge due to pendency of the Civil Suits. Finding no other alternative, the petitioner approached opposite party No.3-the Junior Manager (Electrical), Tinkonia Bagicha Section, PO: Buxibazar, Dist: Cuttack to provide new electricity connection to her premises and also deposited a sum of Rs.34/- through treasury challan along with all relevant documents, but opposite party No.3 vide his letter No.174 dated 06.04.2012 rejected the said application and denied to give new electric connection to the premises of the petitioner. Being aggrieved, petitioner had approached this Court in W.P.(C) No.7938

of 2012 seeking issuance of a direction to opposite party-licensee to provide electricity connection to her premises. However, the said writ petition was withdrawn by order dated 20.06.2012 with a liberty to the petitioner to file a better petition. The petitioner also approached opposite parties 2 and 3 to provide temporary electricity connection to her premises but the same was not acceded to. Hence, the present writ petition.

3. Mr. B.S.Tripathy, learned counsel appearing for the petitioner submitted that the petitioner is a poor lady having banana business in the Buxi Bazar and suffering a lot being denied to avail electricity. The action/inaction on the part of the opposite parties in not considering her petition to provide new electricity connection to her premises is arbitrary and illegal. Though the petitioner has approached opposite party Nos.2 and 3 to provide temporary electricity connection, the same has not been provided to her. In similar matter, this Court in W.P.(C) No.61 of 2003 and W.P.(C) No.11788 of 2008 directed the Licensee to give power supply to the premises of the petitioner on temporary basis. Concluding his argument, Mr.Tripathy requested to allow the prayer made in the writ petition.

4. Mr.B.Dash, learned counsel appearing for opposite party-CESU submitted that the petitioner is not the owner of the house and she is not coming forward with the application for new connection with the permission/consent of the true owner of the house in question. As per Regulation 4(1) of OERC Distribution and Conditions of Supply Code, 2004, if anybody except the owner applies for new connection he/she has to

obtain permission of the owner. In the instant case, the petitioner applied for new connection without permission of the owner. Therefore, opposite party-Licensee cannot consider petitioner's application for new connection. Mr.Dash further submitted that the temporary connection is given under the Regulation 80(14) of the said Code, 2004 to meet the temporary needs on special occasions including marriage or other ceremonial functions, fairs, festivals, religious functions or seasonal business or for construction of residential houses, complexes, commercial complexes, industrial premises provided that such power supply does not exceed a period of six months. Since the petitioner has not applied for supply of temporary power supply for any of the purposes enumerated in Regulation 80(14), her application for temporary supply of power cannot be considered. There are also arrear dues outstanding against the premises. Concluding his argument, Mr.Dash submitted for dismissal of the writ petition.

5. On the rival contentions of both parties, the question that arises for consideration is as to whether opp. Party-licensee authorities are justified to deny temporary power supply or new connection to the premises of the petitioner in view of non-compliance of Regulation 4(1) of the Code, 2004.

6. Undisputedly, Civil Suits are pending in the Civil Court between the owner of the premises and the petitioner, who is a tenant under the said owner. The petitioner had been availing power supply from the owner, who is a consumer of electricity under the opposite party-Licensee. Due to civil

disputes, the owner disconnected the power supply to the premises of the petitioner.

7. Since it is not the case of the petitioner that she requires power supply for any of the purposes enumerated under Regulation 80(14) of the Code, 2004, the opposite party licensee is justified to deny temporary power supply to the petitioner's premises. The facts of the case in W.P(C) No.61 of 2003 and W.P.(C) No.11788 of 2008 relied upon by Mr.Tripathy are different from the facts of the case at hand. In those two cases, there was no prayer to provide temporary power supply to the premises of the petitioner and the Court has not directed to give temporary power supply to the premises of the petitioner as provided under Regulation 80(14) of the Code, 2004. Therefore, the orders passed in those cases are of no help to the petitioner.

8. The grounds for not giving new connection to the premises of the petitioner are of two fold.— (i) the petitioner has not obtained the consent of the owner and without the permission of the owner she is not entitled to get new electricity connection; (ii) there is arrear outstanding on the same premises.

9. So far as first ground is concerned, since civil dispute is pending between the petitioner and her owner, petitioner certainly cannot obtain any permission/consent from the owner to get new electricity connection to her premises. So far second ground is concerned, admittedly owner of the premises is a consumer under the opposite party-Licensee and electricity dues and arrear charges if any, are outstanding against the owner, the

petitioner is not liable to pay such arrears to the opposite party-licensee. According to the petitioner, despite outstanding arrear dues, the owner is availing the power supply. Be that as it may, fact remains that there was no electricity connection in the name of the petitioner and no arrear dues is outstanding against her. Therefore, that cannot be a ground to deny new electricity connection to the petitioner.

10. Now, the only question arises as to whether without consent/permission of the owner new connection can be given to the petitioner, who is an occupier of the premises owned by opposite party No.4.

11. 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 electricity supply from the distribution licensee.

12. At this juncture, it would also be appropriate to refer here to 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.

13. 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.”

14. 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 the licensee to restore the power supply to the flat in question upon the undertaking to be given by the petitioner.

15. 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 or non-supply of power 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.

16. 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.”

17. 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 Regulations of Chapter III of the Code, 2004 which deal with power supply.

Relevant portions 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."

18. Conjoint reading of Sections 42(1) and 43(1) of the Act, 2003 and Regulations 3, 4, 5 & 7 of the Code, 2004 shows that even if a person is not an owner of the premises, but in occupation of a premises can be supplied with electricity 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.

19. 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.