

BEFORE THE ELECTRICITY OMBUDSMAN
(For the State of Goa and Union Territories)
Under Section 42 (6) of the Electricity Act, 2003
3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,
Gurugram (Haryana) 122015,
Phone No.:0124-4684708, Email ID: ombudsman.jercuts@gov.in

Review Appeal No.171 (R) of 2022

Date of Hearing: 16.08.2022

Date of Order: 18.08.2022

Shri Bhartendu Sood
Chandigarh

.... Appellant

Versus

The Superintending Engineer,
Electricity Department,
Chandigarh and others

.... Respondents

Parties present:

Appellant(s) 1. Shri Bhartendu Sood

Respondent(s) 1. Er. Rohit Kumar Sekhri
Executive Engineer

2. Er. Arvind Kumar
Assistant Engineer



Date of Order:18.08.2022

The Appellant has preferred a Review Appeal against the Final order of the Electricity Ombudsman in Appeal No.-164 of 2022 tiled Shri Bhartendu Sood vs Electricity Department-Chandigarh. The Review Appeal was admitted on 06.07.2022, as Appeal No.171 (R) of 2022. Copy of the same as received was forwarded to the Respondents with a direction to submit their remarks/ counter reply on each of the points. The counter reply received from the Respondents was supplied to the Appellant for filing the Rejoinder.

(A) Submissions by the Appellant:

1. Appellant has taken many grounds for Review Appeal and the same are examined below in tabular form under the heading (E) "Findings & Analysis".

(B) Submissions by the Respondents:

Er. Rohit Kumar Sekhri- Executive Engineer, on behalf of the Electricity Department Chandigarh, submitted on oath asunder:-

1. That the deponent is working as Executive Engineer, Electy. 'OP' Divn. No.4 and is authorized by the Electricity Wing of Engineering Department, UT, Chd. being Deemed Licensee vide letter No.8539 dated: 29.10.2010 to file the reply and represent on the behalf of Electricity Wing of Engineering Department, UT, Chd. in the present Review Petition titled Sh. Bhartendu Sood V/S S.E., Electy. 'OP' Circle, UT, Chd. and others.
2. That the deponent is filing the counter reply in the present Review Petition which is as under: -

RESPECTFULLY SHOWETHON MERITS:-

The detailed reply in the Appeal No. 164/2022 has already been submitted by the Respondent against which the order was issued by the Hon'ble Ombudsman on dated 16.06.2022. Now, the Appellant has raised the issue that the transfer of electricity connection of House No-231, Sector 45 was neither the part of the original complaint nor had any reference/mention in the order of the Hon'ble CGRF whose order was challenged by the Appellant before the Hon'ble Ombudsman. The said issue does not pertain to the Respondent being the same was decided by Hon'ble Ombudsman Suo-moto.

Further, the issue regarding waiver of late payment surcharge of Rs. 112/-, was already covered in the reply submitted by Respondent before the Hon'ble Ombudsman in respect of Appeal No. 164/2022. It is worth to mention here that the Hon'ble CGRF after detailed study of the case passed the order on dated 17.02.2022 and decided the case in favour of the Respondent with the directions that "money was refunded back by the SBI on dated 27.10.21 i.e. one day before the last date of the depositing electricity bill which was 28.10.2021. So, no benefit of waiving off of surcharge can be given to the appellant as the appellant had enough time to deposit the bill before last date i.e. 28.10.2021." Thereafter, the Hon'ble Ombudsman after detailed scrutiny of the case passed the order on dated 16.06.2022 and upheld the order dated 17.02.2022 passed by Learned CGRF in respect of complaint No. C-143/2022.

It is therefore, respectfully prayed that the present Review Petition may kindly be dismissed in view of the above stated facts being devoid of merit please.

(C) Final Order No-164/2022 dated 16.06.2022, preferred for Review Appeal :

Appeal No-164/2022 was decided as under: -

“DECISION

- (i) For the reasons discussed above, the appeal of the Appellant is dismissed being devoid of merit.
- (ii) The Orders in Complaint No- CC -143/2022 dated-17.02.2022, passed by Learned CGRF-Chandigarh is upheld.
- (iii) Since the existing agreement has become null and void, the Electricity Department-Chandigarh/Deemed Distribution Licensee is directed to issue notice to the Appellant to get the existing connection transferred in his name within 30 days. If the Appellant fails to file an application as per Supply Code Regulations-2018, this electricity connection be disconnected and action be taken to recover the pending dues. If Appellant applies for Transfer of connection/Change of name or a new connection as per provisions of Supply Code Regulations-2018, the same be expedited as per said Regulations.
- (iv) In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.

- (v) The Electricity Department/Licensee should submit a compliance report to the office of Electricity Ombudsman on the action taken in this regard within **45 days** from the issuance of this Order by email.
- (vi) The appeal is disposed of accordingly.”

(D) Deliberations during hearing at Chandigarh on 16.08.2022:

1. Appellant submission:

- a. Shri Bhartendu Sood the Appellant reiterated his version as submitted in the Review appeal.
- b. On being asked, on which points his Review Appeal lies as per Regulation 37(8) of the Consumer Grievances Redressal Forum and Ombudsman Regulation-2019, he replied that since his Appeal was admitted by Hon'ble Ombudsman, therefore he considers that his contentions for Review are in order. His attention was invited that admission of any Review Appeal/Appeal does not mean that it is in order. For every Appeal, Orders on merits/Act/Regulations are required to be passed after giving opportunity of being heard.

2. Respondents Submission:

1. Er. Rohit Kumar Sekhri-Executive Engineer reiterated his version as submitted in the counter reply to the Review appeal and requested to dismiss the Review Appeal, since the contentions raised in Review Appeal are already decided in Appeal No-164/2022 and final order has been passed.

(E) Findings & Analysis:-

1. I have perused the documents on record and pleadings of the parties.
2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. The issues which have arisen for considerations in the present Appeal are as under: -
 - (i) Whether the Review Appeal of the Appellant is maintainable as per Regulations and whether he is entitled to relief as prayed for?



4. Regarding issue no 3(i) as above, as to whether the Review Appeal of the Appellant is maintainable as per Regulations and whether he is entitled to relief as prayed for?

(a) Following provisions have been provided in the Consumer Grievances Redressal Forum and Ombudsman Regulation-2019, notified by the Hon'ble Commission, regarding preconditions for Reviewing an order: -

(i) "**Section 37(8)** :-

37(8)- The Ombudsman may, at any time, after affording an opportunity of being heard, review his Order, either on his own motion or on an application of any of the parties to the proceedings, within 30 days of the Order on –

- (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;*
- (ii) on account of some mistake or error apparent from the face of record;*
- (iii) for any other sufficient reasons. "*

(b) The Hon'ble High Court of Calcutta, Circuit Bench at Port Blair vide Order dated -11.02.2011 in bench of Writ Petitions namely Abhimanayu Muzamdar vs Superintending Engineer, Electricity Department, Andaman Nicobar Islands and others has interpreted the definition of **Occupier** and relevant part is reproduced below:-

Quote

"When the Rules of 2006 were introduced, the legislatures had in their mind the aforesaid concept of settled possession which was capable of being defended against any threat of dispossession, even at the instance of the owner, except by due process of law as laid down by the Supreme Court and consequently, introduced the definition of the word 'occupier' as lawful occupier without further defining the word "lawful" therein. Therefore, in the absence of any definition of the word "lawful" in the Rules of 2006, we should apply the principle of "settled possession" laid down by the Supreme Court to the phrase "lawful occupier" appearing in the Rules for implementation of the object of the Electricity Act, 2003 to construe the same as a person in "settled possession" whose possession can be defended against the threat of dispossession otherwise than due process of law even by the lawful owner.

We, therefore, hold that a person in settled possession of a property as illustrated in the case of Rame Gowda (supra), is free to apply for supply of electricity without the consent of the owner of the same and is entitled to get electricity and enjoy the same until he is evicted by due process of law.

We have already pointed out that either in the Electricity Act, 2003 or in the Rules of 2006, there is no procedure prescribed for resolving the dispute as to the status of an occupier in the property over which the electricity is sought to be brought or over which any work is to be constructed by the licensee for giving connection of

electricity to any person. To construe the word "lawful" appearing in the Rule as "having perfect legal title to possess" would lead to absurdity in implementing the object of the Act and the Rules. In that event, at every stage, the licensee would face problem in giving electricity whenever any dispute as to the title of a person to remain in possession would be raised by any other person claiming to be the owner having lawful title over the property in question and the licensee would be required to wait until such a dispute is resolved by a competent court in a protracted litigation. We, therefore, construe the word "lawful occupier" appearing in the Rules as "the person in settled possession".

Unquote

5. After passing the Final order on dated-16.06.2022, in Appeal No.-164/2022, this authority has become a "**functus officio**" and can Review the Appellant case, strictly as per above said Regulations of "Consumer Grievances Redressal Forum and Ombudsman Regulation-2019".
6. The grounds taken by the Appellant for Review Appeal and its appreciation as per the Regulations are examined /analyzed as tabulated below: -

Sr. Nos	Grounds taken by the Appellant in Review Appeal	Examination /Appreciation of Review Appeal facts as required under <i>Section 37(8) of the said Regulations</i>
1.	This Review Petition is being filed as the impugned order in Appeal No 164 dated 16.06.2022 has patent defect and is violative of well settled legal Principles/position and facts of the case.	In the Final Order in Appeal No-164/2022, it has been clearly ordered that: - "In case, the Appellant or Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019." Therefore, the Appellant is at liberty to challenge the Final order under Appeal in appropriate Court. Thus, this is no ground, which warrant Review as per said Regulations.
2	Hon'ble Electricity OMBUDSMAN the Appellant Court, has given decision with regard to transfer of the Electricity Connection of House No-231 in the name of the Applicant, which was neither the part of the complaint nor had any reference/mention in the Order of the	Following provisions under Regulation-36(2) has been provided in the Consumer Grievances Redressal Forum and Ombudsman, Regulations, 2019: - "36(2) - The Ombudsman shall be guided

	<p>learned CGRF whose order was Appealed to by the Appellant.</p> <p>The transfer of Meter was never the issue in the COMPLAINT. The only cause of action was that the Complainant was forced to pay a surcharge though he had paid the Bill well before time.</p> <p>Complainant's appeal was against the Order of the Learned CGRF-Chandigarh dated 17.02.2022. In the impugned order the Hon'ble CGRF has confined itself to the issue in the complaint i.e. Withdrawal of the surcharge levied to the Complainant; the relief sought by the Complainant. Learned CGRF has not made the ownership of the Electricity meter as the issue. As per CPC, the Appellant Court has to look into the merits and demerits of the order of the lower court. It cannot go beyond examining the order of the lower court. If it feels that any issue should have been taken by the lower court i.e. CGRF, the best it could do was to send back the order to CGRF for retrial.</p>	<p>by principles of natural justice, and subject to other provisions of these Regulations, the Ombudsman shall have power to regulate its own procedure.”</p> <p>Being Appellate authority, this authority can review/modify/set aside, the orders passed by Ld. CGRF to circumvent the miscarriage of justice.</p> <p>Therefore, this ground is not a sufficient ground/cause which warrant Review as per said Regulations.</p>
3	<p>Otherwise also the right of the Consumer to get the connection transferred in his name on the strength of the proof of Occupancy is a policy matter, which best has to be decided for all Chandigarh consumers, by the Chandigarh Administration/ Chandigarh Electricity Department and cannot be decided exclusively for the Complainant, especially when it was not the issue of his complaint or in the order of CGRF whose decision was debated before the Hon'ble Electricity OMBUDSMAN.</p> <p>Therefore, the Impugned order has patent defect and merits review.</p>	<p>Following provisions under Regulation-3 of the Consumer Grievances Redressal Forum and Ombudsman, Regulations, 2019 has been provided:</p> <p>-</p> <p>“3. Definitions</p> <p>(d) “Complainant”/Consumer means and includes</p> <p>(i) any electricity consumer or consumers including their legal heirs or successors, having a grievance/complaint against a licensee and lodging the same either directly or through their representatives, or</p> <p>(ii) any voluntary/registered consumer society/association or associations, registered under the law for the time being in force and making the complaints in the larger common or similar interest of the consumers, or</p> <p>(c) any person whose electricity connection is disconnected, or</p> <p>(d) an applicant for a new connection for the supply of electricity;</p> <p>(e) (v) A consumer as defined under clause (15) of Section 2 of the Act</p> <p>(vi) Any unregistered association or group of consumers where they have common or similar interests;”</p> <p>The connection is in the name of Smt. Poonam Singh and Appellant confirmed that he has purchased the premises on Power of Attorney and he is residing there for the last many years. As per</p>

		<p>Regulations 3(d) (i) as above a Complainant can be consumer or consumers including their legal heirs or successors.</p> <p>The Appellant is neither a consumer as connection is in the name of Smt. Poonam Singh. He is neither a legal heirs nor successors of Smt. Poonam Singh. It is only on the basis of “Occupier”, he was considered a consumer as per Electricity Act-2003 and his Appeal No-164/2020 was accepted. Since he was considered an <u>Occupier</u>, accordingly it was ordered that he should enter in a fresh agreement with Electricity Department.</p> <p>These facts were duly examined in para-5, of the Final Order in Appeal No-164/2022, under heading <u>(E) Findings & Analysis.</u></p> <p>The release of Electricity connection to an <u>Occupier</u> is provided in section-43 of Electricity Act-2003 as well as Supply Code-2018 notified by the Joint Electricity Regulatory Commission and definition of lawful Occupier has been interpreted by Hon’ble High Court of Calcutta, Circuit Bench at Port Blair. Since, release of connection to an occupier has been guaranteed in Electricity Act-2003 as well as Supply Code-2018, it is wrong to suggest that it is policy matter. Respondents/Electricity Department of Chandigarh Administration being Distribution Licensee is bound to follow the provisions of Act & Regulation failing which they are liable to pay penalty as per Section-43 of the Electricity Act-2003 and face panel action as per Electricity Act.</p> <p>Therefore, the grounds submitted at Sr. Nos. 3 of this table are not new facts which warrant Review as per said Regulations.</p>
4	<p>Complainant’s only grouse was that he had to unjustifiably pay the Surcharge of Rs 112/- though he had transferred the bill amount by net banking of SBI on 22nd October itself on the e-Sampark portal of Chandigarh, well before the due date that was 28th October,2022. It is worth mentioning that e-sampark is authorized by OP only, for receiving electricity payments from the Chandigarh consumers. Under the situation, the Consumer has every reason to feel relieved once his transaction was successful on the authorized portal. It was indeed successful as was admitted by the OP too.</p> <p>The issue before the Hon’ble Electricity OMBUDSMAN was whether the Opposite party (Electricity Department) was right in expecting the Complainant to redeposit the</p>	<p>These facts were duly examined in para-4, of the Final order in Appeal No-164/2022, under heading <u>(E) Findings & Analysis.</u></p> <p>Therefore, the grounds submitted at Sr. Nos. 4 of this table are not new facts which warrant Review as per said Regulations.</p> 

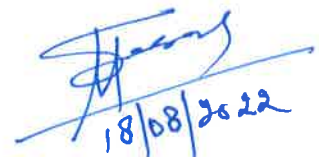
	<p>bill amount as he had received back the bill amount on 27th Ocyober,2021 i.e. before the due date which was 28.10.2021. In legal parlance, is the Service provider (OP) right in expecting the Consumer to over perform without looking into the cause of deficiency at his end. The Hon'ble Electricity OMBUDSMAN has not touched this issue at all.</p> <p>In Jurisprudence, the intention of the doer is of great importance, but in this trial, this aspect was ignored completely. The very fact that Complainant's intentions were to pay well before time and he had sufficient funds in his Bank balance to cover the bill amount was completely ignored. It smacks of the dictum that in monopolistic conditions service provider is always right and consumer is always wrong and it becomes more true when the service provider is a Government body like Chandigarh Electricity Department.</p>	
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7. In view of the above point wise examination/analysis of the grounds put up by the Appellant for Review of Order No.164/2022, I am of the considered opinion that no new facts or mistake or sufficient cause could be substantiated, as provided under Section-37 (8) of the CGRF and Ombudsman Regulations-2019, which warrant a Review. After passing the Order No.164/2022 on dated 16.06.2022, this authority had become a "functus officio" and I find no ground that qualify to Review the Order No.164/2022 dated 16.06.2022, as examined above.

(F) DECISION

- (i) For the reasons discussed above, the Review Appeal of the Appellant is hereby dismissed.
- (ii) In case, the Appellant or Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.

(iii) The Review Appeal is disposed of accordingly



(M.P. Singh Wasal)

Electricity Ombudsman
For Goa & UTs (except Delhi)

Dated-18.08.2022

