

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.3341 of 2017


Order reserved on: 14-12-2017

Order delivered on: 2-1-2018

N.R. Sharma, S/o Late Shri Manoharlal Sharma, aged about 54 years,
R/o B-7, M/s Ind Synergy Limited, Residential Colony, Kotmar,
Raigarh, District Raigarh (C.G.)

---- Petitioner

Versus

- 
1. Chhattisgarh State Power Distribution Company Limited (C.G.),
Through its Managing Director, Chhattisgarh State Power Distribution
Company Limited, Daganiya, Raipur (C.G.)
 2. Superintending Engineer (Raigarh Circle), Chhattisgarh State Power
Distribution Company Limited, Raigarh (C.G.)
 3. The Assistant Engineer (Rural), Chhattisgarh State Power Distribution
Company Limited, Raigarh (C.G.)
 4. M/s Ind Synergy Limited, Through its Director, Having Office at
Village Kotmar, Tah. Raigarh, District Raigarh (C.G.)

---- Respondents

Writ Petition (C) No.3340 of 2017

Chottelal Yadav, S/o Shri Umrao Singh Yadav, aged about 43 years,
R/o B-8, M/s Ind Synergy Limited, Residential Colony, Kotmar,
Raigarh, District Raigarh (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Limited (C.G.),
Through its Managing Director, Chhattisgarh State Power Distribution
Company Limited, Daganiya, Raipur (C.G.)
2. Superintending Engineer (Raigarh Circle), Chhattisgarh State Power
Distribution Company Limited, Raigarh (C.G.)
3. The Assistant Engineer (Rural), Chhattisgarh State Power Distribution
Company Limited, Raigarh (C.G.)

4. M/s Ind Synergy Limited, Through its Director, Having Office at Village Kotmar, Tah. Raigarh, District Raigarh (C.G.)

---- Respondents

AND

Writ Petition (C) No.3343 of 2017

Devendra Bohra, S/o Shri Trilok Singh Bohra, aged about 29 years, R/o B-21, M/s Ind Synergy Limited, Residential Colony, Kotmar, Raigarh, District Raigarh (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Limited (C.G.), Through its Managing Director, Chhattisgarh State Power Distribution Company Limited, Daganiya, Raipur (C.G.)
2. Superintending Engineer (Raigarh Circle), Chhattisgarh State Power Distribution Company Limited, Raigarh (C.G.)
3. The Assistant Engineer (Rural), Chhattisgarh State Power Distribution Company Limited, Raigarh (C.G.)
4. M/s Ind Synergy Limited, Through its Director, Having Office at Village Kotmar, Tah. Raigarh, District Raigarh (C.G.)

---- Respondents

For Petitioners:	Mr. Ashish Surana, Advocate.
For Respondents No.1 to 3:	Mr. Varun Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and fact is involved in these writ petitions, they are being disposed of by this common order.
2. The petitioners in each of the petitions are tenants of respondent No.4 M/s Ind Synergy Limited and are occupiers of the leased residential premises. They made an application to respondent No.2, who is a distribution licensee, for supply of electricity connection to their premises but the said supply was not made by respondent No.2 /

distribution licensee leading to service of legal notice dated 29-8-2016 to respondent No.2 and in turn, respondent No.2 informed the petitioners that respondent No.4, their landlord, M/s Ind Synergy Limited, as per their records, was having electricity arrears being the EHT consumer and therefore no connection can be provided in those premises where outstanding amount is due for payment and the matter is pending before the competent court and in these prevailing circumstances, new LT connection cannot be provided to them. Questioning legality, validity and correctness of the said order and inaction on the part of respondents No.1 to 3 in non-supplying the LT electricity connection, this batch of writ petitions has been preferred.

3. Respondents No.1 to 3 have filed their return stating inter alia that the Electricity Supply Code provides for requirement of new connection and respondent No.4, landlord of the petitioners, has an arrears of electricity dues on the premises for which new connection is applied for and unless the arrears are cleared, no electricity supply can be made to them. Even respondent No.4 has surrendered the HT electricity connection which was extended to it and therefore unless the dues are realised by respondents No.1 to 3 in full compliance of clause 4.19 of the Supply Code, issuance of new electricity connection for the same premises would not be legally permissible.

4. Mr. Ashish Surana, learned counsel appearing for the petitioners, would submit that Section 43(1) of the Electricity Act, 2003 is mandatory in nature and even for non-supply of electricity connection, consequence has been provided under Section 43(3) of the Electricity

Act, 2003 and the distribution licensee is liable to pay penalty which may extend to ₹ 1,000/- for each day of default which is also mandatory in nature. He would further submit that the dispute relating to the bill raised for arrears of electricity dues from respondent No.4 is already pending consideration before the Chhattisgarh State Electricity Regulatory Commission and interim order has been granted in favour of respondent No.4 and as such, clause 4.19 of the Electricity Supply Code would not come in the way of the petitioners to get the service connection. Therefore, respondents No.1 to 3 be directed by issuing a writ of mandamus to supply electricity connection to the petitioners.

5. On the other hand, Mr. Varun Sharma, learned counsel appearing for respondents No.1 to 3, would vehemently oppose the submission and would submit that unless the entire electricity arrears are deposited by respondent No.4 in terms of clause 4.19 of the Electricity Supply Code, 2011, the petitioners are not entitled for electricity connection in their premises, as the premises are owned by respondent No.4 and the petitioners have no right to electricity. Right to electricity is not an absolute right and is covered under the statutory paradigm designed under the Electricity Act and the Supply Code, as such, the writ petitions deserve to be dismissed.

6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.

7. It is not in dispute that respondent No.4 had earlier obtained high

tension electricity connection in which there are arrears of payment against respondent No.4 and respondent No.4 has filed a petition under Section 86(1)(f) read with Section 142 of the Electricity Act, 2003 questioning that arrears before the Chhattisgarh State Electricity Regulatory Commission and the said Commission by its order dated 31-8-2016 directed respondents No.1 to 3 herein not to take any coercive steps against respondent No.4 herein till the disposal of the petition and that petition is pending consideration before the said Commission.

8. At this stage, it would be appropriate to notice Sections 43 and 44 of the Electricity Act, 2003 which provide duty to supply on request and exceptions form duty to supply electricity, respectively. Sections 43 and 44 read as follows: -

“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:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said

period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.—For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

44. Exceptions from duty to supply electricity.—Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control.”

9. A careful perusal of Section 43 of the Electricity Act, 2003 would show that in Section 43, the word “shall” has been used. Section 43 begins with the heading “duty to supply on request”. Section 44 begins with the heading “exceptions from duty to supply electricity” stating that

nothing contained in Section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control. Therefore, it is quite vivid that there is a statutory obligation to provide electricity to the owner or occupier of the premises. The term “premises” is defined in sub-section (51) of Section 2 of the Electricity Act, 2003 as “premises” includes any land, building or structure. As stated, “occupier” means the person in occupation (whether as owner or otherwise) of the premises, where Electricity is used or intended to be used. Proviso to Section 43(2) of the Electricity Act, 2003 provides that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

10. Thus, from the statutory provisions of the Electricity Act, 2003 it flows that it is the intention of the Legislature to provide electricity supply to all the persons, whether they are the owners of the property or occupiers, as the case may be, as between the owner and occupier, like in the case of a Landlord and Tenant, a mortgagee, assignee and any other person, who is in lawful possession of the premises.

11. Section 43(3) of the Electricity Act, 2003 provides for consequence of penalty on failure to comply with the prescribed requirement and once the consequence is provided for non-compliance of the statutory provision, that provision is always held to be mandatory. There is no

discretion left with the authority in case of provision being mandatory in nature. Failure to adhere to mandatory provision, entailing penalty, the provision is imperative. In the light of above-stated analysis, it is held that Section 43 of the Electricity Act, 2003 has to be construed as mandatory to provide electricity supply to owner or occupier of the premises where the electricity is used or intended to be used.

12. Access to Electricity should be construed as a human right, of course, to the requirements to be satisfied under the Electricity laws. Denial of the same, upon even satisfying the requirements, would amount to violation of human rights.

13. The Supreme Court in the matter of Chameli Singh and others v. State of U.P. and another¹ discussed the components of right to live and specifically observed that right to life includes the right to live with human dignity and further observed that right to live guaranteed in any civilised society implies the right to shelter and while discussing the right to shelter, it has been held that right to shelter includes electricity which is undisputedly, an essential service to the shelter for a human being. The Supreme Court observed as under: -

“7. In State of Karnataka v. Narasimhamurthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7), this Court held that right to shelter is a fundamental right under Article 19(1) of the Constitution ...”

8. ... Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads

¹ (1996) 2 SCC 549

etc. so as to have easy access to his daily avocation ...”

14. The Madras High Court in the matter of T.M. Prakash and others v. The District Collector, Tiruvannamalai District, Tiruvannamalai and another² has held that access to Electricity supply should also be considered as a right to life, in terms of Article 21 of the Constitution of India and observed as under: -

“66. Lack of Electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without Electricity supply cannot even imagine to compete with others, who have the supply. Women have to struggle with firewood, kerosene, in the midst of smoke. Air pollution causes lung diseases and respiratory problems. Electricity supply to the poor, supports education and if it is coupled with suitable employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour.

68. The Respondents ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socio-economic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of Electricity denies a person to have equal

opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socio-economic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.”

15. The judgment of the Supreme Court in Chameli Singh (supra) has been followed by the Calcutta High Court in the matter of Amarendra Singh v. Calcutta Electric Supply Corporation Ltd. & Ors.³ holding that once a person is considered as the occupier, he is entitled to electricity connection, and the legality and/or validity of occupation of the premises can be decided in civil court. Similar is the proposition laid down by the Calcutta High Court in the matter of Fashion Proprietor Aswani Kumar Maity v. West Bengal Electricity Distribution Co. Ltd. & Ors.⁴ holding that Section 43 of the Electricity Act, 2003 makes it incumbent on a licensee to supply electricity to an owner or occupier of any premises.

16. Following the principles of law laid down in the afore-cited judgments, particularly when the distribution licensee is obliged to supply electricity statutorily under Section 43(1) of the Electricity Act, 2003 which is mandatory in nature and consequence of non-supply of electricity is provided in the shape of Section 43(3) of the Act of 2003 and when access to electricity is a human right subject to fulfillment of conditions under the Electricity laws and even is a legal right as well as access to electricity supply is included in right to life under Article 21 of the Constitution of India, denial of electricity supply to the

3 AIR 2008 Cal 66

4 AIR 2009 Cal 87

petitioners even when they are ready and willing to fulfill the conditions of LT electricity connection is plainly arbitrary and contrary to the provisions of Section 43 (1) of the Electricity Act, 2003 apart from violative of their right to access to electricity supply included in right to life guaranteed under Article 21 of the Constitution on the alleged ground that arrears of electricity due on the part of respondent No.4 which is substantially disputed by respondent No.4 and is pending consideration before the Chhattisgarh State Electricity Regulatory Commission and interim order has been granted in favour of respondent No.4, particularly in view of the fact that the petitioners are tenants and they are having separate status and they are claiming only LT connection purely for their domestic purpose in which clause 4.19 of the Chhattisgarh Electricity Supply Code is inapplicable.

17. In view of the aforesaid discussion, the action of respondents No.1 to 3 is held to be arbitrary and now, they are directed that they will provide a new electricity connection to the writ petitioners upon the writ petitioners complying with all requisite formalities including paying the relevant charges. The connection will be made available to the petitioners within two weeks from the date of completion of all formalities.

18. The writ petitions are allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.3341 of 2017

N.R. Sharma

Versus

Chhattisgarh State Power Distribution Company Limited and others
and two other connected cases

Head Note

Access to electricity is a human right and also included in right to life under
Article 21 of the Constitution of India.

बिजली तक पहुँच एक मानवाधिकार है तथा भारत के संविधान के अनुच्छेद 21 के अन्तर्गत
जीवन के अधिकार में भी सम्मिलित है।

