

(2008) 04 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

PUNJAB STATE ELECTRICITY BOARD

APPELLANT

Vs

Sukhjinder Singh

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Citation : 2008 4 CPJ 143

Hon'ble Judges : S.N.Aggarwal , Jasbir Kapoor J.

Advocate : B.S.Taunque

Judgement

1. -THIS judgment will decide three appeals bearing First Appeal No. 1623 of 2007 (Punjab State Electricity Board and Anr. v. Sukhjinder Singh), First Appeal No. 1624 of 2007, (Punjab State Electricity Board and Anr. v. Nirmala) and First Appeal No. 1648 of 2007, (Punjab State Electricity Board and Anr. v. Shyamali), as the questions of law and facts involved in all these appeals are identical. Facts are taken from First Appeal No. 1623 of 2007 and the parties would be referred by their status in this appeal.

2. SUKHJINDER Singh respondent constructed his house in Nayagaon. He approached the appellants for providing him domestic electric connection but they had refused to do so for the reason that a power line was passing over the house. In August, 2006 the concerned Junior Engineer of the appellants had told the respondent to give an affidavit to the effect that in case of any mishappening the respondent would not claim any compensation from the appellants. The respondent had accordingly given that affidavit. Security was also deposited on 11. 8. 2006 and thereafter the appellants had installed the electric connection in his house. It was further pleaded that a few days thereafter the appellants removed the electric meter without giving any notice to the respondent. The respondent took up the matter with the appellants on which he was informed that since the power line was passing overhead the house of the respondent, therefore, the electricity connection could not be granted. It was further alleged that there were many houses similarly situated where the electric connections have been given by the appellants. Representation was made to the appellants

and in the Bijli Darbar held at Banur on 19. 5. 2007 the respondent was assured for being granted the electricity connection. Similar assurance was given by the appellants on 26. 5. 2007 in the Bijli Darbar held at Lalru but to no effect. Hence the respondent filed the complaint in the learned District Consumer Disputes Redressal Forum, Ropar (in short "district Forum").

The appellants filed written reply. Preliminary objections were pleaded and the case was also contested on merits. The main plea of the appellants was that they have issued Circular No. 38/2006 by which directions have been issued to all the offices working under the appellants not to release the electric connections to those houses/buildings where the power line (s) are passing over the plots till such time the line (s) are got shifted by the individual (s) or the housing society, etc. at their own costs. These instructions were already brought to the notice of the respondent but the respondent had not given any reply. It was admitted that the respondent had applied for electric connection but it was declined on the ground that the electric power lines were passing over the plot on which the respondent had built his house. The appellants are ready to return the amount of security deposited by him with the appellants. It was denied if the appellants had given any assurance to the respondent in any Bijli Darbar. Hence dismissal of the complaint was prayed.

3. THE respondent placed on file his own affidavit as Ex. CW1/a, affidavit of Gurjinder Singh as Ex. CW2/a and affidavit of Paramjeet Kaur as Ex. CW2/b. He also proved documents Ex. C-1 to Ex. C-10. On the other hand, the appellants placed on file the affidavit of H. S. Boparai, Senior Executive Engineer as Ex. R-1 and photocopy of rules and regulations/circular as Ex. R2 and attested copy of site plan as Ex. R-3. On the basis of these pleadings and the documents, the learned District Forum vide impugned order dated 16. 11. 2007 accepted the complaint and directed the appellants to instal the electric connection in the house of the respondent which was earlier released to him and which was later on removed. The respondent was also awarded compensation to the tune of Rs. 10,000 including costs of litigation.

4. HENCE the appeal. Record has been perused and submissions have been considered. Learned Counsel for the appellants drew the attention of this Commission towards commercial circular No. 38 of 2006 dated 25. 7. 2006 issued by the Chief Engineer (Commercial), Punjab State Electricity Board, Patiala. It reads as under: "sub: Construction of Houses/colonies - Release of Electricity Connection. There are reports from the field officers that mushroom growth of illegal/unauthorised construction of houses/colonies is taking place below 66 KV lines of PSEB and in some cases the clearance of 66 KV lines had been reduced to 2. 3 feet from the unauthorized constructed buildings, which is violation of Indian Electricity Act and is a threat to human lives. In view of the above, the matter has been considered and it has been decided that in no case any electricity connection shall be released to a prospective consumer (s) where the power line (s) are passing over his (their) plots, till such time, the lines are

got shifted by the individual (s) or the Housing Society, etc. at his (their) cost. Strict compliance of the above instructions be ensured by the field officers. "

5. IN this context, the respondent filed an application pointing out that the appellants had granted electric connections to numerous householders whose houses are also similarly situated and over which the 66 or 11 KV power lines are passing. A copy of list of 10 houses (Annexure S-5) was given to the appellants for furnishing its proper reply. The appellants filed the reply which reveals that in five cases the electric connections were granted to them prior to the issuance of the circular dated 25. 7. 2006 and in two cases the electric connections did not exist and in two cases the electric connections were issued in August, 2006 i. e. after the issuance of circular dated 25. 7. 2006 but the explanation given by the learned Counsel for the appellants was that this circular was sent to the lower offices on 7. 9. 2006 for compliance and prior to that the electric connection were released to these house owners. In one case the electric connection was released on 9. 11. 2006 i. e. , after the issuance of the circular dated 25. 7. 2006 but the reason given was that originally only one room was built which was not under the 66 KV power line. However, new construction has been raised by that consumer after the release of the electric connection. The new construction is incomplete and is having temporary wires.

6. THIS is very surprising. The appellants had granted the electric connection to the respondent also but they had removed the electric connection after one or two weeks on the plea that his house was underneath the 66 KV or 11 KV power line and, therefore, the electric connection could not be granted to him. However, they have not proved any document on the file to show if Sharda Devi who was granted electric connection after the issuance of these instructions and whose house was situated in similar location, had raised new construction after the grant of electric connection which had fallen under the 66 KV power line. Even if it is accepted that she had raised a new construction which falls under 66 KV power lines why this meter could not be removed if it was violative of the circular issued on 25. 7. 2006. If the electric connection of the respondent could be removed then the similar treatment could have been meted out to the similarly placed consumers. This conduct of the appellants only reveals that they are playing the game arbitrarily. They apply their instructions to any one they like and they ignore these instructions if they want to give the electric connection. At least this fact has been proved on the file.

The submission of the learned Counsel for the respondent was that the appellants had issued another circular i. e. CC No. 68 of 2007 dated 7. 12. 2007 modifying the circular dated 25. 7. 2006 and some relaxation has been granted. The relevant portion of this circular reads as under: "5. To mitigate such problems the matter has been considered and it has been decided to partially amend/relax the provisions of CC No. 38/06 dated 25. 7. 2006 for 11 KV or higher voltage subject to following conditions: (i) DS officer/official before release of connection of the applicant/consumer will ensure and record that

requisite Electrical Clearances as required for 11 KV or higher voltage are available at site and he has no objection for release of connection as per Electricity Rules.

(ii) The applicant/consumer will furnish undertaking/indemnity Bond to the Board that he will not carry out any further construction work under/near Electric/power lines, so that the Electrical clearances as available on the date of release of connection are maintained. He will also furnish Indemnity Bond to the Board that he will be solely responsible for any damages in case of any fatal/non-fatal accident occurred on account of PSEB Electric lines. Field officers are requested to ensure the compliance of above instructions. "

7. THE appellants have admitted having issued these instructions but the submission of the learned Counsel for the appellants was that the electric connection in pursuance of these instructions dated 7. 12. 2007 can be issued only if the DS Officer (SDO concerned) ensures and records that requisite electrical clearances as required for 11 KV or higher voltage are available at site and that he has no objection for the release of connection as per Electricity Rules. It was submitted that no officer of the appellants can take the risk of giving such a certificate and, therefore, there is no relaxation to the conditions laid down in the circular dated 25. 7. 2006. It was further submitted with emphasis by the learned Counsel for the appellants that even these instructions do not help the respondent for the grant of electric connection.

8. IN view of the discussion held above, we reach the conclusion that the appellants have issued clear instructions that no house owner or occupant can be granted electric connection if his house is underneath the 66 KV or 11 KV power line and the judicial Courts cannot direct the grant of electric connection in violation of the instructions of the appellants. However, it is also clear that the appellants themselves have violated their own instructions and they apply their own instructions arbitrarily and this amounts to total abuse of power. In these circumstances, all the three appeals of the appellants, namely, First Appeal Nos. 1623, 1624 and 1648 of 2007 are partly accepted and the impugned orders dated 16. 11. 2007 are modified to the extent that the respondents cannot be granted electricity connections. However, the appellants are burdened with an amount of Rs. 50,000 in each case as compensation for harassment and mental tension to the respondents for granting and withdrawing the electric connection and for exercising the power arbitrarily in favour of others. The appellants are further burdened with costs of Rs. 5,000 in each case payable to the respondents. The appellants shall also refund the security deposited by the respondents if any.

9. THE respondents would, however, be at liberty to avail any other remedy available to them for getting the electricity connection as per law.

10. THE appellants had deposited an amount of Rs. 5,000 in each case at the time of filing the appeals. The Registry is directed to remit this amount of Rs.

5,000 along with interest accrued thereon, if any, to the respondent by way of a crossed cheque/demand draft after the expiry of 45 days under intimation to the learned District Forum and the appellants. Remaining amount shall be paid by the appellants to the respondent in each case within 45 days from the date of receipt of a copy of this order failing which this amount would carry interest at the rate of 9% per annum from today till the date of payment. The arguments were heard in these cases on 21. 4. 2008 and the orders were reserved. Now, the order be communicated to the parties. Appeals partly allowed.