

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.12700 of 2015 (O&M)

Date of decision: November 28, 2015

Comfort Technologies

...Petitioner

Versus

Engineering Department (Electricity),
UT and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajesh Garg, Sr.Advocate assisted by
Ms.Nimrata Shergill, Advocate for the petitioner.

Mr.Harkesh Manuja, Advocate for
respondent No.1.

Mr.Man Mohan Singh, Sr.Advocate with
Ms.Harsimran Kaur, Advocate for
respondents No.2 and 3.

HARINDER SINGH SIDHU, J.

By filing this petition, the petitioner – M/s Comfort Technologies has sought quashing of the letter dated 30.04.2015 (Annexure P-8), whereby, respondent No.1 – Engineering Department (Electricity) rejected the request of the petitioner for release of electricity connection, for the reasons as under:-

*“1. Non-compliance of clause 3.5(3)(a) of Electricity Supply Code Regulation 2010 wherein it is specifically mentioned that in **case of tenancy permission of landlord along with proof of ownership is required.***

2. Rent agreement submitted by you is not valid on the date of submission of application which is expired on dated 30.04.2014.”

The facts as narrated in the petition are that vide rent agreement dated 21.5.2013 (Annexure P-1), the petitioner entered into an agreement with respondent No.2 for taking on rent Bay Shop No.391 Sector-44-D, Chandigarh for a period of 11 months commencing from 1.6.2013. It was stipulated therein that monthly water and electricity charges shall be paid by the lessee in addition to the lease amount.

Respondent No.3 is son of respondent No.2 and both are co-owners of the leased property to the extent of 50% each, but the rent agreement was between the petitioner and respondent No. 2 only.

Alleging that respondents No.2 and 3 had interfered with the possession of the petitioner, he lodged DDRs on two separate occasions i.e., 30th October, 2013 and 2.12.2013. On the first occasion the matter was settled as the respondent No. 3 agreed not to interfere with the peaceful possession of the petitioner. Pursuant to the second DDR also, no action was taken by the police treating it as a civil dispute between landlord and tenant for eviction from the shop. The petitioner also filed a civil suit No. 111/ 2014 for permanent injunction for restraining the respondents from interfering in the peaceful possession of the leased premises wherein a stay was granted till 5.3.2014.

Respondents No.2 and 3 requested the Electricity Department to disconnect the electric connection, provided in the premises, which prompted the petitioner to move to the Consumer

Grievance Redressal Forum (Electricity), Chandigarh for restoration of the electricity connection. Initially vide order dated 24.12.2013, the Forum directed the Electricity Department to restore the electricity connection stating that the Department cannot violate the tenancy rights of an occupant in view of a valid written rent agreement between the parties. However, later vide order dated 31.12.2013, it directed the Department not to restore Electricity Supply to the petitioner. It was reasoned that the petitioner had not disclosed to it that respondents No.2 and 3 had already terminated the contract of tenancy and that there was a police case pending.

Aggrieved, the petitioner filed CWP No.8965 of 2014 seeking a direction for restoration of the electricity connection which was disposed of vide order dated 17.11.2014 by directing as under:-

“This Court has already secured the restoration of the electricity connection and the same shall continue till an appropriate decision is taken by the Ombudsman on an appeal that the petitioner may prefer. If such an appeal is filed, time taken by the petitioner before this Court in prosecuting the writ petition will be considered for exclusion while computing the period of limitation for preferring the appeal.

The Electricity Corporation is at liberty to take a fresh application from the petitioner and grant connection after taking appropriate indemnity form in the manner contemplated under the Rules in which event the petitioner may not require any redressal through an appeal to the Ombudsman.

Disposed of.”

Thereafter, against the order dated 31.12.2013 passed by

the Forum, the petitioner preferred an appeal before the Electricity Ombudsman, which was disposed of by passing order dated 17.3.2015 (Annexure P-6), the relevant part of which reads as under:-

“Based on the above, the representation/ appeal of the Appellant is disposed of with the following orders:

Since the electricity connection has been restored by the Licensee in the name of the Owner, on the orders of Hon'ble High Court of Punjab and Haryana, Chandigarh and the owner is not owning the responsibility of electricity dues, the Appellant may apply for fresh electricity connection, within 15 days of the issue of the above order as per Clause 3.5(3)(a) of Electricity Supply Code, Regulations 2010 ...”

By the said order the licensee was ordered to release the new connection as soon as the formalities were fulfilled by the petitioner. It was also ordered that the supply be not disconnected till the new connection was released.

The Ombudsman gave liberty to the petitioner to apply for fresh electricity connection as per Clause 3.5(3)(a) of Electricity Supply Code, Regulations 2010, within 15 days of the order

Accordingly, the petitioner applied for a fresh electricity connection vide application dated 30.3.2015 (Annexure P-7), which was denied by the respondent- Electricity Department vide the impugned order dated 30.4.2015 (Annexure P-8). However the electric connection was not disconnected in compliance with the

second part of the order of the Ombudsman.

In the meantime, on an application moved by respondent -Electricity Department, the Electricity Ombudsman vide order dated 13.5.2015 (Annexure R-2/2) clarified that if the new connection formalities are not fulfilled within 15 days as per regulation 3.5(3) of the JERC (Supply Code) Regulations 2010, the licensee has the right to disconnect the existing electricity connection. Accordingly as the petitioner did not fulfil the requisite formalities, the electricity supply of Bay Sho No. 391, Sector 44-D, were disconnected vide PDCO dated 14.05.2015.

Aggrieved the petitioner has filed the instant writ petition.

In the written statement filed on behalf of respondents 2 and 3, preliminary objection has been taken to the maintainability of the petition on the ground that disputed questions of fact are involved. It has been disputed that the Rent Agreement Annexure P-1 is a rent agreement and on the other hand has been asserted that it is merely a licence to carry on sale of Refrigerators and washing machines in some portion of the shop which is jointly on lease with respondents 2 and 3 from the Chandigarh Administration. It is stated that determining the true nature of the agreement requires adducing of evidence regarding payment of Rent, payment of water charges, payment of Property Tax, payment of Ground Rent of the leased premises, the intention of the parties, their past and present conduct and other attending circumstances. It is further asserted that respondent No. 3, in whose name the Electricity connection existed

is not a party of the Rent Agreement. It has been asserted that in fact the so called Rent agreement was got signed by Sh. Satish Kumar for the purpose of addition of Bay Shop No. 391, Sector 44-A in the Sales Tax Vat-5 which is evident from Annexure R-2/1. It has been also asserted that the possession of the premises at all times remained with Respondents 2 and 3 and Mr. Raj Pal Singla (father of respondent No.3) who has his office in some portion of the Bay Shop 391/ 44-D. To prove this an Authority Letter dated 26.09.2011 of respondent No. 3, Navneet Singla has been annexed as Annexure R-2/16. Therein it has been stated that Navneet Singla and his mother Smt. Santosh Singla (respondents 3 and 2 respectively) are owners of Bay Shop No 391, Sector 44-D to the extent of 50% each. The portion owned by his mother is being used to run business in the name and style of DOKs Dollar Shop. Through the said Authority letter Navneet Singla has authorised his father Sh. Raj Pal Singla, who holds an 'A' Class Electric Contractor Licence, to establish and run his office in the name and style of Singla Power Associates in the 50% portion falling to his share.

It has been stated that a complaint had been filed by Sh. Raj Pal Singla against Sh. Satish Kumar Sharma, based whereon FIR No. 58 dated 31.1 2014 was registered at Police Station Sector 34, Chandigarh. It has also been asserted that challan is likely to be filed soon in that case.

Mr. Rajesh Garg Ld. Senior Counsel for the petitioner has argued that he having been legally inducted as a tenant, cannot be

evicted except in accordance with law. So long as the tenancy subsists he cannot be denied the basic amenities like electricity supply. He has questioned the legality of the action of the electricity department in not releasing him the electric connection merely for his inability to produce the rent agreement valid on the date of submission of the application for the connection.

To the contrary Sh. Manmohan Singh Sr. Counsel for respondents has contended that the writ petition is not the proper remedy for the relief sought for by the petitioner as disputed questions of fact are involved. He stressed that the petitioner was a licensee and on the expiry of the licence, his status is that of a trespasser and he cannot lay claim to a new electric connection which has been rightly declined for his failure to comply with the requirements of clause 3.5(3)(a) of the Electricity Supply Code Regulations, 2010. He further stressed that if the petitioner claims himself to be a tenant then he has an efficacious remedy under Section 10 of the East Punjab Urban Rent Restriction Act, to make an application to the Controller for restoration of the electricity connection which admittedly is an amenity. He argued that the reluctance of the petitioner to avail of this remedy speaks for itself, that the petitioner knows he will not be able to establish a valid subsisting tenancy in his favour. He further argued that Annexure P-1, is signed by Respondent No. 2 who has 50% share in the premises and this does not give the petitioner the right to occupy the whole of the premises.. There is no privity of contract between the

petitioner and respondent No. 3, and the electric connection was in the name of the respondent No. 3, who rightly got it disconnected.

I have heard Learned counsel for the parties and gone through the paper-book and am of the view that the present petition deserves to be dismissed.

The electricity connection to the premises was disconnected on the application made by respondent No. 3 duly consented to by respondent No 2. This was strictly as per clause 9.2(1) of the Electricity Supply Code Regulation 2010 as per which the licensee may disconnect power supply to a consumer at the request of a consumer. After securing the restoration of electricity connection to the petitioner by way of an interim order, the writ petition filed by the petitioner against the order of the Consumer Forum whereby restoration of the electricity connection was refused, was disposed of giving liberty to the petitioner to approach the Ombudsman . Simultaneously liberty was also given to the Electricity Corporation to take a fresh application from the petitioner and grant connection after taking appropriate indemnity in accordance with the Rules. The appeal of the petitioner was disposed of by the Electricity Ombudsman by directing that the petitioner may apply for fresh electricity connection within 15 days as per clause 3.5(3)(a) of the Electricity Supply Code Regulation 2010. The request of the petitioner for fresh connection has been declined by the impugned order dated 30.4.2015 on two grounds; namely for , non-compliance of clause 3.5(3)(a) of Electricity Supply Code Regulations 2010,

wherein, it is specifically mentioned that in case of tenancy permission of landlord along with proof of ownership is required and secondly, that the rent agreement submitted by the petitioner had already expired on 30.4.2014.

In my view, the impugned order of the respondent – Electricity Department rejecting the application of the petitioner for grant of electricity connection cannot be held to be illegal as the refusal is for failure to comply with the requirements for getting a new connection as spelt out in clause 3.5(3)(a) of the Electricity Supply Code Regulations, 2010, which is reproduced hereunder:

3.5 New Connection:

“(3) The consumer shall furnish, along with application form, attested true copies of following documents. The licensee may ask for the following original documents, from the consumer, if required, for verification.

(a) Proof of ownership of the premises, such as registered sale deed or partition deed or succession or heir certificate or will of the owner,

OR

Proof of occupancy such as power of attorney or latest rent receipt or lease deed or rent agreement or copy of allotment order issued by the owner of the property. In case of supply of agriculture/irrigation pump set, the copy of Land Revenue receipt giving the Revenue Plot No. of the field for which the supply is required. In case of tenancy permission of landlord along with proof of ownership of the premises.”

The argument of the Ld. Counsel for the petitioner that the Rent Agreement Annexure P-1, should be taken as the compliance with the requirements of the Regulation, cannot be accepted because for the purposes of a new connection, the rent agreement is required as proof of occupancy, which could only mean a rent agreement which was subsisting and pertained to the period when the new connection is applied for. The Rent Agreement

Annexure P-1 was for a period of eleven months commencing from 1st June, 2013 and accordingly was not a subsisting Rent Agreement which could be relied upon as proof of occupancy on the date of applying for the new connection on 10.3.2015.

It needs to be noted that, in this petition the petitioner has only challenged the order dated 30.4.2015 (Annexure P-8) passed by the respondent – Department, but has not challenged provisions of the Electricity Supply Code Regulations relied on to deny the connection.

Undoubtedly electricity supply is a basic amenity for any person. I have pondered over the argument of the Ld. Counsel for the petitioner, that if a landlord is permitted to act in the manner in which the respondents 2 and 3 have acted to first get the electricity supply to the premises disconnected on his request being the consumer as per Clause 9.2(1) of the Regulations and then a new electricity connection is not released to the tenant for his failure to comply with the conditions as per clause 3.5(3) of the Regulations, it would become a weapon in the hands of unscrupulous landlords to be used against the tenants by depriving them of electricity, thereby coercing them to vacate, and thus to do indirectly what they cannot do directly. However this fear is totally misplaced. The Rent Restriction Acts have enough teeth to protect the bonafide tenants from misuse of the above provisions. In the present context Section 10 and 19 of the East Punjab Rent Restriction Act, 1949 are the relevant provisions which come to their aid:

“10. Landlord not to interfere with amenities enjoyed by the tenant.-

(1) No landlord shall, without just or sufficient cause, cut off or withhold any of the amenities enjoyed by the tenant.

(2) A tenant in occupation of a building or rented land may, if the landlord has contravened the provisions of this Section, make an application to the Controller complaining of such contravention.

(3) If the Controller on enquiry finds that the tenant has been in enjoyment of the amenities and that they were cut off or withheld by the landlord without just or sufficient cause, he shall make an order directing the landlord to restore such amenities.

19. Penalties.-

(1) If any person contravenes any of the provisions of sub- section (2) of Section 9, sub-section (1) of Section 10, Section 11 or Section 18, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of clause (a) of sub-section (I) of Section 6 or sub-Section (1) of Section 7 he shall be punishable with imprisonment which may extend to two years and with fine.

(3) No Court shall take cognizance of an offence under this Section except upon-

(a) a complaint of facts which constitute such offence filed with the sanction of the Controller in writing; or

(b) a report in writing of such facts made by the Controller.”

As per Section 10, a landlord shall not cut off or withhold any of the amenities enjoyed by the tenant without just or sufficient cause. For any contravention thereof by the landlord, the tenant may

make an application to the Controller who, if he finds that such amenities have been cut off or withheld may direct restoration of the amenities. Section 19 makes the contravention of the provisions Section 10(1) punishable with fine.

While it is open to any person to elect to pursue any of the remedies as may be available to him, yet I have been unable to comprehend the manifest reluctance of the petitioner to take recourse to the efficacious remedies under the Rent Restriction Act, which are meant to remedy exactly the situation in which the petitioner is placed. Ld. Counsel for the respondents has argued that the Rent Agreement is in fact a licence and not a lease. Be that it may, it is not for the writ Court to go into this question or the other disputed questions raised in this petition.

Thus, I see no illegality in the impugned order. Accordingly, this petition is dismissed.

November 28, 2015

**(HARINDER SINGH SIDHU)
JUDGE**

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