

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

203

**CWP-2587-2015 (O&M).
Date of Decision: 23.01.2023.**

UTTAR HARYANA BIJLI VITRAN NIGAM AND ANOTHER

...PETITIONERS

Versus

**CONSUMER GRIEVANCES REDRESSAL FORUM AND
OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Pardeep Singh Poonia, Advocate,
for the petitioners.

Ms. Samridhi Sareen, Advocate (Legal-Aid-Counsel)
for respondent No.2.

VINOD S. BHARDWAJ. J (ORAL).

The present writ petition has been preferred against the order dated 18.12.2012 (Annexure P-10) passed by the Consumer Grievances Redressal Forum (hereinafter referred to as 'the CGRF').

Briefly summarized, the facts of the present case are that respondent No.2 – Smt. Harjinder Kaur who was the landlady/owner of a plot situated in Industrial Area, Yamuna Nagar, had been allotted Electricity Connection bearing No.YI-171 under the Industrial Area, Sub Division, Yamuna Nagar. The aforesaid premises had been given by respondent No.2-landlady to one Islam Ansari. As per the rent agreement, the electricity dues were to be paid by the tenant, however,

he failed to clear the said dues. A request was accordingly submitted by the landlady to the concerned Sub Divisional Officer of the petitioner-Distribution licensee to disconnect the supply of electricity of the premises owned by her. However, the concerned Sub Divisional Officer did not take any action and continue supplying electricity to the aforementioned premises. Accordingly, respondent No.2-landlady had to approach the Civil Court for issuance of directions to the respondent Authorities for disconnecting the electricity supply. However, despite the order passed by the Civil Court, the supply was not disconnected.

A representation was also submitted by the respondent No.2-landlady to the officials of the petitioner-Distribution licensee requesting them to disconnect the supply since the arrears against the premises are mounting. However, the needful was not done by the concerned Sub Divisional Officer despite rendering assurances for taking timely prompt action. Finally, an application was submitted by the respondent No.2 – landlady before the CGRF.

The petitioner filed its response on 05.11.2012 stating that the respondent No.2-landlady had not deposited a single penny since January 2012 and she was asking for the temporary disconnection of the electricity supply. She has also sought for permanent disconnection and that it was her obligation to effect recovery from the tenant qua the outstanding dues and not the obligation of the Department. The Electricity Department cannot be made bound by any *inter se* private arrangement/agreement between the landlady and the tenant. Only an amount of Rs.21,000/- was deposited by her in cash and thereafter a

cheque of Rs.14,000/- was deposited on 17.09.2012. The temporary disconnection was carried on 03.10.2012. The tenant therefore assured payment of all bills and also issued the cheques towards discharge of liability. The supply was thus restored on 05.10.2012. However, the cheques presented were dishonoured. A complaint under Section 138 of the Negotiable Instruments Act, 1881 had also been lodged against the defaulting tenant.

The CGRF, after considering the rival submissions advanced by the respective parties, directed that the respondent No.2-landlady is not liable to make any payment of the dues against the said electricity connection that had accumulated till the date of permanent disconnection and also directed restoration of electricity since the permanent disconnection had been ordered in violation of the instructions and procedure notified by the petitioner-Distribution licensee.

Aggrieved thereof the present petition has been filed.

Learned counsel for the petitioner-Distribution licensee has argued that the order passed by the CGRF is unsustainable since it was the obligation of the landlady to ensure that the dues against the electricity connection released to the premises of respondent No.2-landlady are deposited. Merely because the landlady had entered into an agreement with a tenant, the obligation of the owner of the premises to clear the dues against the electricity connection installed in their name on the premises does not get diluted. The burden would always lie upon the owner of the premises to effect recovery of the outstanding dues

clear them. The respondent No.2-landlady cannot fasten liability of her failure on the department and it is upto her to seek recovery of money from the tenant. There is no privity so far as the petitioner and tenant are concerned.

There had been no representation on behalf of respondent No.2-landlady. Resultantly Legal-Aid-Counsel had been nominated by this Court to assist.

It has been informed by the counsel that in the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 against the tenant-Islam Ansari, he has already been declared as a proclaimed person and thus the complaint has been filed for securing presence of the proclaimed person.

The Legal-Aid-Counsel, however, contends that the CGRF has allowed the complaint filed by respondent No.2-landlady for the reasons that the owner-landlady had not been in default. At the initiation of default by the tenant, an application was submitted by the landlady with the respondent Authorities for disconnection of the electricity supply. However on account of deliberate inaction by the Sub Divisional Officer, the electricity supply was not disconnected. So much so the applicant-landlord had to approach the Civil Court for seeking a disconnection to the premises. It is thus argued that the order had been passed by the CGRF after noticing that there was no lapse on part of the landlady but dues escalated on account of the deliberate inaction on the part of the respondents' officials. The loss to the Nigam, if any, is thus

attributable to their employees and not to the petitioner and therefore, the liability thereof cannot be fastened on the respondent No.2-landlady.

I have heard the learned counsel representing the respective parties and have gone through the documents appended along with the present petition.

It is essential to refer to the operative part of the order passed by the CGRF. The observations recorded by the CGRF before allowing the above said application are reproduced hereunder:-

“1.Irrespective of the rent agreement, the SDO is required to ensure that the electricity due are being recovered regularly. In this case due to dispute between the complainant and the tenant, the Civil Court while admitting that there was a rent agreement between the two parties in its order dated, 03.09.2012 decided that it is the duty of the plaintiff i.e. Mr. Islam Ansari to pay the electricity charges (to defendant No. 2 i.e. UHBVN) and that there are no grounds for restraining the defendant No. 2 from disconnecting the electricity supply to the suit property. But the supply was disconnected by the respondent SDO.

2. The SDO acted in defiance of directions of the XEN/SE and even the Forum and allowed the tenant enjoy of electricity. Under his memo No. 4421 dt. 17.09.2012, the XEN Op Division, Yamunanagar asked for a report from the SDO for not complying with the decision of the Civil Court and therefore not disconnecting the supply. During hearing proceedings, even the SE pointed out that the complainant had approached him and he had given directions to the SDO to disconnect the supply to the premises and take further action for recovery of the defaulting amount but the SDO did not bother.

3. From the copy of the consumer produced before the Forum it is observed that the premises is defaulter since Jan 2011. Part payments were accepted by the SDO that too on very few occasions and the unpaid amount continued to accumulate. Cheques of Rs. 20,0000/- dated 03.10.2012 and Rs. 66,000/- dated 05.10.2012 were dishonored. No action was taken for recover. No steps were taken for disconnecting the supply even for continued default for a long period unless the matter was brought before the Forum.

4. The SDO continued to defy the order of the Civil Court and the senior officers of the Nigam. He extended undue favour to the tenant by restoring the supply vide SJO No. 43/2255 dated 05.10.2012 without ensuing that the cheques deposited on 03.10.2012 and 05.10.2012 were duly honored and amount credited to Nigam's A/c well knowing that even after those payments, he outstanding. amount was

5. He did not ensure that full outstanding amount was recovered before restoring the supply on 05.10.2012. So he extended undue favour to the tenant which puts his conduct to question.

6. He continues to accept part payments and that too with gap of period which he was not authorized and competent. The defaulting amount has accumulated due to fault of the SDO to recover the outstanding amount.

7. Now the SDO has issued PDCO without following proper procedure of first issuing TDCO.

8. The respondent SDO has now filed petitioner before the Judicial Magistrate, 1st Class, Yamunanagar under section 138 of the Negotiable Instrument Act and Section 120 of

IPC for the cheques dishonored. But still no action appears to have been taken for the balance unpaid amount.”

It was thus apparent that the concerned Sub Divisional Officer had been acting in defiance of the directions issued by the superior officers as also by the Civil Court and the CGRF itself. No reasons were put forth by the petitioner-Distribution licensee for non-compliance of the instructions/orders by the concerned Sub Divisional Officer. Any escalation of the loss as a result of the inaction by officials of the petitioner-Distribution licensee cannot be fastened upon the landlady. It was in the aforesaid circumstances and to balance the equities that the order has been passed by the CGRF exonerating the respondent No.2-landlady from any liability to make payment of the dues since she was not in default and the same lay in the inaction of the officials of the petitioner Department as noticed by the CGRF.

I do not find that the discretion exercised by the CGRF is illegal, perverse, misplaced or is not substantiated or supported from the evidence on record. Specific findings/observations have been recorded by the CGRF against officials of petitioner which is not controverted or false. Finding no illegality, perversity or impropriety in the said order passed by the Consumer Grievances Redressal Forum, the present petition is dismissed. The order dated 18.12.2012 (Annexure P-10) passed by the Consumer Grievances Redressal Forum, is affirmed.

January 23, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No