

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

Appeal No.152 of 2021

Date of Video Conferencing: 25.11.2021

Date of Order: 29.11.2021

Shri Hire Mahadev Parab,
Goa

.... Appellant

Versus

The Chief Electrical Engineer,
Electricity Department and others
Goa.

.... Respondents

Parties present:

Appellant(s)

1. Shri Pravin Parab,
Appellant's Representative

Respondent(s)

1. Shri. M.A. Hullalada,
Executive Engineer
2. Shri William Barreto,
Assistant Engineer



The Appellant has preferred an Appeal against CGRF-Goa order in CC-28/2021/83 dated-30.07.2021. The Appeal was admitted on 07.09.2021, as Appeal No.152 of 2021. 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. A copy of counter reply was supplied to the Appellant who has also filed a Rejoinder.

Settlement by Mutual Agreement

Both the parties appeared before the Electricity Ombudsman through Video Conferencing as scheduled on 25.11.2021 and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleading on the matter.

(A) Submissions by the Appellant:

Appellant submitted the brief facts as under: -

1. The Appellant and his family are the owners in possession of the property surveyed under Survey No. 42/6(part) of Virnoda Village, Pernem, Goa.
2. On this property the Appellant and his family have been conducting agricultural activities and on the basis of the ownership of this property and agricultural activities being conducted by the Appellant and his family, the Appellant had obtained a Krishi Card, from the Agricultural Department, Government of Goa.
3. In the year 2020 the Appellant had obtained an electricity connection, for the Electricity Department, Government of Goa, being CA No. 60007542008, for the property bearing Survey No. 42/6 (part), for agricultural purpose. As the electricity connection was for agricultural purposes the applicable tariff is lower than that of domestic or commercial connections.
4. As the connection sought was for agricultural purposes the Appellant submitted a No Objection Certificate (NOC) from the Agricultural Department, Government of Goa, which certificate was duly submitted, being NOC No. I/56/Elec. Con/2019-20/ZAOPER/1510 dated 11.02.2020 and Record of Rights. On the basis of this NOC the Appellant was granted a lower tariff as applicable for connection for agricultural purposes.
5. By letter dated 25.05.2021, the Respondent No.3, brought to the notice of the Appellant that a letter dated 25.02.2021 had been received from one Mr. Ranganath Kale Parab, apparently stating that the NOC had been withdrawn by the Agriculture Department, Government of Goa, and further directed the Appellant to furnish a fresh NOC within a period of 15 days.
6. It is pertinently submitted that due to the prevailing pandemic the time period, for the purpose of submitting a fresh NOC, was absolutely unreasonable.
7. It ought to have been taken into consideration that the withdrawal of the NOC was illegal and in violation of the principles of natural justice as the Agriculture Department acted mechanically without applying judicious mind to the provisions of the Goa Land Revenue Code, 1968 and acted without verifying rights of the Appellant. Therefore, the Respondent No.3 ought to have afforded the Appellant sufficient time to remedy the same and the time period of 15 days by no stretch of imagination can be considered to be sufficient time for the same, especially considering the fact that we are till date living under the cloud of the prevailing Corona Virus Pandemic.



8. It is pertinent note that the NOC had been withdrawn on the basis of the Order dated 04.06.2019, passed by the Deputy Collector Pernem in Case No. DCP/LRC/ILL-COMP/8-56/2019, directing the Appellant to restore the land to its original condition.
9. It is pertinent to note that the aforementioned order is both factual and legally misconceived, as the Appellant has at no point of time changed the use of the land which is the subject matter and till date is using the property for agricultural purposes. It is further pertinent to note that the aforementioned order is merely an interim order and the same has not attained finality, which only goes to show that the Agriculture Department had acted hastily and had not taken the prudent step of seeking legal advice.
10. It is further pertinent to note that the Respondent No.3 had failed to provide the Appellant with a copy of the letter dated 25.02.2021, aforementioned, therefore the Appellant was not given an opportunity to comprehensively respond. It is also pertinent to note that instead of furnishing the Appellant with a copy of the letter dated 25.02.2021, the office of the Respondent refused to accept the application of the Appellant for the same and directed him to make the application under RTI Act, 2005. The Respondent No.3 did not furnish a copy of the same and furnished a copy of the same only when the same was submitted to the Forum in the complaint proceedings.
11. However, without prejudice to his right to file an additional reply upon receipt of the letter dated 25.02.2021, the Appellant submitted reply dated 10.06.2021.
12. By a letter date 17.06.2021 Ref. No. 3/1/Tech/Per-I/20-21/386, the Respondent No.3 responded to the reply of the Appellant, from which it will be noticed that the Respondent No.3 had the preconceive notion against the Appellant, that being that the Appellant was bias against the Appellant and was not acting as a neutral authority.
13. Due the aforementioned letter, the Appellant by letter dated 23.06.2021, the Appellant pointed out to the Respondent No.3 that it appeared that he had a bias against the Appellant and advised the Respondent No.3 to recuse from the matter. However, the Respondent No.3 by letter dated 24.06.2021, denied having any bias and further refused to recuse from the matter.
14. The very next day, by letter dated 25.06.2021 Ref. No. 3/1/Tech/Per-I/20-21/219, the decision of Respondent No.3 to disconnect the electricity connection of the Appellant, in the property bearing Survey No. 42/6 (part), was communicated to the Appellant.
15. It is pertinent to note that the Appellant had file an application to change the consumer category of the connection, by application dated 04.06.2021.
16. Being aggrieved by the decision of the Respondent No.3 the Appellant filed complaint/representation before the Consumer Grievance Redressal Forum (CGRF), Government of Goa, Electricity Department, which was registered as Complaint/Representation No. 28/2021.
17. By Order dated 30.07.2021, the Forum was pleased to dismiss the Complaint/Representation of the Appellant, hereinafter referred to as the Impugned Order.
18. It is pertinent to note that at the time of hearing the arguments of the Complaint/Representation the Chairman of the Forum was not present, which raises the question as to how has the Chairman signed the Impugned Order, as it is a settled position of law that a judge who has not heard the matter can pass order in the same.
19. Being aggrieved against the impugned order the Appellant prefers the present appeal on following grounds amongst others, which are taken without prejudice to each other and on the grounds, which may be taken during the course of argument with the leave of this Authority:

GROUND

- I. The Impugned Order is perverse and without any legal basis.
- II. By the Impugned Order no consideration has been given to the fact that till date the Appellant and his family are conducting agricultural activity upon the property bearing Survey No. 42/6 (part).
- III. The authority ought to have conducted a inspection of the property bearing Survey No. 42/6 (part), so as to ascertain for itself whether or not the Appellant was conducting agricultural activities at the property to which the connection was given.



- IV. The Authority ought not to have solely relied upon the withdrawal of the NOC of the Agriculture Department, so as to decide whether or not the Appellant was entitled to a connection on a lower tariff as applicable toward connection for agricultural purposes. The Electricity Department is not bound by the decision of the Directorate of Agriculture, as it is completely independent and not subordinate to the Directorate of Agriculture.
- V. The Impugned Order has failed to take into account that while the Appellant had extensively canvassed the illegality of the order of the Deputy Collector the same was merely to bring to the attention of the authority that the order had not attained finality as the proceedings were still pending and further that the order was contrary to facts and an absolute distortion of the law and for this reason was an absolute nullity in the eyes of law and for this reason no reliance ought to be placed on the order of the Deputy Collector.
- VI. The Impugned Order is sought to be sustained on the ground that the temporary disconnection of the Appellant's connection fall within the categories as enumerated in Regulation 9.3 and more specifically clause 2. However, from a perusal of clause 2 of Regulation 9.3, it will be seen that it is necessary that the consumer has to have undertaken a commercial activity which has subsequently become unlawful or that permissions have been withdrawn. In the present the Appellant is conducting agricultural activity upon the property to which the connection has been installed and the consumer category is that of agricultural and no permission is required for the purpose of conducting agricultural activity nor is it unlawful, hence, the authority could not rely on Regulation 9.3 clause 2 for the purpose of temporary disconnection.
- VII. The Respondent No.3 as well as the Forum have failed to give any consideration to Regulation 5.94. Regulation 5.94 reads as under:

"5.94 If it is found that a consumer has been wrongly classified in a particular category, or the purpose of supply as mentioned in Agreement has changed to other Tariff category, or the consumption of power has exceeded the limit of that category as per the commission order, the Licensee may consider reclassifying the consumer under appropriate category. The consumer shall be informed of the purpose reclassification through a notice and duly given a 30 day notice period to file objections, if any. The Licensee, after due consideration of the consumers reply, if any, may alter the classification within 10 day from date of receipt of reply. In case of any dispute the consumer may approach the Consumer Redressal Forum."

It is clear that in the present case it is not mandatory to move for disconnection, but a change of category is permissible.

- VIII. The Respondent No.3 and the Forum therefore ought to have sought to reclassify the connection of the Appellant instead of seeking to disconnect the same.
- IX. In view of the aforementioned provision the Respondent No.3 and the Forum ought to have allowed the application of the Appellant to change the connection to a commercial connection, instead to seeking to disconnect the connection altogether.
- X. The Impugned Order is illegal, arbitrary contrary to the fundamental and established principles of law, result of total non-application of mind and if allowed to subsist will cause immense loss, prejudice to the undersigned, will cause miscarriage of justice.
- XI. The Impugned Order is perverse, rendered in absolute disregard of the facts and wholly unsupported by any material on record.
- XII. The principles of natural justice have not been duly adhered to as at the very being of the proceedings the Appellant was not provided with all the material as was being relied upon by the Respondent No.3, hence, the Appellant was not given a fair hearing by the Respondent No.3 and on this ground itself the whole proceedings stand vitiated.
- XIII. The Respondent No.3 and the Forum have failed to take into consideration that the proceedings before the Deputy Collector were still pending and the order dated 04.06.2019 had not attained finality and for this reason no action ought to have been taken on the basis of that order, hence, the



Respondent No.3 and Forum ought to have applied their mind and not acted mechanically, by simply following the action taken by the Directorate of Agriculture.

XIV. The Respondent No.3 and the Forum failed to consider the law as declared by the Supreme Court of India and the Bombay High Court. The Respondent No.3 and the Forum failed to adjudge the matter with reference to Judgments passed by the Supreme Court of India and the Bombay High Court in :

1. Satish Jaggi vs. State of Chhattisgarh and Others(2007)3 SCC (page 62)
2. Maneka Gandhi vs. Union Of India 1978 AIR 597
3. Judgment of Hon'ble Supreme Court dated 25.11.2010 in Civil Appeal No. 3568 of 2005, 3566 of 2005 and 3567 of 2005 between Sarup Singh & Anr. vs. Union Of India
4. Amrit Bhikaji Kale & Ors vs. Kashinath Janardhan Trade & Anr. 1983 SCC (3) 437
5. Balvant N. Viswamitra & Others vs. Yadav Sadashiv Mule (Dead) Through Lrs. & Others 2004) 8 SCC 706
6. Abdullahiyan Abdulrehman vs. The Government Of Bombay (1942) 44 BOMLR 577
7. Any other decision with leave.

XV. That pursuant to the orders dated 23.05.2017, 28.03.2018 and 20.05.2019 in matter arising out of Petition No. 228/2017, 249/2018 and 266/2019 of the licensee passed by the Hon'ble Joint Electricity Regulatory Commission for the State of Goa and Union Territories at Gurugram, the licensee has evolved a chart for electricity tariffs in respect of electricity connections for agriculture use. The Hon'ble Commission in said orders whilst providing category of electricity connection and its application has provided the point of supply/notes. The Hon'ble Commission in said orders has further provided in respect of –

Low Tension and High Tension Agriculture Pump sets	The tariff shall applicable front the date of production of a certificate from the Directorate of Animal Husbandry or Agriculture to the effect that the consumer carried on the said activity on regular basis. In case of failure to produce the certificate, the same shall be considered under commercial category.
--	---

It follows from the orders dated 23.05.2017, 28.03.2018 and 20.05.2019 passed by the Hon'ble Commission that pursuant to said Orders the licensee has to evolve a category wise chart for electricity tariffs in respect of electricity connections including agriculture use on production of Certificate that may be issued by the Directorate of Agriculture.

The Respondent No.3 and the Forum failed to appreciate that the certificate mentioned in the impugned notice determines the application of tariff against the electrify connection. That at any rate the certificate is not the genesis of any rights of a holder of land. In short the certificate mentioned in the impugned notice do not create any substantive right or take away any substantive rights of a holder of land.

While the matters stood thus, the Respondent No.3 ought not to have sought production of any fresh certificate by the Appellant failing which the connection will be disconnected. The action of the Respondent No.3 is not only *de-hors* the Electricity Act, 2003 and the Joint Electricity Commission for the State of Goa and UTs (Electricity Supply Code) Regulations, 2018 but also a illegal and a clandestine approach to coercively disconnect the electricity connection which the Appellant is lawfully enjoying, which approach has no basis in the annals of law.

XVI. That Respondent No.3 rejected the application of the Appellant for change in his consumer category from LTAG to Commercial-Low Tension arbitrarily without independently considering its merits with reference to the Orders passed by the orders dated 23.05.2017, 28.03.2018 and 20.05.2019 in matter arising out of Petition No. 228/2017, 249/2018 and 266/2019 passed by the Hon'ble Joint Electricity Regulatory Commission for the State of Goa and Union Territories at Gurugram.

- XVII. The Respondent No.3 and the Forum failed to consider that the accusations made in respect of the electricity connection are unfounded. The Respondent No.3 failed to note that the complaints of the complainant are frivolous and malicious.
- XVIII. The Impugned Order though signed by the Chairman of the Forum, although the Chairman was not present at the time of the hearing. The Impugned Order could not have been passed by an authority that has not heard the matter.
- XIX. The Forum ought not to have proceeded with the argument in the absence of the Chairman.
- XX. The Impugned Order therefore ought to be set quashed and aside, and the connection of the Appellant ought to be restored.
- XXI. The Impugned Order was passed on 30.07.2021 and the copy of the Impugned Order was received on the 06.08.2021 and in view of the Order of the Hon'ble Supreme Court in Misc. Application No. 665/2021 in SMWP No. 3/2020, the present Appeal in within limitation.

PRAYER

In view of the above it is humbly prayed that this Commission be pleased to:

- A. Call for the record and proceedings of the Respondent No.3.
- B. Quash and set aside impugned notice dated 25.05.2021, impugned decision dated 09.06.2021, impugned decision dated 25.06.2021 of the Respondent No.3 and the Impugned Order dated 30.07.2021 passed by the Forum as erroneous and arbitrary.
- C. Order restoration of the electricity connection of the Appellant under CA No.60007542008.
- D. Order the Respondent No.3 to make change in the consumer category of the Appellant from LTAG to Commercial-Low Tension.
- E. Pending final decision, in the meanwhile the electricity connection of the Appellant CA No.60007542008 be restored at the cost and expense of the Respondent No.3.
- F. For any other order in the interest of justice.

(B) Submissions by the Respondents:

Shri. M.A. Hullalada, Executive Engineer, (Div.-XVII), on behalf Respondents/Electricity Department-Goa, submitted the counter reply as under: -

1. That the deponent is working as Executive Engineer, and is authorized by Electricity Department, Goa, being Deemed Licensee vide letter No.149/03/CEE/TECH/COM/1100 dated 29-09-2021, to file this reply and represent on behalf of Electricity Department, Goa, in this case.
2. The para wise counter reply to the Appeal is as under: -
 - (i) In reply to Para 1 and 2, no comments are required.
 - (ii) In reply to Para 3 and 4, it is true that the Appellant had availed LTAG connection bearing C.A.No.60007542008 to the well in Sy. No.42/6 at Khalchawada, Virmoda, Pernem on 21-02-2020 by producing a Certificate issued by Zonal Agricultural Officer (ZAO), Pernem vide No.1/ 56/ Elect. Con/2019-20/ZAO PER/1510 dated 11-02-2020 as required under Regulation 5.34(2) of Supply Code 2018.
 - (iii) In reply to Para 5, the contents of the para 5 of the Appeal are admitted.
 - (iv) In reply to Para 6, the notice period of 15 days for compliance is as per Regulation 9.3 of Supply Code 2018. Further, it is to state that the Appellant had been on Notice to produce the fresh NOC from the ZAO, Pernem from 02-03-2021 in earlier



proceedings. As such, the Appellant cannot say that sufficient time was not given to him to produce the fresh NOC from the ZAO, Pernem.

- (v) In reply to Para 7, the Certificate dated 11-02-2020 issued to Appellant by the ZAO, Pernem was withdrawn by them based on **Stop Work Order** issued by the Deputy Collector and SDO, Pernem vide Case No. CDCP/LRC/LL-CONV/8-56/2019 dated 04-06-2019. The Appellant has not produced any relief/stay Order against the **Stop Work Order** before the ZAO, Pernem and the Respondents.
- (vi) In reply to Para 8, the Certificate was withdrawn by the ZAO, Pernem after conducting proceedings including personal hearing and also giving opportunity to the Appellant to Appeal against the withdrawal of the NOC before their Appellate Authority.
- (vii) In reply to Para 9, it is submitted that if the Appellant was aggrieved, he had the option to Appeal against **Stop Work Order** of the Deputy Collector before appropriate Appellate Authority and obtain reliefs/stay. As the Appellant failed to produce any relief/stay before the ZAO, Pernem, the NOC was withdrawn after conducting personal hearing in the matter.

The proceedings before the ZAO, Pernem recorded vide Note No. 1/56/Elec/Com/2020-21/ZAOPER/1460 dated 03-02-2021. The Appellant also failed to Appeal against the Order of the ZAO, Pernem before their Appellate Authority i.e. Director of Agriculture, Directorate of Agriculture, Krishi Bhavan, Tonca, Caranzalem, Goa.

- (viii) In reply to Para 10, it is submitted that the contents of the para are false. The copy of the Complaint dated 25-02-2021 of Shri. Ranganath K. Parab was made available to the Appellant vide mail dated 04/06/2021.
- (ix) In reply to Para 11, it is submitted that the reply dated 10-06-2021 of Appellant is in response to this Office Notice dated 25-05-2021.
- (x) In reply to Para 12, it is submitted that contents are denied.
- (xi) In reply to Para 13, it is submitted that the false allegations leveled by the Appellant are denied. The Appellant has no authority to advise the Respondent to recuse from the proceedings.
- (xii) In reply to Para 14, it is submitted that the LT-Agriculture connection of Shri. Hire M. Parab, Sy.No.42/6, Khalchawada, Virnoda was temporarily disconnected on 25-06-2021 as per Regulation 9.4 Supply Code, 2018 since the Appellant failed to produce fresh Certificate from ZAO, Pernem within the notice period.

The communication of the Temporary Disconnection was given to the Appellant vide letter No. 3/1/Tech/Per-I/21-22/419 dated 25-06-2021.

- (xiii) In reply to Para 15, it is submitted that it is true that the Appellant had applied for change of tariff of LT-Agriculture connection (LTAG) to LT-Commercial (LTC). The Appellant was informed vide letter No.3/1/Tech/Per-I/21-22/335 dated 09-06-2021, to apply for LTC connection by Completing Departmental formalities.
- (xiv) In reply to Para 16, no comments are required.
- (xv) In reply to Para 17, the contents are admitted\
- (xvi) In reply to Para 18, no comments are required.
- (xvii) In reply to Para 19 (I to VII), the contents are false.
- (xviii) In reply to Para 19 (VIII), the provision 5.94 is not applicable in this case since the LTAG connection was illegally obtained by the Appellant on 21-02-2020 in spite of a **Stop Work**



Order dated 04-06-2019 from Dy. Collector and SDO, Pernem. The Appellant has misrepresented before the ZAO, Pernem and obtained Certificate from ZAO, Pernem on 11/02/2020 which was used to obtain the LTAG connection. The ZAO, Pernem has withdrawn the Certificate on 03/02/2021 after conducting proceedings, after being informed by Shri. Ranganath K. Parab, H.No.17, Khalchawada, Virnoda, Pernem, Goa of the **Stop Work Order** of the Dy. Collector and SDO, Pernem. Subsequent to the withdrawal of certificate by ZAO, Pernem, Respondent No.3 has taken action to disconnect the LTAG connection after following proper procedure.

- (xix) In reply to Para 19 (IX and X), the question of re-classification of connection does not arise since the LTAG connection obtained by Appellant is illegal in view of the **Stop Work Order** of Deputy Collector and SDO, Pernem.
- (xx) In reply to Para 19 (XI, XII and XIII), the contents are denied.
- (xxi) In reply to Para 19 (XIV), it is submitted that no reliefs/stay has been produced by the Appellant against the **Stop Work Order** of Dy. Collector No. Case No. DCP/LRC/ILL-CONV/8-56/2019 dated 04/06/2019 and therefore the Order still stands.
- (xxii) In reply to Para 19 (XV and XVI), it is submitted that the contents are denied.
- (xxiii) In reply to Para 19 (XVII), it is submitted that the LTAG connection to the well was obtained by the Appellant fraudulently in spite of **Stop Work Order** notice from Deputy Collector and SDO, Pernem and as such, the same was illegal and therefore the application of the Appellant for change of tariff to LTC was not entertained and the Appellant was asked to apply for new LTC connection by completing Departmental formalities.
- (xxiv) In reply to Para 19 (XVIII), it is submitted that the Respondents have taken action for disconnection of the LTAG connection to the well based on the fact that the Certificate to the connection was withdrawn by ZAO, Pernem in view of **Stop Work Order** of the Deputy Collector and SDO, Pernem who had declared the activities of the Appellant as illegal and ordered the Appellant and his agents or any other person acting on his behalf to forthwith stop such unauthorized use and restore the land in question to its original use. The action of the Appellant in obtaining LTAG connection to the well in spite of the **Stop Work Order** of Dy. Collector, Pernem is in itself violation and contempt of the **Stop Work Order** of the Deputy Collector and SDO, Pernem.
- (xxv) In reply to Para 19 (XIX and XX), no Comments are required.
- (xxvi) In reply to Para 20 and 21, no comments are required.
- (xxvii) It is admitted by the Appellant that the use of LTAG connection is for pumping water for the purpose of irrigation of plantations. It is also a fact that the source of water i.e. the well in Survey No. 42/6, Khalchawada, Virnoda, Pernem for which the LTAG connection is used is declared illegal by the Dy. Collector and SDO, Pernem who directed the Appellant to stop unauthorized use. The Appellant is unable to get fresh certificate from ZAO, Pernem to revive his LTAG connection and therefore he is forcing the Respondents to do a change of tariff from his LTAG connection to LTC to an illegal installation. The Respondent cannot be a part of the illegal activities of the Appellant and therefore the request for change of tariff from LTAG to LTC has been turned down and the Appellant has been asked to apply for LTC connection by completing Departmental formalities.
- (xxviii) It is therefore prayed that the present Appeal be dismissed and the cost be granted to the Respondents.



(C) CGRF-Goa order in CC-28/2021/83 dated-30.07.2021 preferred for Appeal:

(i) Ld. CGRF-Goa , has passed the following order : -

Order.

We did not find any merit in the complaint; the same stands dismissed.

In case the complainant is not satisfied with the above decision, he is at liberty to file an appeal before the Hon'ble Electricity Ombudsman for State of Goa and Union Territories, 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.

(D) Deliberations during Video hearing on 25.11.2021:

Appellant's Submission

- (a) Shri Pravin Parab-Appellant's Representative, reiterated his version as submitted in the Appeal.
- (b) He further requested for 15 minutes break during the e-proceedings, which was allowed in consumer interest.
- (c) He further submitted that he has a right to land and is in legal occupation of the agriculture land and therefore entitled to electricity connection as per Electricity Act. He further submitted that he has not carried out any change of agriculture land usages.
- (d) On being asked that when the NOC was withdrawn on 03.02.2021 by the same authority who has issued it, why he has not informed the Electricity Department, he has no satisfactory answer.
- (e) He further requested 48 hours' time to file written arguments which were allowed. However, he has not filed any written arguments during the time allowed to him.

Respondent's Submission:

- a. Shri. M.A. Hullalada -Executive Engineer, reiterated his version as submitted in reply to the appeal.

(E) Findings & Analysis: -

1. I have perused the documents on record, CGRF orders 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 Appellant is entitled for reconnection of his Agriculture electricity connection, temporarily disconnected for failure to obtain fresh NOC from the ZAO ?
 - (ii) Whether the rejection of Appellant's request for change of tariff category from Agriculture to Commercial by the Licensee is justified?
 - (iii) Whether the CGRF order dated-30.07.2021 is sustainable in the eyes of law?
4. Regarding issue no 3(i) as above, as to whether the Appellant is entitled for reconnection of his Agriculture electricity connection, temporarily disconnected for failure to obtain fresh NOC from the ZAO?
 - (a) Following provisions have been provided in the Supply Code Regulations, 2018, notified by the Hon'ble Commission: -

(i) Procedure for providing New Electricity Service Connection

Application Form

5.24 The applicant shall apply for release of new connection in the following format as given in the Annexure to this Supply Code, 2018:

Application form for release of new connection (Low Tension) – Annexure- I

Application form for release of new connection (High Tension/ Extra High Tension) - Annexure –II

Format for declaration/undertaking to be signed at the time of receiving electricity supply - Annexure –III

5.25 to 5.26

5.27 Application forms for new connection must be accompanied with a photograph of the applicant, identity proof of the applicant, proof of applicant's ownership or occupancy over the premises for which new connection is being sought, proof of applicant's current address, and in specific cases, certain other documents as detailed in Regulation Error! Reference source not found.- 0 of this Supply Code, 2018.

5.28 to 5.33

5.34 Other documents applicable only for select consumer categories:

- (1) *Industrial consumers: Valid Industrial Licence, if applicable, along with approval of the use of land for non-agricultural purposes (Not required for industrial consumers in notified Industrial Areas).*
- (2) **Agricultural consumers: No Objection Certificate from competent government authority;**
- (3) *Non-Domestic Khokhas and Temporary Structure: No Objection Certificate for khokha or temporary structure from the Nagar Nigam / Nagar Palika / Nagar Panchayat / Gram Sabha / Gram Panchayat / Land Development Authority / Land Owning Agency.*
- (4) *Where new industrial connection or addition to the load of existing connection needs clearance from pollution or environmental angle, the applicant shall submit "no objection certificate" from the competent authority to the Distribution Licensee.*

(ii) **Disconnection and reconnection**

9.1 *The supply may be disconnected temporarily or on a permanent basis as per the procedure described below. The Licensee shall remove service line, meter, etc., after permanent disconnection. However, the Licensee may not remove service line, meter, etc., in case of temporary disconnection.*

9.2 *The charges for connection, reconnection and disconnection shall be in accordance with the Schedule of Charges approved by the Commission.*

Temporary Disconnection

9.3 *The supply may be disconnected temporarily in following cases:*

- (1) *On non-payment of the Licensee's dues: The Licensee may issue a disconnection notice in writing, as per Section 56 of the Act, to any consumer who defaults on his payment of dues, after giving him a notice period of minimum 15 working days to pay the dues. Thereafter, the Licensee may disconnect the consumer's installation on expiry of the said notice period by removing the service line/meter as the Licensee may deem fit;*
- (2) *If the conduct/continuance of any business/industry/activity being carried out in any premises becomes unlawful due to lack of necessary permission or withdrawal of permission from the competent authority;*
- (3) *.....*
- (4) *If the wiring, apparatus, equipment or installation at the consumer's premises is found to be defective or there is leakage of electricity or if the consumer is found to have altered the position of the meter and related apparatus or if the consumer uses any apparatus or appliance or uses the energy in such manner as to endanger the service lines, equipment, electric supply mains and other works of the Licensee, or is found to be using it in any manner which unduly or improperly interferes with the efficient supply of energy to any other consumer;*
- (5) *If at any time, the consumer is found to be using energy for a purpose other than for which it was intended / provided or tampers with the meter and/or other apparatus of the Licensee on his premises or extends/allows*



supply of energy to any other premises from his connection;

(6) If the consumer remains unavailable for meter reading for two or more billing cycle after factoring in advance payment for the period of absence, if any as per the provisions of this Supply Code, 2018.

9.4 The supply shall be disconnected after giving a notice period of minimum 15 days. The supply shall be disconnected only if the cause of the disconnection is not removed within the notice period.

9.5 The Licensee shall, after the connection is temporarily disconnected as per Regulations 9.3(2), 9.3(3) and 9.3(4), issue a notice to the consumer to remove the cause of disconnection within 45 days for domestic consumer and 15 days for consumer of other categories, respectively, failing which the supply shall be disconnected permanently.

9.6 The Licensee may take steps to prevent unauthorized reconnection of consumers disconnected in the manner as described above. Wherever the Licensee discovers that connection has been re-connected in an unauthorized manner, Licensee may initiate action as per provisions of Section 138 of the Act. Further, in case the Licensee discovers that supply to such premises has been restored through another live connection, the same shall also be disconnected.

Permanent Disconnection

9.7 The supply shall be disconnected permanently in following cases:

(1) On the termination of the Agreement;

(2) If the cause for which the supply was temporarily disconnected is not removed within the notice period:

Provided that if the service of the consumer remains continuously disconnected for 180 days, not being a temporary disconnection upon request of the consumer, the Agreement shall be deemed to be terminated on the expiry of 15 days or after expiry of the initial period of agreement, whichever is later without prejudice to the rights of the Licensee or of the consumer under the Act for recovery of any amount due under the Agreement.

- (b) As per record, it is a admitted fact that Zonal Agriculture Officer (ZAO) has issued a NOC for release of Agriculture connection on 11.02.2020. Accordingly, the Agriculture connection was applied by the Appellant and released by the Electricity Department. Later on, this NOC was withdrawn by the ZAO on 03.02.2021, but the Appellant has suppressed this information from the Electricity Department. On some complaint, Respondents came to know of withdrawal of NOC and accordingly issued a notice to the Appellant and after due considerations, the Agriculture connection was temporarily disconnected and Appellant was requested to supply a fresh NOC from competent authority. As per above said Regulations notified by the Hon'ble Regulatory Commission, NOC is mandatory for release of Agriculture connection and in view of its withdrawal by the competent authority, the Respondents are well within their rights to effect the temporary disconnection, till the fresh NOC is produced from the competent authority. As per record, the Appellant has not been able to produce NOC from competent authority for release/continuation of Agriculture connection till date. The judgements as relied on at para XV of the Submission by the Appellant, as stated above are not relevant to the present case. Therefore, I do not find any



irregularity committed by the Respondents in temporarily disconnecting the Agriculture electricity connection.

5. Regarding issue no 3(ii) as above, as to whether the rejection of Appellant request for change of tariff category from Agriculture to Commercial by the Licensee is justified?

- (a) Following provisions have been provided in the Supply Code Regulations, 2018, notified by the Hon'ble Commission: -

(i) Reclassification of Consumer Category

5.94 *If it is found that a consumer has been wrongly classified in a particular category, or the purpose of supply as mentioned in Agreement has changed to other Tariff Category, or the consumption of power has exceeded the limit of that category as per the Commission's Order, the Licensee may consider reclassifying the consumer under appropriate category. The consumer shall be informed of the proposed reclassification through a notice and duly given a 30-day notice period to file objections, if any. The Licensee, after due consideration of the consumer's reply, if any, may alter the classification within 10 days from the date of receipt of reply. In case of any dispute, the consumer may approach the Consumer Grievance Redressal Forum.*

5.95 *If a consumer wishes to change his consumer category, the consumer shall submit an application form to the Licensee in the format given in Annexure VI to this Supply Code, 2018. The Licensee shall process the application form in accordance with Regulations Error! Reference source not found. of this Supply Code, 2018. For site inspection and issuance and payment of demand note for the estimated cost of works, both the Licensee and applicant shall follow the procedure and timelines as laid down in Regulations Error! Reference source not found. of this Supply Code, 2018. The Licensee shall also note down the meter reading at the time of inspection. If on inspection, the consumer's request for reclassification is found valid, the Licensee shall change the category within 10 days of receipt of the application.*

5.96 *If the Licensee does not find the request for reclassification valid, it shall inform the applicant in writing, giving reason(s) for the same, within 10 days from date of inspection.*

5.97 *For the period in which the consumer's application for reclassification is pending, the consumer shall not be liable for any action on grounds of unauthorized use of electricity.*

(ii) Unauthorized Use of Electricity (UUE)

Cases to be treated as Unauthorized Use of Electricity

8.33 *The following acts on the part of consumer are to be considered as unauthorized use of electricity for the purpose of assessment under the provisions of Section 126 of the Act;*



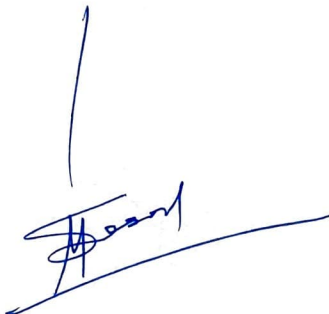
- (1) *By any artificial means; or*
- (2) *By a means not authorized by the concerned person or authority or Licensee; or*
- (3) *Through a tampered meter; or*
- (4) **For the purpose other than for which the usage of electricity was authorized; or**
- (5) *For the premises or areas other than those for which the supply of electricity was authorized.*

(b) The contention of the Appellant that on withdrawal of NOC for Agriculture Connection, it should be reclassified into commercial connection as per provisions of Clause 5.94 of Supply Code Regulations- 2018 and Tariff order is not in order. If such a action is taken by the Respondents, then every Industry disconnected on the orders of Pollution Board will come forward to reclassify the Industry in Commercial Establishment, thus bypassing the provisions of statutory Acts. The respondents cannot release a connection to any premises if its activities have been declared illegal/unlawful. In fact , if anybody try to unauthorizedly use the electricity connection for the purpose other than it was authorized ,such defaulters are liable to be proceeded under section 126 of Electricity Act-2003 . In the present case, the NOC issued by the ZAO for Agriculture connection has been withdrawn and even a Stop Work Order has been issued by Deputy Collector cum SDO. Therefore, the action for the Respondents in not converting a Agriculture Connection into Commercial connection is fully justified in accordance with the said Regulations.

His further argument that he is entitled to electricity connection as per Electricity Act, being lawful occupier of the land has also no merit because the dispute in the present Appeal is regarding Agriculture connection for which NOC from the competent authority is mandatory as per Regulations stated above.

6. Regarding issue no 3(iii) above, as to whether the CGRF order dated-30.07.2021 is sustainable in the eyes of law?

I have gone through the order of the Learned CGRF. Without going into the controversy of the allegation of the Appellant that Chairperson was not present during hearing but has signed the order, I find that order has been passed by the Learned CGRF is strictly on merits/ as per Regulations and is required to be upheld. Further I have already interrupted the CGRF and Ombudsman Regulations-2019, in Appeal NO-130/2020 and Appeal No-131/2020 (which are available on the website of Joint Electricity Regulatory Commission for the state of Goa and UTs under heading Office of Ombudsman) that a single member of CGRF is competent to hear and pass orders on consumer complaints, so that consumers are not deprived of their legitimate right of 1st Appeal to the Electricity Ombudsman.



(F) DECISION

- (i) For the reasons discussed above, the appeal of the Appellant is dismissed being devoid of merit.
- (ii) The order in Complaint No- CC-28/2021/83 dated-30.07.2021, passed by Learned CGRF-Goa is upheld.
- (iii) 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.
- (iv) The appeal is disposed of accordingly.



(M.P. Singh Wasal)

Electricity Ombudsman

For Goa & UTs (except Delhi)

Dated 29.11.2021