

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/029/2022

(Present: A. Chandrakumaran Nair)

Dated: 29th July, 2022

Appellant	:	Smt. K. Lalitha, Executive Director, Attukal Shopping Complex Pvt. Ltd., Mall Management Office, 2nd Floor, East Fort, Thiruvananthapuram 695 023
Respondent	:	Deputy Chief Engineer, Electrical Circle, KSEB Ltd., Thiruvananthapuram, Thiruvananthapuram Dist. Special Officer (Revenue) KSEB Ltd., Vidyuthi Bhavanam, Pattom, Thiruvananthapuram Dist.

ORDER

Background of the case:

The appellant is the Executive Director of the Attukal Shopping Complex (Pvt.) Ltd. On 28-06-2019, Attukal Shopping Complex Ltd. has participated in a public auction of Dhanalakshmi Bank, Fort Branch, Thiruvananthapuram under SAR FAESI Act and successfully bid the property in the name of Sri. A.V. Rengaraj (Ayyappas Textiles). Now, the appellant is the absolute owner of the “Ayyappas Building”. The authorized officer of the Dhanalakshmi Bank Ltd. sold the aforesaid property to the appellant on “as is where is” condition. The Bank had confirmed the sale and issued the sale certificate on 2-11-2019 and got registered on 7-3-2020 at the Registrar Office, Fort, Thiruvananthapuram under Rule 9 (6) of Securities Interest (Enforcement) Rules 2002. The ownership of the building has been changed in Thiruvananthapuram Corporation and in Village Office and paid land tax. On 08-09-2020, the appellant made an application to the Licensee to change the ownership and another application on 22-10-2020 to reduce the

Contract Demand from 250 kVA to 25 kVA. There was an arrear energy charges of Rs.11,96,945/-. The Licensee asked NOC from the previous owner of the building for the transfer of Security Deposit, which has been objected by the previous owner.

The Licensee issued a letter to the appellant directing to clear the arrear of energy charges and also to pay fresh Security Deposit.

The appellant filed a petition to the Consumer Grievance Redressal Forum (CGRF), Southern Region, Kottarakkara and CGRF ordered vide OP No. 51/2021 dated 28-09-2021 that the petitioner is liable to remit the current charge arrears and required Security Deposit afresh while executing the agreement for transfer of ownership and reduction of Contract Demand.

Aggrieved by the decision of CGRF, the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

The appellant purchased the properties and building under e-auction for a consideration of 12 crores 45 lakhs and thereby the applicant's company got full right, title and possession over the same. After completion of e-auction formalities, sale confirmation letter was issued on 2-11-2019 and sale deed was executed on 7-3-2020. Along with the sale the Bank has issued separate letter to the Trivandrum Corporation, Water Authority and Electricity Board intimating change of ownership in the name of the applicant and requested to transfer those amenities in the name of the applicant.

When the Bank took possession of the premises, there was electricity charge arrears amounting to Rs. 11,96,945/-. From 2018 onwards till the date of sale namely 7-3-2020, there was no consumption of electrical energy. But the Board insisted remittance of arrears of electricity charges for the period during which the premises was kept closed. After purchase of the property the applicant send letters to the Licensee on 8-9-2020 and 22-10-2020 for reduction of electrical consumption from 250 kVA to 25 kVA and to note the change of ownership. But that was not considered. Accordingly, the applicant approached the Licensee to transfer the ownership and to return the security deposit. But the Licensee refused to consider the request on the basis of their stand that the applicant must obtain consent letter from the previous owner. The said stand taken by the Licensee is illegal. The electricity arrears cannot be recovered from the subsequent purchaser of the property.

But the Licensee took a wrong stand that the Bank was not competent to transfer the security deposit attached to the electricity connection in view of the section 31 of the SARFAESI ACT on the ground that the security deposit is exempted from the purview of the operation of the SARFAESI Act, section 31 and refused to return the security deposit or adjust it against the existing connection. The said decision is quite perverse, illegal and wrong. Either it is to be returned or it is to be adjusted towards the electricity connection in the name of the applicant.

The grievance of the appellant is that the existing electrical connection in the name of Ayyappas Textiles, Thiruvananthapuram has to be transferred to the appellant's name, on the appellant remitting arrears excluding the prevailing security deposit provided by the previous consumer since all the then existing title and possession over the property, building and all other privileges and rights, including consumer rights, stands transferred in favour of the appellant by e-auction and followed by sale deed executed in favour of the appellant whereby the appellant was authorized and allowed to change the "patta" with respect to the property in the appellant's name, to hold possession of the property, to change ownership over the building in the name of the appellant and also to get transfer of the public utility services, namely consumer connections such as electricity connection, water connection, drainage connection, etc. So much so, on the strength of acquisition of title, right and possession over the premises and its amenities, the appellant is entitled to get all those rights, transferred in the name of appellant. So much so, the appellant is entitled to get the existing electric consumer connection transferred in her name and is entitled to remit electric charges thereafter for the future consumption of electricity charges.

It is the duty of the purchaser of the premises to satisfy herself that there is no electricity dues before purchasing the premises. The auction sale was conducted free of encumbrance and all other liabilities and the vendor/consumer/the bank alone is responsible for clearing the electricity dues up to the date of sale and there is indemnity clause making them responsible for the said arrears.

The present stand of the distributor/electricity board that the dues in regard to the electricity supply to the premises should be cleared before electric supply is restored, inclusive of the prevailing security deposit, is the matter in dispute in this

case. Since the security deposit for the existing consumer connection being already outstanding with the Electricity Board remitted by the appellant's predecessor, the board has no authority or power to demand further deposit of security deposit once again by the successor.

Though the claim of arrears of electricity charges up to the date of sale can be equated to an issue as between the transferor and the transferee (herein this case by third party involvement, namely the creditor of the transferor) and can be equated as an issue which ought to have been protected by indemnity clauses in the transfer deed (sale deed). The board cannot on no account claim any special right over the existing security deposit and can insist remittance of further security deposit on the ground that there is a transfer of title and possession over the premises wherein-the consumer connection is provided.

In that respect, there is no question of furnishing a no-objection certificate from the registered consumer, namely the previous owner, namely as per the regulation 91 (4) (d) of the Kerala Electricity Supply Code 2014. Since the very sale of the property and transfer of ownership and possession and all other amenities, privileges and rights amounts to no-objection on the part of the transferor and, after the sale, the transferor will be estopped and will not be competent to claim any right over the consumer connection.

Then again under Regulation 91 (4) (b) of the Code 2014, the request of transfer insist only recoverable dues in respect of the concerned connection which will not include the security deposit which stands in the account of the transferor and to be retained for the possession and beneficial enjoyment of the subject matter by the transferee. So much so the appellant is not liable to pay any fresh security deposit and she is expected and bound to pay only arrears of electricity charges from 5-11-2019 and there is no consumption of electric energy from the said connection thereafter since the premises is closed down and there is no supply of electric energy. The present claim for Rs.24,57,156/- is wrong and is liable to be interfered.

The matter in issue and the matter decided in CA No. 656/08 by the Hon'ble High Court is in another context. The dispute involved in that case is whether a stipulation by the distributor that the dues in regard to the electricity supply to the premises should be cleared before electricity supply is restored or a new connection

is given to the premises. But the matter in dispute in this litigation is the right of the distributor to insist for furnishment of security deposit over and above the security deposit already deposited to the distributor by the previous owner as demand for alleged arrears of electricity charges for the period during which the premises was in the possession of the bank as per powers conferred to it under the Securitization Act. So, the matter involved in this appeal requires reconsideration in the light of the facts involved and law on the point. As the matter now stands, the order under challenge is unreasonable and arbitrary.

Nature of relief sought

To pass orders directing the electricity board to renew the electric connection to consumer no. LCN16/4223 to the applicant, who is the present owner of the building and to whom the electric connection therein belongs without insisting the NOC from the previous owner as the premises concern is purchased from the Dhanalexmi Bank, whose NOC is already submitted before the KSE Board and also to direct the KSE Board to give fresh service connection to the appellant as required by the appellant in the application dated 22-10-2020 by adjusting the previous charges from the outstanding security deposit and to grant fresh service connection.

Arguments of the respondent:

HT Service Connection bearing consumer No. LCN 16/4223 with contract demand of 250 kVA was given to M/s Ayyappas Textiles near East Fort, Thiruvananthapuram under Electrical Section, Fort. The owner was Mr. Rangarajan. Due to the failure of payment of loan from M/s Dhanalekshmi Bank, the bank has taken possession of the building and land to an extend of 30.35 cents along with the amenities of the building under SARFASI Act. The bank was paying the current charge due after taking the procession. Later the bank informed vide letter dated 25.12.2019 that the property was sold to the appellant M/s Attukal Shopping Complex. The appellant approached this office for change of ownership in the name of Smt. Lalitha.

As per regulation 41 & 91 (6) of Kerala Electricity Supply Code 2014 stipulates that the procedure to be followed for transfer of ownership to a new consumer. As a Licensee, the Board has issued an order tilted 'Ease of doing

Business' with No. BO(FTD) No.1902/2018)D (D&IT)/D-6-AE3/Ease of doing business/2018-19) dated, Thiruvananthapuram, 02.11.2018 in which clause 3.1.1 stipulate the procedure to be followed for transferring ownership to new consumer. The appellant approached this office for change of ownership on 15.09.2020 after remitting required fee on 08.09.2020 at Electrical Section, Fort. The appellant was intimated vide letter No. DB2/HT/Ayyappas/Fort/ 2020-21/101 dated 09.10.2020 to produce the consent from Sri. Rangarajan, the previous owner to transfer the security deposit amounting to Rs. 5,59,860/- remitted by him while availing the HT Connection. Since the appellant is not satisfied with the intimation, she approached the Director (Distribution, IT &HRM). Accordingly, the Director directed this respondent to intimate the present owner for his willingness to transfer the deposit amount to the appellant.

Then the respondent vide letter No. DB3/Ayyappas/2020-21/199 dated 02.03.2021 asked the consumer Sri. A.V. Rangarajan whether he is willing to transfer the deposit amount of Rs. 5,59,860/- to the appellant. In the reply dated 19.03.2021 Sri. Rangarajan expressed his serious objection in transferring the deposit amount. The matter was intimated to Director (Distribution, IT& HRM) vide letter No. DB2/HT-Ayyappas/ownership change/2020-21/210 dated 15.03.2021. The Director vide letter No. D (D&IT)/D1/Complaint/2020-21/0111 dated 31.02.2021 directed the respondent to collect fresh security deposit from the appellant based on the revised connected load. The Director also intimated the appellant after taking legal opinion that the existing security deposit cannot be transferred in her favour and the ownership change can be effected after remitting current charge arrears and pay security deposit afresh.

The appellant approached CGRF, Southern Region, Kottarakkara (O P no. 51/2021) and received order dated 28-9-2021. CGRF directed the appellant to remit the current charge arrears and the required security deposit afresh while executing the agreement for transfer of ownership and reduction of contract demand in accordance with the relevant provisions of Kerala Electricity Supply Code -2014.

Analysis and findings:

The hearing of the case was conducted on 08-07-2022 at the Court room of Kerala State Electricity Regulatory Commission, Thiruvananthapuram. Advocate Joseph Stephenson attended the hearing on behalf of the appellant and the Deputy Chief Engineer, Electrical Circle, Thiruvananthapuram and Smt. Daisamma. P.J., Special Officer (Revenue), KSEBL, Vydyuthi Bhavanam, Thiruvananthapuram from the respondent's side attended the hearing. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The building and property of Ayyappas Textiles was attached by the Dhanalakshmi Bank as the owner has defaulted the repayment of huge loan availed from the Bank, invoking the provision of SARFAESI Act 2002. Bank took over the possession of the properties, building, structures, amenities such as electric connection, water connection etc. The appellant participated in the e-auction conducted by the Bank, the Bank registered the Sale Deed to the appellant on 07-03-2020. The ownership of the property and building has been transferred to the appellant in the Corporation and Revenue (Village Office) records.

The Bank took over the building as per the SARFAESI Act in which the definition of property as per 2 (1) (t) property means: "(i) immovable property (ii) movable property (iii) any debt or right to receive payment of money whether secured or unsecured (iv) receivables whether existing or future (v) intangible asset, being know-how, patent, copy right, trade mark, license, franchise or any other business or commercial right of similar nature" and 2 (1) (zc) Secured Asset means "the property on which security interest is credited with the provisions", though the appellant claiming that the possession and all right over the said premises inclusive of electric connection had vested in the name of his creditor, namely Dhanalakshmi Bank, under the provision of SARFAESI Act 2002, the Section 31 of this Act clearly mentioned that:

"31. Provisions of this Act not to apply in certain cases – The provision of this Act shall not apply to (a) a lien on any goods, money or security given by or under

the Indian Contract Act – 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force”.

In this, the security deposit made as per the Indian Contract Act is excluded.

The Licensee is empowered to collect the security deposit from the consumer as per the Section 47 of the Indian Electricity Act 2003 and Section 67 of the Kerala Electricity Supply Code 2014.

The process of Transfer of Service Connection is clearly elaborated in Section 91 of the Kerala Electricity Supply Code 2014 as follow:

Section 91 (3) The transferee shall pay the required security and execute a fresh service connection agreement.

Section 91 (4) The licensee shall process applications relating to change of name of the consumer due to change in ownership or occupancy of the premises in accordance with the procedure detailed below:-

(b) the request for transfer of connection shall not be accepted unless all recoverable dues in respect of the concerned connection are fully paid;

(c) the application form shall be accepted on showing proof of ownership or occupancy of the premises;

(d) a no objection certificate from the registered consumer or previous occupant of the premises or a person authorised by them shall be required in the cases involving transfer of security deposit in the name of applicant;

(f) in case the no objection certificate from the registered consumer or previous occupant of the premises or a person authorised by them is not submitted, an application for change of name shall be entertained only if security deposit as stipulated in the Code is paid afresh by the applicant;

In the case in hand, the appellant has applied for the transfer of the electric connection and reduction of the Contract Demand from 250 kVA to 25 kVA.

As per the records of the Licensee, the connection is still in the name of Sri. A.V. Rengaraj and the energy charges arrears are also due from the registered owner only. Then, why the security deposit is not adjusted against the energy charges due, as the records says, the energy charges are due from the registered owner. Though as per the SARFAESI Act, the security deposit is exempted, the Licensee is having the right to recover the arrears from the security deposit and purpose of security deposit is only to ensure the security of the receivables from the consumer.

The Kerala Electricity Supply Code 2014, Section 99 states about the 'enhancement of connected load' or Contract Demand:

Section 99 (4) The application of enhancement of load shall not be considered if the consumer is in arrears of payment of dues payable to the Licensee.

Section 100 states about the reduction of connected load or contract demand.

Section 100 (10) "If the application is not decided and order is not issued by the licensee within the above mentioned period of fifteen days from the date of completion of inspection, permission for reduction of connected load or contract demand, as the case may be, shall be deemed to have been granted with effect from the sixteenth day."

It is very pertinent to note that for enhancement of connected load, the clearance of arrears is a pre-requisite while the reduction of connected load or contract demand, the consumer need not clear the arrears, if any. The argument of the respondent that the reduction in contract demand was not done as the appellant was not cleared the arrears has not have any stand. For the Section 100 (10) clearly state that the reduction of load is sanctioned within 15 days if not it shall be deemed to have been granted with effect from sixteenth days. As above the contract demand is deemed to have been reduced with effect from 07-11-2020. The Licensee is bound to charge the demand charges only for 25 kVA with effect from 07-11-2020.

Kerala Electricity Supply Code 2014, Section 143 (3) states "If the service connection of the consumer remains continuously disconnected for one hundred and eighty days, except upon the request of the consumer, the agreement may be terminated after giving a notice of fifteen days to the consumer."

As per this clause, it is very clear that the contract also would have been terminated with 180 days of disconnection of the power. Here, the electric load was used since it was on closure.

The Kerala State Electricity Supply Code 2014, Section 40 (3) states "(3) If a purchaser or lessee or occupier of such premises requires a new connection, as the earlier connection given to the previous consumer in that premises has already been disconnected and dismantled on the ground of outstanding dues of

the previous consumer, new connection shall not be denied to such purchaser or lessee or occupier of the premises provided he furnishes a deposit which shall be equal to the arrears of electricity charges and other liabilities if any, excluding interest thereon, till the licensee obtains from the appropriate legal forum an order on the recovery of arrears and other liabilities or till the licensee settles the arrears and liabilities with the previous consumer or till completion of three years whichever is less:

Provided that on obtaining order from the appropriate legal forum on the recovery of such arrears of electricity charges and other liabilities, or on settlement of the arrears and liabilities by the licensee with previous consumer or on completion of three years as aforesaid, the licensee shall release the entire amount of deposit furnished by such owner or lessee or occupier of the premises, along with interest at bank rate as on the date of furnishing such deposit.

This clause is very clear that if the new purchaser require a new connection, which was earlier disconnected on the ground of outstanding dues of previous consumer, new connection shall be given provided that the new purchaser furnishes a deposit, which shall be equal to the arrears of electricity charges and other liabilities, excluding interest. The deposit thus, collected from the new consumer is to be refunded / released on completion of three years along with interest at the bank rate. The appellant can use this Section to get the new connection, if the connection is deemed to be terminated.

Decision: -

From the analysis done and the conclusions arrived at as detailed above, following decisions are hereby taken:

- (1) The order of CGRF, Southern Region, Kottarakkara in OP No. 51/2021 dated 28-09-2021 is set aside.
- (2) The demand notice of Licensee is quashed.
- (3) The Licensee shall recover the arrears of the energy charges from the security deposit of registered owner of Licensee as per the records.

- (4) The Contract Demand is deemed to be reduced with effect from 07-11-2020 and the Licensee has to send the revised demand to the appellant.
- (5) The appellant shall pay the energy charges as per the revised demand of Licensee as a deposit as per Section 40 (3) of Kerala Electricity Supply Code 2014.
- (6) The appellant is liable to pay the security deposit for transferring the connection and execute fresh agreement.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/029/2022/_____ dated _____.

Delivered to:

1. Smt. K. Lalitha, Executive Director, Attukal Shopping Complex Pvt. Ltd., Mall Management Office, 2nd Floor, East Fort, Thiruvananthapuram 695 023
2. Deputy Chief Engineer, Electrical Circle, KSEB Ltd., Thiruvananthapuram, Thiruvananthapuram Dist.
3. Special Officer (Revenue), KSEB Ltd., Vydyuthi Bhavanam, Pattom, Thiruvananthapuram Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.