

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/161/2010.

(Present T.P. Vivekanandan)

Appellant : Sreekanth K M,  
Hankook Latex (P) Ltd, Rubber Park,  
Irapuram, Valayanchirangara, Perumbavoor,  
Ernakulam (Dt).

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Aluva.

ORDER.

Background of the Case: -

The appellant has purchased the property belonging to Mr. Johnson PP, M/s Poonolil Rice and Food Products, Aluva, through Public Auction from the Kerala Financial Corporation. At the time of taking over (possession) of the property by the appellant, there were Electricity charge dues pending on the property. The KSEB had disconnected the electricity for default of payments by the previous owner and later initiated Revenue Recovery Action against him for realization of the same dues. While being so, the appellant has applied to the Respondent, for a new electric connection in the same premises and KSEB denied it on the ground of previous arrears pending, and asked him to clear it first. Being aggrieved, the appellant then submitted a Petition before the CGRF, Ernakulam, seeking to order for a fresh electric connection as they are not bound to pay the previous consumer's arrears. The request of the petitioner was not allowed and the Petition itself was dismissed, vide order No. CGRF/CR/

Comp. 143/09-10,1135, dated 01.06.2010. Aggrieved by the order of CGRF, the appellant has filed this Appeal Petition.

**Argument of the Appellant: -**

According to the petitioner, he purchased the property from the KFC, through auction. The previous owner of the property was a consumer of KSEB and had defaulted the payment of electricity charges. The KSEB had disconnected the supply and initiated Revenue Recovery proceedings for realization of the arrears from the previous owner. The appellant had approached KSEB, for a new electric service connection but the respondent has denied the connection on the ground of arrears pending in the premises which was defaulted by the previous owner. The appellant argues that since the purchase of the property was made as per Section 60 of the Kerala Revenue Recovery Act, and by the said rules, it is evident that the possessed property shall be free from all further liabilities and encumbrances.

The Appellant has raised another argument that the liability of the electricity arrear rests with the previous owner only. Though the respondent has taken steps to recover the dues from the previous owner through Revenue Recovery rules, in the year 2005, they failed to pursue the matter vigorously. The relief sought by the appellant is to pass a decree to get the fresh electric connection without remitting the arrears pending, which was defaulted by the previous owner of the premises. On the final day of hearing, it was requested;

- (a) To wave the penal interest from the arrear amount.
- (b) Once the payment made, the new connection, should be in their name.
- (c) RR Action should continue against the previous owner and once the amount is realized, their amount should be refunded.
- (d) Security amount should be adjusted against the arrears.

**Argument of the Respondent.**

The respondent's contention is that while the property was sold to Sri. Srikanth by public auction, there was Electricity charge arrears in the premises. Even though the Revenue Recovery action was initiated against the previous owner, Sri. P P Johnson, that amount has not been realized so far. The respondent argues that the arrear against a tenant is not a bar on giving a fresh connection to a new tenant, if the owner of the property is the Government, or the new entrant deposits the amount, till it is recovered from the old consumer. The KSEB has intimated the arrears to the KFC authorities, but they did not mention about the Electricity charge arrears pending at the site to bidders, prior to the

time of Auction or there after on selling and transferring the property after auction. The respondent contents that KSE Board is not legally bound to effect supply to a premise, without clearing the electricity arrears pending in the same premise.

**Analysis and Findings.**

The Appeal Petition was first scheduled for hearing on 15.3.2011, but was adjourned as requested by the appellant. The second hearing was posted on 03.06.2011 and Mr. Sreekanth KM, Advocate and Mr. Jooho Kwon, appeared for the appellant's side and Sri Sudev Kumar, AEE, for the opposite side. The final hearing was done on 25.9.2012 and the appellant's side was represented by Mr. Dukee Kwon, MD, and Mr E J Davis, GM, HLPL and the opposite side by Sri Sudev Kumar, AEE, ESD, Aluva. The hearing was conducted in my chamber at Edappally, Ernakulum. On examining the petition, statement of facts filed by the respondent, arguments made during the hearing and the notes submitted by the parties, perusing the documents of both sides and considering all the facts and circumstances of the case, this Forum comes to the following decision.

The Case is that the previous owner of the property, Sri. P P Johnson, Poonolil Rice and Foods (P) Ltd, has availed Loan from the Financial Institution, KFC, by pledging the said property as Security and the same property was attached by them, for default in loan repayment and later KFC sold it in Public auction, as per rules, to recover the dues. The auction purchaser was the appellant, 'M/s Hankook Latex (P) Ltd', Irapuram, Valayanchirangara.

It is reported by KSEB that there is an amount of Rs. Rs.2,19,285/-, pending as arrears of current charges from the previous owner, Sri. P P Johnson and KSEB have dismantled the service connection for default of payment on 30.12.2006 and took Revenue Recovery Action against him on 19.03.2007. While so, the KFC sold the property to the appellant on 9.10.2007, without realizing the KSEB dues reported to them. On 3.10.2008, the appellant applied for a fresh electric connection in the premises and the KSEB denied the request stating that electricity dues are pending in the premise. They further intimated that new electric connection, without clearing the dues, cannot be provided as per rules of KSEBoard. Aggrieved by the decision, the appellant has filed a Petition before the CGRF, Ernakulam, which was dismissed, after hearing and finding no merits in the Petition.

*Hence the issue to be decided is "whether the appellant is eligible for getting a new electric connection in a premise without clearing the electricity dues caused by the previous owner of the same premise?"*

The respondent has cited Regulation 19 (4) of KSEB Terms & Conditions of Supply 2005 in support of his arguments for denial of supply. It says "All dues to the Board from a consumer shall be the first charge on assets of the consumer". During the hearing conducted on 3.6.2011, the appellant has agreed to provide Bank security for the amount due i.e. Rs.2, 19, 285/-, provided the respondent agrees to effect a new electric connection. The opposite party also need to take effective steps to recover the amount due (arrears of previous owner) through RR action. Once the amount is realized through RR, the appellant should be absolved from the bank security condition, he requested.

DECISION: -

Until the new Electricity Act, 2003, was enacted, the clause 15 (e) of the Conditions of Supply of Electrical Energy, 1990, contained a safety provisions to the Board, wherein the buyers of the defaulted premise would be entitled to electricity connection only if arrears in respect of those premises having dues are deposited by the concerned applicants for electricity. Further, there was provision for refund of the said amounts to the buyers, if recovery was made from the defaulters.

As per Regulation 7 of KSEB Terms & Conditions of Supply, 2005, and Regulation 12 of the Electricity Supply Code, 2005, it is stated as follows; "if a purchaser of premise requires a new connection, as the earlier connection has already been dismantled after disconnection, the arrear if any shall be realized from the previous owner/occupier of the premises and not from the purchaser". It is clear from the above Regulation that the purchaser of the property is under no legal liability to make payment of the unpaid dues of the erstwhile consumer. This was a Regulation notified by the Hon Commission and not forms part of the IE Act, 2003.

While being so, in an identical case of dispute before the Hon: Supreme Court in 'Paschimanchal Vidyut Vithan Nigam Ltd Vs DVS Steels and Alloys Pvt Ltd' reported in, 2009 (1) KLT 253 (SC), the Apex Court observed that;

".....A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premise, cannot be termed as unreasonable or arbitrary". This judgment implies that the purchaser, of the property having arrears, like the Appellant cannot disown the liability of the previous owner or occupier, who has caused the electricity charges arrears in the property, he has bought.

Further, the Division Bench of the Hon: High court of Kerala in W A No.2114 of 2009, between KSEB Vs KSERC and others, in the matter of the electricity arrears payable by the previous consumers

of defaulted premises, recently has issued an order directing the KSERC to incorporate appropriate provisions in the Electricity Supply Code, for ensuring the recovery of arrears of electricity dues and amounts, due to the Licensee, keeping in mind the Hon: High Court's and Hon: Supreme Court's Judgments, delivered on the said matter referred. Till such regulations or rules are framed by the Hon: Commission, it was told to keep pending the arrears of previous consumers.

Accordingly the Hon: KSERC has issued the notification No.641/CT/12/KSERC dated 30<sup>th</sup> May 2012, as directed by the Hon: high Court of Kerala referred above, amending the existing Clause 12 of the Kerala Electricity Supply Code, 2005, as; "*.....(2) Notwithstanding anything contained in sub clause (1), the purchaser referred to therein shall deposit an amount equivalent to such arrears excluding interest with the Licensee, which shall be reimbursed as and when realized from the previous owner/occupier.*"

Hence the question is answered as, that the purchaser of a property or premises having electricity arrears, will become eligible to get the new service connection on the same property, only after clearing the dues or remitting the electricity charge arrears (of the previous owner or occupier), as deposit with the Licensee.

The respondent has reported the electricity dues of the property, bought by the appellant, pending as follows;

1).Temporary connection No. T4/98-99	= Rs. 1, 31, 295.00
2). Consumer No. 13737	= Rs. 87, 900.00
Total	= Rs. 2, 19, 195.00,

The above amount contains both arrears of electricity charges and its interest portion for default made in timely payments. As per the new Regulation, the purchaser of the property having arrears is required to remit only the electricity charges and not any interest portion. The caution deposit or the security deposit, kept with the Licensee, against the said service connection shall also be adjusted. Hence it is decided that the appellant is liable to remit the electricity charge arrears only i.e. excluding the interest, as deposit till the actual dues including the interest is recovered from the original owner, through suitable means or taking appropriate legal steps. And once the said amount is realized from the previous owner, the amount so deposited by the appellant, shall be refunded. The respondent should pursue to recover the arrear amount from the previous owner, as per rules, even after getting the Electricity charge arrears deposited by the new purchaser of the property.

