

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P.043/2014

(Present: Sri. V.V. Sathyarajan)

Dated 30th day of January 2015.

Appellant : Shri.Jouhar Ali

Rarankandath House,
Thrikkannapuram P.O,
Malappuram – 679 573.

Respondent: (1). The Assistant Executive Engineer,
Electrical Sub Division,
KSEBoard Ltd, Valancherry,
Malappuram (Dt).

(2). The Assistant Engineer,
Electrical Section,
KSEBoard Ltd, Kuttippuram,
Malappuram (Dt).

Additional Respondent : Shri.Rarankandath Aboobacker
Rarankandath House,
Thrikkannapuram P.O,
Malappuram (Dt)

ORDER.**Background of the case:-**

The appellant and his brother Usmankoya have been conducting Kala Furniture and Kala Home appliances as tenants in a building owned by the appellant's brother Sri.Aboobacker. Consumer numbers 6201 and 3457 relate to Kala Furniture and Kala Home Appliances respectively. At first there were seven connections in the building. But five service connections 3458, 5461, 6285, 6286 and 6287 were dismantled. For regularising the remaining two connections 3457 and 6201 the complainant submitted application on 05.02.2010 and executed two Indemnity Bonds in Form No.5 before the

Assistant Engineer, Electrical Section, Kuttippuram after remitting the then existing dues. Thereafter monthly bills were also paid regularly.

There were some disputes and litigations between the appellant and the additional respondent before the CDRF, Malappuram and before the Hon'ble High Court of Kerala. As per the orders of the Hon'ble High Court in WP (c) 35132/2010, the respondents were directed to conduct an independent enquiry and to take steps as envisaged by law. The respondents were also directed either to regularise or to disconnect connections 3457 and 6201 as envisaged under law. Finally the KSEBoard Ltd, after conducting an enquiry, passed an order directing to penalize for unauthorised use of electricity and to issue notice for removing unauthorised load connected to 3457 and 6201. It was also directed to regularise the load to these connections and to disconnect the supply to goods lift.

Aggrieved by the above order of the KSEBoard Ltd, the appellant approached the CGRF, Kozhikode seeking direction to regularise the supply connection No.3457 and 6201. But the petition was dismissed by the CGRF. Hence, this appeal petition is filed.

Arguments of the Appellant.

The order of the CGRF in OP No.54/2009-10 was set aside by the Hon'ble High Court on 09.01.2012 by its judgement in WP (c) 35132/2010. Hence, the present finding of the CGRF that "the matter is already adjudicated by the Forum earlier and the petition is hit by the resjudicata" is baseless and utter false. The Kala Furniture and Kala Home Appliances are having license from the Grama Panchayath. The order to pay penal amount had been challenged before the CGRF. There are no records or data to show that the appellant used additional load during the period from 26.11.2010 to 16.10.2012. Monthly bills were promptly paid for both consumer number 3457 and 6201. The penal bill numbers 297315 and 297316 have to be declared invalid. The above bills were issued without serving provisional bill and without hearing the consumer. Moreover, the appellant had produced copy of application and Indemnity Bond already submitted on 05.02.2010. Hence, the appellant argued that he is not liable to pay any penal charges from 05.02.2010.

The appellant further argued that in view of the judgment in WP (c) 6601/2012 A and WA 1057/2012, the objection of the land lord and consumer is to be neglected. Hence the connection to both 3457 and 6201 may be reinstated.

Arguments of the Respondent.

The respondent stated that the registered consumer of service connection numbers 6201 and 3457 is Sri.Rarankandath Aboobacker. Out of the seven connections five of them were dismantled on 01.02.2010 because multiple connections are not permitted in the same premises.

The CGRF Kozhikode issued order in OP 54/09-10 filed by Sri.Rarankandath Aboobacker, directing the respondents to proceed with section 126 of Electricity Act, 2003 against the unauthorised loads in the above service connections. Against the above order of CGRF Kozhikode the appellant filed writ petition No.35132/2010 before Hon'ble High Court. The additional respondent Sri.Rarankandath Aboobacker also approached Hon'ble High Court in the same issue vide WP (c) 13282/2011. Meanwhile an inspection was conducted on 23.02.2010 and a provisional assessment bills for Rs.29,700/- and Rs.59,400/- were issued in service connections 3457 and 6201 respectively.

On 09.01.2012, the Hon'ble High Court issued common judgement in both WP (c) No. 35132/2010 and WP (c) No.13282/2011 by setting aside the order of CGRF Kozhikode dated 10.11.2010 and directed to recover any charges towards the unauthorised use of electricity from Sri Jouhar Ali and Shri. Rarankandath Aboobaker is not responsible. The KSEBoard was directed to conduct an independent enquiry into the use of unauthorised use of electricity if any and either to regularise or to disconnect the load in the above service connections as per law. As per the findings of the independent enquiry committee, Board issued an order as follows:-

1. Sri.Jouhar Ali should remit the penal charges in the consumer No.6201 and 3457.
2. Disconnection notice should be issued for removing the unauthorised loads in the service connections.
3. The spot disconnection notice should be issued in service connection No.6201 as it is connected with un safely operated goods lift.
4. The loads in the above two service connections may be regularised only after getting bonafide building numbers form the Local Body.

As per the above Enquiry Committee Report, bills for Rs.1,44,680/- and for Rs.72340/- were issued in consumer Numbers 6201 and 3457 respectively and service connection number 6201 was disconnected after issuing spot disconnection notice. The appellant again approached the Hon'ble High Court and filed WP (c) 25147/2012

for reconnection of consumer 6201 and quashing the penal bills. The Hon'ble High Court issued an interim order to maintain status quo in electric connections provided at the premises of Kala Home appliances and Kala Furniture. While the matter is pending with Hon'ble High Court, the appellant filed a complaint before CGRF Malappuram vide CC No.275/2012 for reconnection and quashing the bills. The CDRF issued an interim order to reconnect consumer No.6201 and remit the half of the amount of bill No.297315 dated 16.10.2012 without knowing the case before Hon'ble High Court. As per the interim order of CDRF the appellant withdrew the case WP (c) No.25147/2012 on the file of the Hon'ble High Court and remitted Rs.73,750/- in consumer No.6201. Meanwhile appellant submitted to applications for regularisation in consumer No.6201 and 3457 at Electrical Section, Kuttippuram on 15.12.2012. The Assistant Engineer rejected the applications since the appellant was not the registered consumer.

On 05.02.2013 the Assistant Engineer, Electrical Section, Kuttippuram disconnected the service connection No.3457 after issuing notice. The appellant filed revision petition No.24/2013 before the State Consumer Redressal Commission for reconnection of consumer No.3457 while the matter was pending with the Hon'ble High Court. The State Commission, without knowing the matter was pending before the Hon'ble High Court, ordered to reconnect the consumer No.3457.

Sri.Rarankandath Aboobacker, the owner of the building filed a petition WP (c) No.15217/2013 before the Hon'ble High Court against the CDRF's order dated 14.11.2013. The copy of the above order is yet to be received. The standing counsel to KSEBoard informed that the WP (c) No.15217/2013 had been disposed of directing the CGRF to consider the maintainability of the petition and to hear the arguments of the building owner before passing any orders.

On 11.10.2013, CDRF Malappuram dismissed the CC No.275/2012 filed by the appellant. As CDRF dismissed the petition, the only existing order in this matter is the Board Order dated 08.10.2012, which is based on the independent enquiry conducted subsequent to the High Court judgement dated 09. 01.2012. In the end the service connection to consumer No.6201 was disconnected after issuing spot disconnection notice and arrear notices were issued to both consumers 6201 and 3457.

On 31.12.2013, CGRF Kozhikode ordered in OP No.69/2013-14 directing the appellant to remit all arrears pending against consumer No.6201 and 3457. The respondent stated that service connection to consumer number 3457 was disconnected on 25.07.2014 after issuing notice and consumer number 6201 was disconnected on 25.10.2013 due to unauthorised and unsafe condition of loads in the premises. Consumer number 3457 was disconnected due to non payment of arrears for unauthorised extension of supply. The services were disconnected based on the Board order dated 08.10.2012 which had been issued on the basis of an independent enquiry ordered by the High Court. The respondent argued that the CGRF Kozhikode issued the order in OP No.69/2013-14 after a thorough study and requested not to set aside the order and to dismiss the petition with a direction to remit all outstanding arrears due to the Board.

Argument's of the Additional Respondent.

The registered consumer of service connections 6201 and 3457 is the Additional respondent and not the appellant. The Additional respondent and his wife are the owners of the building. Since the Additional respondent was abroad till 2006, the appellant was entrusted with the supervision of the construction of the said building. When Additional respondent's son completed his studies and started taking care of the building, it is found that the appellant had obtained power connection to the building by fraudulent means. Hence, he made a complaint to the Assistant Engineer, Electrical Section, KSEBoard Ltd, Kuttippuram about the unauthorised electric connections. But, the appellant and his people resisted the disconnection - efforts of the KSEBoard. The Additional respondent in his complaint dated 03.03.2010 addressed the Assistant Engineer, Electrical Section, KSEBoard Ltd, Kuttippuram to disconnect supply to 6201 which was used for operating goods lift. Moreover, he has complained to the Electrical Inspector that the appellant illegally installed a lift in the building. The Electrical Inspector, in his letter dated 02.06.2010 stated that the lift installed was not in accordance with law.

Pursuant to common judgement in WP (c) 35132/10 and WP (c) 13282/11, an enquiry committee was constituted and thereafter a report was submitted by the said enquiry committee. The committee has recommended that 'spot disconnection notice' may be issued to disconnect the electric supply to the service lift operated in the premises by extending supply from consumer No.6201, since the said connection is endangering to the life of human beings.

On getting the report of Independent Enquiry Committee, an order was issued on 08.10.2012 for removing the unauthorised load connected

to consumer numbers 6201 and 3457. It was also directed to penalize the appellant for the unauthorised use of electricity. It was also directed to do the regularization of any load to the above connections only after getting bonafide building numbers allotted by the Panchayath. The power connection to 6201 was disconnected on 18.10.2012 long before obtaining the status quo order on 30.10.2012. On 22.10.2012 the Assistant Engineer, Kuttippuram has informed the appellant that the application for regularization cannot be entertained, since the appellant is not the registered consumer. In the event of paying rent regularly by the appellant- tenant the Additional respondent (landlord) will not raise any objection to the regularization of consumer No.3457. The appellant has not paid any rent for 2nd and 3rd floor of the building. If the appellant agrees to pay the rent, the 3rd respondent is willing to regularize the connections. The KSEBoard authorities have not given any sanction to the service lift. The 2nd respondent has already replied to the appellant that it is not possible to regularize the connection since the connection is in the name of the Additional respondent.

Analysis and Findings.

Hearing was conducted in the chamber of State Electricity Ombudsman, Conference Hall, Vidyuthibhavanam, Gandhi Road, Kozhikode on 26.11.2014. Appellant and Additional respondent appeared before this Authority. Sri.Praveen M.A. Assistant Executive Engineer represented the 1st and 2nd respondents. Hearing the arguments of parties in the matter and perusing the appeal petition, statement of facts, documents etc, this Authority comes to the following conclusions.

On going through the records it can be seen that the appellant is a tenant under Additional respondent. Originally there were seven connections in the building with consumer numbers 6285, 6286, 6587, 3458, 3461, 6201 and 3457. Out of which five numbers were dismantled on 01.02.2010 and the remaining are 3457 and 6201. The registered consumer is Sri.Rarankandath Aboobacker. The basic issue in this matter is the dispute between the appellant and the Additional respondent regarding the ownership of the building. The Additional respondent raised objection to regularization of additional load in the above mentioned consumer numbers, since the appellant was his rival who requires connection in the rented premises.

The CGRF, Kozhikode in OP No.54/2009 dated 10.11.2010 had directed the respondents therein to take action under Section 126 of Electricity Act, 2003. This was challenged before the High Court in WP(C) 35132/2010. The additional respondent also filed WP(C) 13282 of 2011 before Hon'ble High

Court and prayed for the implementation of action for unauthorised use of electricity under Section 126 of Electricity Act 2003. The main prayer was that the respondent should not be responsible for any charges likely to be levied by KSEBoard for unauthorised use of electricity in consumer No.6201. The writ petitions were disposed of by the Hon'ble High Court directing the respondents to conduct an independent enquiry by constituting a committee and to take steps as envisaged under law. Accordingly an enquiry committee was formed and an enquiry was conducted. After the receipt of the enquiry committee report, Board issued an order vide B.O. (M.D) No.1802/2012 (LE.IV 1119/2012) dated 08.10.2012 Thiruvananthapuram as detailed below.

1. Sri.Jouhar Ali/ the petitioner in WP (C) 35132/2010 may be penalised for the unauthorised use of electricity as per the inspection dated 23.02.2011.
2. Disconnection notice may be issued for removing unauthorised load connected to consumer numbers 6201 and 3457.
3. A spot disconnection notice may be issued to disconnect the electric supply to the service lift operated in the premises and connected by extending supply from consumer number 6201.
4. Regularization of any loads to these premises of consumer number 3457 and 6201 may be done only after getting bonafide building numbers allotted by the Local Authority concerned.

For implementing the first direction, respondent issued bills for Rs.1,44,680/- and Rs.72,340/- in consumer number 6201 and 3457 respectively. And service connection to consumer number 6201 was disconnected after serving spot disconnection notice. Aggrieved against the respondent's action, appellant approached Hon'ble High Court and filed writ petition WP(C) 24157/2012 for reconnection of consumer number 6201 and quashing the penal bills issued. Appellant also approached CDRF Malappuram vide CC No.275/2012 for the same issue. The CDRF issued an interim order to reconnect the consumer number 6201 and directed to remit half the amount. The appellant remitted an amount of Rs.73,750/- as per interim order and withdrew the writ Petition No.WP(C) 25147/2012 filed before Hon'ble High Court. Subsequent to the Board Order the appellant approached the Electrical Inspectorate, Malappuram with an application under Right to Information Act 2005. A specific question was asked as to whether sanction from Electrical Inspectorate had been required for operating goods lift. The Information Officer has reported that no permission is required for operating a goods lift. Again the appellant approached the Assistant Engineer, Electrical Section, Kuttippuram on 05.11.2012 for regularising service connections 6201 and

3457. But the respondent did not take any steps alleging that the appellant is not the registered consumer. Then the appellant again approached the Hon'ble High Court by preferring WP (C) 26545/2013 and interim order was issued by the Hon'ble High Court to maintain status quo.

From the above facts it is seen that the reasons relied on by the respondents for the disconnection of supply to consumer number 6201 and bills issued for unauthorised use of supply from 26.11.2010 to 16.10.2012 are not sustainable and that the disconnection was done without observing the Rules and Regulations. From the records, it can be seen that the appellant submitted an application for regularisation of additional load along with indemnity Bond and other documents proving tenancy as early on 05.02.2010. The respondent has not taken any action on that application. It can be presumed that the lethargy shown by the respondents on that application culminated in the present conundrum. Now it is not practical to take a decision relying on those documents in view of the subsequent developments between the appellant and additional respondent. However the additional respondent in his counter statement has agreed to regularise the connection, if the appellant remit the rent for the rest of the rooms. So it is made clear that if the appellant or the additional respondent approaches the KSEBoard, with relevant documents, the respondent Board shall consider the application for regularisation without any delay. The respondent KSEBoard is not expected to take a partisan role in the dispute existing between the landlord (third respondent) and tenant (appellant).

It is not out of place to note the fact that the CGRF Kozhikode passed the order in OP No.69/2013-14 on 31.12.2013. But that order is seen despatched only on 30.06.2014 and the same reached the appellant on 25.07.2014. The second respondent disconnected the supply to the consumer No.3457 on the same day i.e. 25.07.2014. The second respondent implemented the order without giving breathing time and without giving notice as per Regulation 25(g) of Supply Code 2005. Finally this Authority, in its interim order dated 03.09.2014, directed the respondent to reconnect the supply to the consumer No.3457. That order is confirmed now subject to the other observations made in this order. Needless to say the appellant is liable to remit the regular bills and other payments due to Board timely.

The only question remaining to be discussed further is the consequences of the Board Order said to be issued in obedience to the directions in the common judgment of the Hon'ble High Court. On a perusal of the common judgement it can be seen that the instructions contained in the

Board Order are not specifically stated in the High Court Judgement. The Board Order cannot be directly linked to the common judgement of the High Court. The Board Order was issued subsequent to the enquiry conducted by the expert committee ordered to be constituted by the High Court. The parties, aggrieved by the Board Order, can very well challenge the same before the Hon'ble High Court. The appellant herein is not obstructed from complaining against the Board Order, though there exists the common judgement of the High Court. It is reiterated that what the Hon'ble High Court ordered is constitution of an enquiry committee only. The findings of the committee cannot be treated as the findings of the High Court.

Decisions.

In the light of the above detailed evaluation of evidence and legal aspects the following decisions are made.

1. Even though the respondent issued penal bills for Rs.29700/- and Rs.59400/- for the unauthorised use of supply under Section 126 of Electricity Act 2003, the assessment bill become final only when the Assessing Officer passes the final order, after considering the objections and after affording opportunity of personal hearing. Then only the person against whom such assessment is made will become liable for payment of the amount of penalty. Sub Section (4) Section 126 provides an option to the person who is served with provisional assessment to accept such assessment and make deposit of the amount assessed, within 7 days of service of such provisional assessment. But as long as such an option is not exercised or when the person up on whom the provisional assessment is served has chosen to object the same, the assessment cannot be said to be completed/finalised, and no liability can be fetched, until final order is issued. In the case at hand, it is evident that the respondent issued the bills and demanded payment of the amount of penalty provisionally assessed even before affording an opportunity to file objections and even before conducting any personal hearing. Such a demand cannot be sustained under law and is liable to be quashed. Hence the demand issued for Rs.29,700/- and Rs.59,400/- is hereby quashed. The amount already remitted by the appellant in this regard may be refunded along with interest applicable without delay at any rate before 30 days from the receipt of this order.
2. The appellant is also not liable to pay any penal bill from the date of application submitted by the appellant for regularization with Indemnity

Bond dated 05.02.2010, since the respondent has not taken any action on that application.

3. Regulation 14(4) and 14 (4) (b) of KSEB's Terms and Conditions of Supply, 2005 ensures supply to a consumer in the absence of consent from the owner of the premises, if the consumer observes the rules/conditions stipulated. Hence, the appellant is eligible for reconnection based on his application dated 05.02.2010. In view of the above Regulation and in view of the decision No.1, the service connection to consumer No.6201 is liable to be reconnected.
4. It is not out of place to hold that the findings of the enquiry committee that led to the issuance of spot disconnection notice to disconnect electric supply to the goods lift operated in the premises is against real facts, rules and prevailing regulations.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is allowed to the extent as ordered and is disposed of accordingly. The order of the CGRF in OP No.69/2013 - 14 dated 31.12.2013 is modified to the above extent. No order on costs.

ELECTRICITY OMBUDSMAN.

No.P/043/2014/ /Dated.

Forwarded to:

1. Sri.Jouhar Ali, Rarankandath House, Thrikkannapuram. P.O, Malappuram, PIN – 679 573.
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBoard Ltd, Valancherry, Malappuram (Dt).
3. The Assistant Engineer, Electrical Section, KSEBoard Ltd, Kuttippuram, Malappuram (Dt).
4. Sri.Rarankandath Aboobacker, Rarankandath House,Thrikkannapuram P.O, Malappuram (Dt)

Copy to:

- 1) The Secretary, Kerala State Electricity Regulatory Commission, KPFCBhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
- 2) The Secretary, KSEBoard Ltd, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4
- 3) The Chairperson, Consumer Grievance Redressal Forum, Vydyuthibhavanam, KSEBoard Ltd, Gandhi Road, Kozhikode.

