

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/027/2016

(Present: V.V. Sathyarajan)

Dated: 13th July 2016

Appellant : Sri K.Surendran &
Smt. S.Ushakumari
'Ushus',
Hospital Junction,
Parassala P.O.,
Thiruvananthapuram.

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Parassala,
Thiruvananthapuram.

ORDER

Background of the case:

The appellants Sri K. Surendran & Smt. S. Ushakumari are the owners of 10 cents of land comprised in Resurvey No. 131/14 of Parassala Village. On 25-02-2012, the appellants gave a licence to one Sri Vandrose for running a driving school in a semi permanent shed bearing Door No VIII/VI A in the above said property for a period of 3 years. Sri Vandrose obtained an electricity connection with consumer No. 23631 under the jurisdiction of Electrical Section, Parassala, with the consent of the appellants. After completing the license period of 3 years the appellant has not renewed the agreement further.

The appellants wanted to change the name of the registered service connection with consumer No. 23631 to the appellant's name and hence approached with an application to the Assistant Engineer, Electrical Section, Parassala and Assistant Executive Engineer, Electrical Sub Division, Parassala which was not allowed by them. Aggrieved by this, the appellants filed a petition before the CGRF, Kottarakkara vide OP No.1658/2015. The CGRF disposed of the petition with a direction to the respondent to change the name of the registered consumer on production of the documents by the appellants as per the model application form for change in name of registered consumer Annexed to the

Regulation 90(1) of Kerala Electricity Supply Code, 2014. Not satisfied with the above decision of the CGRF, the appellant submitted this appeal petition before this Authority.

Arguments of the appellant:

- 1) The appellants are in absolute possession, enjoyment and ownership of 10 cents of property comprised in Resurvey No. 131/14 of Parassala Village. The appellants obtained the above property by virtue of Sale Deed No. 2500/1999. There is a semi permanent building in the above property.
- 2) On 25-02-2012, the appellants gave a licence to one Sri Vandrose for running a driving school in the semi permanent shed bearing Door No VIII/VI A for a period of 3 years. The period of licence was over and the license arrangement was not renewed. Now Sri Vandrose is not conducting driving school in the above property.
- 3) Sri Vandrose filed a suit against the appellants as OS.211/2015 for a temporary order of Injunction and the Hon'ble Munsiff Court, Neyyattinkara after hearing both sides dismissed the injunction application granted in I A 1152/2015 in OS.211/2015.
- 4) While Sri Vandrose was in occupation in the above building, he obtained electricity connection as consumer No. 23631 with the permission of the appellants. The same was not renewed thereafter. The appellants wanted to take electricity connection in their name. Hence the appellants filed an application for change of name of consumer in the name of appellants as contemplated under Regulation 90(1) of Electricity Supply Code, 2014.

The Assistant Engineer dismissed that application on flimsy ground. Against that order the appellants preferred appeal before the Assistant Executive Engineer, Parassala as 393/2015-16/21-11-2015, the Assistant Executive Engineer, dismissed the appeal on the ground that the consumer is not willing to change the name of the consumer and hence the appeal was dismissed.

Against that the appellants preferred complaint before the Consumer Grievance Redressal Forum, Kottarakkara as OP No. 1658/15. The Consumer Grievance Redressal Forum without consideration of the subject matter in its proper perspective disposed of that appeal with a "direction that the appellants shall produce documents as per Regulation 90(1) of Kerala Electricity Supply Code with annexure VIII, then the name of the consumer will be changed. The above orders are totally illegal. Hence this appeal is filed on the following among other.

- 1) The order of the respondents in rejecting the application for change of consumer in the name of the appellants is totally illegal and it is liable to be set aside.

- 2) The respondents, without conducting any enquiry and without verification of any documents, arbitrarily found that for change of consumer-ship consent of Sri Vandrose is necessary. It is against the provisions of Electricity Supply Code.
- 3) Sri Vandrose has no manner of right, title or interest, whatsoever over the property and building wherein the electric connection is taken. The respondents have not ascertained as to what was the right to Sri Vandrose over the said property and building. Without ascertaining the title of Sri Vandrose over the said property and building, the respondents demanded to produce consent from him for change of name of consumer.
- 4) The respondents even without ascertaining the title and ownership of the appellants over the said property and building, demanded the appellants to produce the consent from Sri Vandrose for change of name of consumer-ship.
- 5) The respondents ought to have conducted an enquiry about the title and ownership of the appellants over the property and building and after convincing the same the respondents might and ought to have changed the consumer-ship in favour of the appellants.
- 6) The appellants gave permission to Sri Vandrose only for a limited period of 3 years. No further consent was given to him. The appellants don't want the consumer No. in the premises of the appellants; hence on request of the appellant service connection is only to be dismantled on termination of the Licence Agreement.
- 7) Without the consent of the appellants, Sri Vandrose is not entitled to renew the consumer or to maintain the connection in the property of the appellants.
- 8) For dismantling the connection no consent from Sri Vandrose is necessary. Appellants need not follow the proceedings laid down in Rule 90(1) of the Kerala Electricity Supply Code since the same is applicable only due to change in the ownership or occupancy.
- 9) The appellants are the owners even prior and subsequent to the electric connection and hence proof of ownership, no objection certificate from the existing consumer etc. are not at all required.
- 10) The existing consumer is not the title holder nor is he in possession of the building. Hence imposing of unreasonable conditions are ultra virus.

For these and other reasons to be submitted at the time of argument, it is humbly prayed that this Hon'ble Appellate Authority may be pleased to allow this appeal and thereby to set aside the order No. AE/ES/PSLA 98/15-16 dated nil of the Assistant Engineer, Parassala, order No. AEE/PSLA/393/2015-16/21-11-2015 dated 21-11-2015 of the Assistant Executive Engineer, Parassala and also the order No. CGRF/KTR/OP No. 1658/2015 & 3/2016 dated 14-03-2016 of the Consumer Grievance Redressal Forum, Kottarakkara which was communicated to

the appellants on 25-03-2016 and the orders or else to dismantle the electric connection from the premises of the appellants.

Arguments of the respondent:

The respondent has submitted the following counter statement against the appeal petition preferred by the appellant.

Sri Vandrose who is the lessee of the appellants' property has applied for an electric connection with the consent of the appellants for conducting automobile workshop and the same was provided with consumer No. 23631. Later on 28-08-2015, the appellants have applied for change in name of the registered owner of consumer No. 23631 to the Assistant Engineer, Electrical Section, Parassala. The Assistant Engineer has denied the request in the absence of a written consent from the present registered consumer. Aggrieved by this, on 27-10-2015, the appellants filed a representation before the Assistant Executive Engineer, Parassala which was also rejected on the grounds that Sri. Vandrose expressed his unwillingness to change the ownership. Against the orders of Assistant Engineer and Assistant Executive Engineer, the appellants filed a petition before the CGRF, Kottarakkara vide OP No.1658/2015.

The CGRF disposed of the petition with a direction to the respondent to change the name of the registered consumer on production of the documents by the appellants by following Annexure 8 of the Regulation 90(1) of Kerala Electricity Supply Code, 2014. The contention of the respondent is that a written consent from the present registered consumer is necessary for changing the name of the registered consumer as per Regulation 90 (1) of the Supply Code, 2014. Even though the appellant is the owner of the premises, he could not produce the NOC from the existing registered consumer which caused rejection of the appellants' application for changing the name and address of the consumer.

Analysis and Findings: -

The hearing of the case was conducted on 22-06-2016, in the Court Hall of CGRF (South), Kottarakkara. The appellants' side was represented by Sri. K. Surendran, and the respondent by Sri. Saji Kumar, the Assistant Engineer, Electrical Section, Parassala and they have argued the case, mainly on the lines stated above. On examining the appeal petition and argument note filed by the appellant, the statement of facts and argument note of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings leading to the decisions thereof.

The issue referred in this appeal is with respect to the change of name and address of the consumer No. 23631 in the records of the licensee.

The appellants are in absolute possession, enjoyment and ownership of 10 cents of property comprised in Resurvey No. 131/14 of Parassala Village. On 25-02-2012, the appellants gave a licence to one Sri Vandrose for running a driving school in the semi permanent shed bearing Door No VIII/VI A for a period of 3 years. The appellants gave permission to Sri Vandrose only for a limited period of 3 years. No further consent was given to him.

But the respondent denied the request of the appellants' for change of the name and address of the registered consumer because of the failure on the part of appellants to produce a written consent from the present registered consumer as per Regulation 90 (1) of the Supply Code, 2014. After hearing the submissions made by the appellant and the respondent and on perusal of the records produced, it is prima facie evident that the property is originally owned by the appellants and the present registered consumer is a licensee who obtained connection with the consent of the appellants.

As per Regulation 90 (1) of Supply Code, 2014, application for the change in name of the registered consumer due to change in the ownership or occupancy shall be applied in proper form (Annexure 8) along with the following documents.

1. Copy of the latest bill duly paid.
2. Proof of ownership/legal occupancy of premises.
3. No objection certificate from the existing consumer if available /possible
4. Registered deed/successor certificate (if any other document)

On going through the model application form for change in name of registered consumer (Annexure 8) of Supply Code, 2014 it can be seen that No Objection Certificate from the existing consumer can be insisted if it is available or possible as mentioned in Note No. 3 of Annexure 8 of Supply Code, 2014. Regulation 90(1) of Supply Code, 2014 is applicable for change in the name of registered consumer due to the change in the ownership or occupancy. In this case, there is no change of ownership. The appellant is the owner of the premises which was earlier given to Sri Vandrose on a license agreement for conducting a driving school.

Regulation 91 (4) (f) reads as ***“in case the no objection certificate from the registered consumer or previous occupant of the premises or a person authorized 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.”*** The above provisions reveal that the production of the NOC from the existing consumer is not mandatory for change of name. Further, the evidence shows that Sri Vandrose is not continuing the business in the premises and not even occupying the premises. In this background the Regulation 91(4) (f) will apply in this case.

On a perusal of the records, it is revealed that a civil case in OS No. 211/2015 filed by Sri Vandrose is pending in the Court of the Additional Munsiff -

I, Neyyattinkara and a Criminal Case No. 399/2015 under Sections 468, 471, 406 & 420 IPC against Sri Vandrose is pending in the Court of the Judicial First Class Magistrate, Neyyattinkara. As these cases are not directly related to the issue in question referred in this appeal, there is no bar for this Authority to consider the issue and pass appropriate order.

From the records it is revealed that the registered consumer is not conducting any business in the premises in question or an occupant in the said premises, it is proper for the respondent to take action on the application for change in name without insisting no objection certificate from the existing consumer as per the Note 3 of the model application form (Annexure 8) of Regulation 90(1). In the absence of no objection certificate from the registered consumer the owner can deposit the security amount as stipulated in the Supply Code afresh and apply for change of name.

Decision

In view of the discussions, it is concluded that the respondent is directed to change the name of the appellants on deposit of security amount afresh by the appellants as per Regulation 91(4) (f) and observing all other formalities. This shall be done at any rate within 30 days from the date of receipt of this order. It is also made clear that the security deposit remitted by Sri Vandrose can be refunded to him on his application if any as per the prevailing rules.

The order of CGRF in OP No. 1658/2015 & 3/2016 dated 14-03-2016 is set aside.
No order as to costs.

ELECTRICITY OMBUDSMAN

P/027/2016/ _____ Dated: _____

Delivered to:

1. Sri K.Surendran & Smt. S.Ushakumari, 'Ushus', Hospital Junction, Parassala P.O., Thiruvananthapuram

2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Parassala, Thiruvananthapuram.

Copy to:

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