

THE STATE ELECTRICITY OMBUDSMAN  
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9447576208  
Email:ombudsman.electricity@gmail.com

---

APPEAL PETITION NO. P/022/2016

(Present: V.V. Sathyarajan)

Dated: 29<sup>th</sup> July 2016

Appellant : Smt. Pathumma  
Malayampalli,  
Peruvankuzhiyil,  
Valakulam, Venniyoor,  
Malappuram

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division,  
Thirurangadi, Malappuram

### **ORDER**

#### **Background of the case:**

The appellant, Smt. Pathumma, is an applicant of electric connection for her newly constructed house under the jurisdiction of Electrical Section, Venniyoor. She applied for electric connection after remitting Rs. 50.00 as application fee and Rs. 100.00 as processing fee on 09-10-2015. But the respondent denied her request alleging that the premises requires for new service connection was detected for theft of electricity and subsequently issued penal charges for an amount of Rs. 46,180.00 as per Section 126 of Electricity Act, 2003.

According to the respondent as there is a case pending against the appellant in connection with theft of electricity and an amount of Rs. 46,180.00 is still pending towards the penalty, the service connection could not be given to the appellant. Aggrieved against the stand taken against the issuance of new service connection by the respondent, the appellant approached the CGRF, Kozhikode, with a petition. But the CGRF disposed of the petition vide order in OP No.108/2015-2016 dated 02-03-2016 with the following decisions:

1. The respondents shall effect supply to the petitioner, premise, only after the petitioner remits Rs. 46,180.00 and on proper application, as per existing statutes.
2. The petitioner will be eligible to claim refund for the above amount if and only if he is acquitted by the lawful authority from theft charges.
3. The respondents shall strictly comply with Regulation 160 sub regulation (7) to (10), while effecting supply.
4. Petition allowed accordingly.

Not satisfied with the above decisions of CGRF, the appellant has filed this appeal petition before this Authority.

**Arguments of the appellant:**

The gist of the grievance of the appellant is as follows.

The appellant is an aged lady of 67 years who applied for an electric connection to the building owned by herself. But the officials of Electrical Section, Venniyoor has denied the service connection on the ground that a criminal case was charged against her for theft of electricity and due to this an arrear amount is pending for payment. The appellant has stated that the house for which the electric connection requested is fully owned by the appellant. She had not received any arrear notice from the respondent till date. Further, the appellant has not entered into any agreement with the respondent. In the absence of such an agreement, the respondent has no right to issue an arrear notice.

Further, the appellant was not charged for theft of electricity and not penalized so far. The respondent has the responsibility to conduct a hearing before finalizing the penal bill. No such action has been done in this case. Moreover, the appellant is not an accused in the criminal case charged under Section 135 of Electricity Act, 2003. The appellant's contention is that she was denied natural justice by alleging as an accused unilaterally. The appellant prays this Hon'ble Court/Forum be pleased to order electricity connection considering it as an essential commodity and allow the petition filed by the appellant.

**Arguments of the respondent:**

The respondent raised the following arguments in the statement of facts furnished by him.

A penal bill for an amount of Rs. 46,180.00 dated 22-09-2015 was issued for theft of electricity to the premises for which the appellant requires new service connection. Though the appellant has not accepted the bill, the same was sent to her by registered post which was also not accepted. Hence the appellant was informed vide letter dated 13-10-2015 that an amount of Rs. 46,180.00 is pending and the letter is seen acknowledged by the appellant.

The respondent further stated that as per the site mahazar prepared on 22-09-2015 a complaint registered on 23-09-2015 at Police Station, Thirurangadi. Accordingly the Police registered the above case as No. 1270 and submitted to the First Class Judicial Magistrate Court, Parappanangadi. The respondent contented that even though intimation given to the appellant personally and by post the same was not seen accepted by the appellant. Since the appellant failed to submit any application in this connection, no further steps have been taken to redress her grievance. In connection with theft of electricity a case has been registered as 1270 in the First Class Judicial Magistrate Court, Parappanangadi on 24-09-2015.

**Analysis and findings**

The hearing of the case was conducted on 12-07-2016 in the Conference Hall, TMR Division Office, Shornur and the appellant's side was represented by the appellant and her son, Sri Salam and the respondent's side by Sri Asif Kilimannil, Assistant Executive Engineer, Electrical Sub Division, Kottakkal and Sri Biju K, Sub Engineer-in-charge, Electrical Section, Venniyoor and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellant, the statement of facts of the respondent, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings, leading to the decisions thereof.

The contention of the appellant is that the premises which requires new service connection is fully owned by herself and the respondent has not intimated any amount pending for payment in that premises. Also the statement of the respondent that there is arrear pending in the appellant's premises is not correct since no agreement is executed with the respondent. Another argument raised by the appellant is that before issuing a penal bill a notice or a memo has to be served to the owner of the property and also allow a personal hearing. This was not seen followed in this case. In the criminal case registered under Section 135 the

appellant is not an accused. Considering the above facts the appellant requested to sanction new service connection to her building.

Against the above contentions the respondent stated that a penal bill for Rs. 46,180.00 has been issued to the premises which require new service connection. But the appellant neither remitted the penal bill nor raised any objection till date. As per site mahazar prepared by the inspection team on 22-09-2015 and based on respondent's complaint an FIR was prepared by the Police, Thirurangadi and a case was registered before the First Class Judicial Magistrate Court, Parappanangadi.

***The point to be decided in this case is whether the appellant is entitled for a new service connection to the premises where a penal bill was issued in connection with theft of electricity in an earlier occasion and the penal bill now issued for the same offence is still pending?***

On going through the records it can be seen that the provisional bill for an amount of Rs. 46,180.00 as per Section 126 of Electricity Act was seen issued to Sri Abdul Salam S/o Mohammed and not in favour of the appellant herein Smt. Pathumma. As per the site mahazar prepared by the Sub Engineer-in-charge, Electrical Section, Venniyoor on 22-09-2015, theft of electricity has been detected from the single phase line passing through the property of Sri Abdul Salam, S/o Mohammed, Peruvankuzhiyil House, Valakkulam. The looping of supply from the single phase line was used for the construction of the present building which is owned by the appellant herein. As per the mahazar the Sub Inspector of Police, Thirurangadi has prepared an FIR and registered a Criminal Case under Section 135 of Electricity Act against Sri Abdul Salam, S/o Mohammed, Peruvankuzhiyil House, Valakkulam before the First Class Judicial Magistrate Court, Parappanangadi.

On a perusal of the documents it is found that Sri Abdul Salam, Peruvankuzhiyil House, Valakkulam P.O. had already committed theft of electricity and as per his request he remitted an amount of Rs. 10,000.00 by way of compounding of offence as per Section 152 of Electricity Act, 2003 and remitted Rs. 5,966.00 in terms of Section 135 of Electricity Act, 2003. During the hearing, the appellant herein stated that there are 4 houses including the house in question which requires service connection situated in the compound comprising of 67 cents owned by the appellant. The other 3 houses are occupied by her sons, Sri Abdul Salam and his brothers. A single phase line is passing through the said property from which the looping of electricity was taken for the construction of new building. It is admitted that the respondent issued penal bill for an amount of Rs. 46,180.00 along with notice to Sri Abdul Salam. For availing new service connection the appellant produced an ownership certificate in favour of Smt. Pathumma and others along with the application.

Regulation 159 (6) of the Electricity Supply Code, 2014 says ***“If the theft is committed by any person other than the consumer or his employee or any person acting on his behalf, the authorized officer under subsection (2) of Section 135 of the Act shall take appropriate action under provisions in Part XIV of the Act.”*** If there is any allegation of dishonest or illegal abstraction of energy or tampering of the Meter against the consumer, then it will attract the provisions under Section 135 of Act, 2003. Any such disputes or complaints are not maintainable before the CGRF and Electricity Ombudsman, by virtue of ***Clause 2(1)(f)(vii)(1) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005.*** The Upper Courts of Law has also made it clear that, when there is specific provision in the Act itself to hear such cases by designated Courts or Appellate Authorities, then the same are excluded from the purview of CGRF and Ombudsman.

Here the respondent issued a penal bill for Rs. 46,180.00 to Sri Abdul Salam for the alleged theft of electricity. A criminal case is also pending against Sri Abdul Salam with respect to the allegation of theft of electricity on a second time. The appellant herein is not charge sheeted or issued with any notice with respect to any charge of theft of electricity. So in an overall view of the matter, it can be seen that the appellant is an independent applicant applied for electricity connection to the new building. But the ownership certificate produced by the appellant is issued to **“Pathumma and others”**. This indicates that the owner of the building is not Pathumma alone. While applying new service connection the appellant has not produced any consent from the co-owners.

The looping of supply from the single phase line was used for the construction of the building where new service connection is requested by the appellant. As per Regulation 159 (5) ***“The consumer shall be held responsible for any theft which occurs in his premises irrespective of whether the theft is with or without his knowledge and connivance”***. Regulation 159 (6) ***“If the theft is committed by any person other than the consumer or his employee or any person acting on his behalf, the authorized officer under subsection (2) of Section 135 of the Act shall take appropriate action under provisions in Part XIV of the Act.”***

In this background the penal bill issued to Sri Abdul Salam is liable to be settled before issuing new service connection to the premises applied by the appellant. Hence I don't find any reason to intervene the orders issued by the CGRF in this regard.

### **Decision**

In view of the above discussions the respondent is directed to issue service connection to the new building after complying with all the formalities and after realization of the penal bill for Rs. 46,180.00. I am not making any opinion

regarding the criminal case registered against Sri Abdul Salam as per Section 135 of Electricity Act, 2003 since the matter is pending before the competent Judicial Forum. The appeal petition is disposed of accordingly. The order of CGRF in OP No.108/2015-2016 dated 02-03-2016 is upheld. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/022/2016/                      Dated:

Delivered to:

1. Smt. Pathumma, Malayampalli, Peruvankuzhiyil, Valakulam, Venniyoor, Malappuram
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Thirurangadi, Malappuram

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, Gandhi Road, Kozhikode.