

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/043/2016

(Present: V.V. Sathyarajan)

Dated: 26th September 2016

Appellant : Smt. Anita Poulouse,
7F, Skyline Gateway apartment,
Kalamassery,
Ernakulam.

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Angamaly,
Ernakulam.

ORDER**Background of the case:**

The appellant, Smt. Anita Poulouse, had purchased a property with a service connection having consumer No. 4661 under Electrical Section, Parakkadavu. The above mentioned service connection was registered in favour of one Mr. Sreekumar. O., Edappally, Moozhikulam, Kurumassery P.O. The appellant and her husband are the present occupants of the property and were paying electricity charges up to 09/2014. Since the appellant failed to remit the electricity charges for the month of 11/2014 the respondent disconnected the supply on 18-12-2014 and later dismantled on 17-04-2015.

The appellant alleged that the service connection was disconnected and later dismantled by the respondent without any notice. Hence the appellant requested for restoration of supply, but the respondent denied the request and directed to take a new service connection. Aggrieved against the non restoration of supply, the appellant filed a petition before the CGRF which was disposed in favour of respondent. Not satisfied with the decision of CGRF, the appellant has filed the appeal petition.

Arguments of the appellant:

The appellant's averments in the appeal petition are the following:

The appellant and her husband are the joint owners of property comprised in Survey No. 66/3-2, Block -5 of Parakkadavu Village. The property was purchased from Mrs. Beena and Mrs. Ambika in the year 2010 together with a three phase electric connection with consumer No. 4661 from the Licensee's office. At the time of purchase the appellant and her husband was living abroad in connection with their profession. The electric connection mentioned in the above consumer No. 4661 was properly maintained and the property was continuously used for agricultural purposes for growing crops of different nature.

The appellant submits that the above mentioned connection fall under the category of subsidized agricultural project, for which no amount is normally paid to the KSEB other than the amount appropriated by the agricultural department. That being so, whenever any demand is made by the KSEB, the bills and dues were paid by the appellant on time. There is no default on the part of the appellant in remitting the electricity charges to the department in time. While things stood so, the appellant came to know that during September 2015 the electrical connection with the above consumer No. has been disconnected by the licensee. The electric posts installed by the licensee were also removed from the appellant's property.

Aggrieved by the action of the respondent, the appellant approached CGRF with a complaint; however, the Forum dismissed the petition without taking into consideration the arguments made by the appellant. The arguments presented by the appellant were not even documented in the order issued.

The Forum failed to appreciate that the respondent has not issued any disconnection notice in terms of Section 56 of the Electricity Act, 2003 read with Regulation 139 of the Kerala Electricity Supply Code, 2014 (hereinafter referred to as the "Code"). As borne from the records and the statement made on behalf of the KSEB by the Assistant Executive Engineer at the time of the hearing before the Grievance Forum, the admitted position of the KSEB is that no disconnection notice had either been issued or served upon the appellant at any time. Regulation 139(1) of the Code requires the licensee to issue a' disconnection notice in writing with a notice period of not less than fifteen days intimating the consumer about the grounds for disconnection. Even if one assumes without admitting that there were arrears in charges due in respect of the electricity connection availed at the appellant's premises, the mandatory provisions of Regulation 139(1) require that the disconnection notice is not merely an empty procedural formality that can be ignored, but is intended to provide a consumer with the substantive opportunity to meet the allegations or grounds raised against her.

It is pertinent that Regulation 139(2) grants the discretion to the licensee to disconnect the service only on the expiry of the notice period of fifteen days. In other words, if the licensee does not issue a disconnection notice in terms of this Regulation, and the prescribed notice period is not consequently provided to the consumer, the licensee cannot be permitted to disconnect the service or undertake any further action in respect of such service or such consumer. While this critical fact was canvassed by the appellant in her complaint, and the statement of the Assistant Executive Engineer during the hearing confirmed this position unambiguously, the Grievance Forum erred in ignoring the same and in holding that the "disconnection and ... were done by the Respondents as per rules". The impugned order suffers from malafide and evident non-application of mind, and deserves to be set aside with consequential reliefs to the appellant as well as exemplary costs.

The Forum has completely ignored the provisions of Regulations 174(1) and 175 of the Code governing the issuance of notice to the consumer. Under Regulation 174(1), the licensee "shall ensure" that the notice issued under the Code is in accordance with the Code and in writing. It is the admitted position of the KSEB that it had been unable to serve the appellant at her address or at the address available in the KSEB's records for Consumer No. 4661. It is also admitted by the KSEB that the dismantling notice had been affixed in the premises of the appellant. It is, however, significant to note that the affixation of a notice can actually be done only in circumstances where a consumer "refuses to receive or avoids receiving the notice" as per Regulation 175(2). It is not even the case of the KSEB that these were the circumstances that warranted the affixation of the dismantling notice in the appellant's case. Therefore, it is submitted that the KSEB has failed to adhere to the mandatory provision of Regulation 174(1) which requires the KSEB to ensure that a notice is issued in accordance with the Code.

As a result, the dismantling notice issued by the KSEB could not be acted upon, and ought not to have been upheld by Grievance Forum in light of the glaring irregularities in the conduct of the KSEB's officers. Since the dismantling notice is null and void on account of the failure to serve the notice upon the consumer or any other individual who could have effected constructive notice, the said notice and all subsequent actions are wholly illegal, and the appellant is entitled to the immediate restoration of the electrical connection along with exemplary costs. The Forum has completely ignored the provisions of Regulation 143(3) of the Code. Regulation 143(3) of the Code clearly states that the termination of the agreement for supply of electricity can be done only if the service connection of the consumer remains continuously disconnected for one hundred and eighty days and after "giving a notice of fifteen days to the consumer". In other words, if the licensee does not issue a notice for termination in terms 143(3) of the Regulation, and the prescribed notice period is not consequently provided to the consumer, the licensee cannot be permitted to disconnect the service or undertake any further

action in respect of such service or such consumer. In light of the same, all subsequent actions undertaken by KSEB are illegal and arbitrary, and the appellant is entitled to the immediate restoration of the electrical connection along with exemplary costs.

The Forum has completely ignored the provisions of Regulations 96(1) and 96 (2) of the Code. Regulation 96(1) of the Code states the licensee shall dismantle and remove electric line or electrical plant constructed over, under, along, across, in or upon any land "if the said electric line or electrical plant is not in use continuously for a period of one year or more". It may be pertinent to note that in the case at hand, respondent dismantled" the connection in less than 4 months which is clearly in violation of the Code. While this critical fact was presented before the Assistant Executive Engineer during the hearing, to the utter dismay of the appellant, the same was not taken into consideration.

The Forum ought to have struck down the actions taken by the KSEB pursuant to the dismantling notice because the KSEB's alleged efforts to serve the said notice appear to have been in deliberate disregard of the provisions governing service of the notice. Under Regulation 175 of the Code, the licensee is required to send the notice by registered post or deliver the same by hand. The KSEB has produced no material on record to prove that either modes of registered post or hand delivery could ensure effective service. On the other hand, it is evident even to a lay person like the Complainant that the address at which the KSEB purportedly tried to serve the notice in respect of the electrical connection was insufficient to effect service. The address mentioned on the dismantling notice reads: ("Sreekumar.O., Edappally, Site at Moozhikulam") which would make it almost impossible to locate the person upon whom the service is intended.

Furthermore, the submissions from the KSEB in response to the grievance, also indicates that the notice was affixed to the meter board without even making an attempt to deliver the notice to the aforesaid address. The KSEB instead presented the argument that the notice was affixed to the meter board because the change of ownership was not recorded with KSEB. The appellant wishes to point out that KSEB acted on extraneous information (change of ownership) which was not obtained through official channels. The Grievance Forum has arbitrarily chosen to overlook these crucial facts while summarily arriving at the opinion that the appellant 'has no right to find fault with the respondents". On account of the dismantling notice being defective as no proper service could possibly have been effected in this case, the said notice and all consequential actions pursuant thereto are malafide and patently illegal. The appellant is entitled to the immediate restoration of the electricity connection as a result.

The Forum failed to appreciate that no loss had been suffered by the KSEB on account of the non-payment of the alleged dues for the bi-monthly

period between October 2014 and November 2014. It is pertinent to note that, under Regulation 67(6) of the Code, the KSEB had already collected a security for supply of the electricity which was computed at the rate of three times the average monthly bill amount. Even assuming while not admitting that there were arrears due from the appellant, there could be no possible justification for the undue haste and highhandedness exhibited by the KSEB to issue a dismantling notice within merely eight days from the alleged date of default. No financial loss has been alleged by the KSEB in any case. The highhandedness is further evident from the fact that the KSEB had not even issued a disconnection notice to the appellant at any time, but they were uncharacteristically eager to issue a dismantling notice without any identifiable intent to serve the appellant or any other person.

When any loss suffered by the KSEB could have been easily set off against the security deposit made with respect to this electricity connection at the appellant's premises, each of the actions of the KSEB are ridden with extreme malafide and an intention to burden the common consumer. That the Grievance Forum had been apprised of the appellant's express willingness to discharge any prior dues with respect to the consumption of electricity at her premises, and that there was no intent to evade any payment on the appellant's part. This fact has been recorded in the appellant's application. It is striking, however, that the Grievance Forum has completely ignored the appellant's bonafide and has burdened the appellant with a direction to pursue further legal actions when the objective of the Forum's jurisdiction is to provide speedy resolution to the issues faced by the common consumer.

The appellant had made extensive submissions in writing in her application, as well as through her authorized representative at the time of hearing, and all of the same have been completely disregarded while summarily dismissing the appellant's petition. The aforementioned grounds, inter alia, relating to the non-issuance of a disconnection notice and the failure to serve the dismantling notice were already placed before the Grievance Forum. To the appellant's shock and dismay, none of these substantive submissions which go to the root of the present case were even recorded by the Grievance Forum in the impugned order. This appears to be in pursuance of a premeditated and visibly biased approach on the part of the Grievance Forum, while unreasonably adopting the KSEB's position without any justification.

The Grievance Forum has effectively abdicated its functions and chosen to burden the appellant, who had approached the Forum without seeking any assistance from a legal practitioner presuming that this Forum is dedicated towards amicable and speedy resolution of disputes for common consumers. In effect, without showing any inclination to resolve the issue, the Grievance Forum has not only upheld the prohibition on the supply of services to the appellant, but has also unduly prolonged the conclusion of this case by acting in the same highhanded manner as the KSEB itself.

The appellant would also like to humbly request the Honourable Authority to review if the KSEB has always been consistent in handling the situations as this case and seek statistical data from KSEB to this effect. Hence in the interest of justice it is respectfully requested that this Hon'ble Authority:

- I. Reconnect the electric connection of appellant with Consumer No: 4661 under Electrical Section, Parakkadavu as early as possible.
- II. Grant such other relief that this Hon'ble Authority deem fit to grant under the facts and circumstances of the case

Arguments of the respondent:

The respondent has levelled the following arguments in the statement of facts submitted by him.

Consumer No 4661 under Electrical Section, Parakkadavu, was effected on 22-9-2000, with a connected load of 2238 Watts, in LT V tariff, in the name of Sri. Sreekumar O, Edappally, Moozhikulam, Kurumassery P O. At the time of disconnecting the supply, the ownership of the connection was in the name of Sri. Sreekumar O. The appellants have no right to file complaint in this case since the appellant is not a consumer.

The above connection was using for agricultural purpose and not included in the list of consumers under the Krishi Bhavan. The payment of current charges was made by the consumer or his representative up to 9/2014 and not by Agricultural Department. The supply was disconnected on 18-12-2014 due to the non payment of regular current charges for the month of 11/2014. The argument of the appellant regarding the payment of current charges is false. It is the duty of the consumer to pay the electricity charges promptly.

As per the records of consumers, con No 4661 is in the name of Sri. Sreekumar O and dismantling notice under Reg 139 (6) of Kerala Electricity Supply Code, 2014 was issued to the address of consumer by way of pasting the notice near to the meter board on 20-12-2014, since no responsible persons were available. It is also stated that the information regarding the ownership change of the connection or any application for change of ownership is not yet received in the office for proper communication to the appellant.

Hon'ble CGRF (CR) in its Order dated 02-06-2016 in Complaint No 7/2016-17 dismissed the complaint. CGRF also held that KSEBL act as per prevailing rules for disconnection and dismantling of electricity connection.

It is humbly stated that the action taken from the part of KSEB Ltd., is as per rule and the arguments of the appellant is not sustainable.

Analysis and Findings: -

The hearing of the case was conducted on 30-08-2016 in the chamber of Electricity Ombudsman at Edappally, Kochi. Smt. Anita Poullose, the appellant herself appeared for the hearing and Sri. M.V. Reji, Assistant Engineer, Electrical Section, Parakkadavu, has appeared for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions, thereof.

The main contention of the appellant herein is that the licensee has not issued any disconnection notice in terms of Section 56 of Electricity Act, 2003 read with Regulation 139 of Kerala Electricity Supply Code, 2014. Regulation 139(1) of Supply Code requires the licensee to issue a disconnection notice in writing with a notice period of not less than 15 days intimating the consumer about the grounds for disconnection. Regulation 139(2) grants the discretion to the licensee to disconnect the service only on the expiry of the notice period of 15 days. In the above circumstances, the licensee cannot be permitted to disconnect the service or undertake any further action in respect of such service or such consumer. But the respondent has argued that the appellant has no manner of rights to file the petition before this Authority, since the registered consumer of service connection No. 4661 was one Sreekumar and the appellant is only a stranger and thus challenged the maintainability of the appeal petition.

As per 2(1) (e) of the Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, **a complainant is defined as -**

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;**
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;**
- (iii) the Central Government or State Government - who or which makes the complaint**
- (iv) in case of death of a consumer, his legal heirs or representatives**

As per Section 2 (15) of Electricity Act, 2003, a consumer is defined as "any person who is supplied with electricity for his own use by a

licensee or the government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the licensee, the government or such other person, as the case may be”.

Considering the above definition it is clear that the appellant is a consumer. Hence the argument of the respondent the appellant is not a consumer is found as not sustainable.

Regulation 138(a) of the Supply Code, 2014 grants the licensee to disconnect the supply of electricity” if the consumer defaults in the payment of the dues payable to the licensee as per the bill or demand notice or any order issued by a competent authority, within the period stipulated therein”.

Regulation 139 depicts the procedure for disconnection. – (1) “The licensee shall, in the case of disconnection proposed on the grounds mentioned in clauses (a) and (b) of sub regulation (1) of Regulation 138 above, issue a disconnection notice in writing, as per Section 56 of the Act, with a notice period of not less than fifteen clear days, intimating the consumer about the grounds for disconnection and directing him to pay the dues with penal charges within the notice period.”

Regulation 175 of the Electricity Supply Code, 2014 reads as:

Service of notice:- (1) Any order or notice issued on the consumer by the licensee, including the notice under Section 56 of the Act shall be deemed to be duly served if it is sent by registered post at the correct postal address of the addressee or delivered by hand, with signed acknowledgement to the person residing at the address notified to the consumer:

Provided that in the case of an individual, service of notice to the spouse of the consumer or his authorised representative, and in the case of a firm, company or corporation, service of notice on the Managing Director, Director or Principal Officer or an authorised person of such an institution, shall be taken as sufficient service for the purpose of this Code.

2) If a consumer refuses to receive or avoids receiving the notice, the service may be effected by any of the following methods which shall be deemed as sufficient for service of notice:-

(a) Affixing the notice at a conspicuous place on the premises of the consumer in the presence of two witnesses and photographing the notice; or

(b) Publication of the notice in daily newspaper commonly read in the concerned locality to be kept on record the licensee.

(3) In addition to the methods described above, the licensee may resort to any of the following means also to serve the notice:-

- (i) through special messenger and obtaining signed acknowledgement; or**
- (iii) by courier with proof of delivery; or**
- (iv) by fax; or**
- (v) by e-mail:**
- (vi) Provided that in the case of notice sent by fax or e-mail, it shall be followed by a formal authenticated communication.”**

As per Regulation 41(2) (a) of KSEB Terms & Conditions of Supply, 2005 prevailing at the time of effecting the service connection, **whenever the ownership of a premises changes due to any reason, service connection shall be given as per provisions contained in Clause 19.** As per Regulation 19(3) **when there is a transfer of ownership or right of occupancy of the premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 7 days to the Assistant Engineer/Assistant Executive Engineer concerned.**

Here in this case, the appellant who is the present consumer is not seen taken any steps to transfer the ownership from the registered consumer Sri Sreekumar to her name when the property is purchased in the year 2010 or thereafter. The reason stated for the delay in transfer of ownership is that at the time of purchase of property the appellant and her husband was living abroad.

It is also pertinent to note that the appellant's service connection was disconnected on 18-12-2014 and subsequently dismantled on 17-04-2015. In this regard the cardinal aspect is that the service is an agricultural connection which falls under the category of subsidized one and the payment of current charges is made by the Agricultural Department. This scheme is specifically meant for an agriculturist. Admittedly, there was no usage of supply in the premises for a considerable period of more than 3 years. Normally the agricultural service is given to a particular agriculturist after evaluating his capacity to cultivate and on the approval issued from Agricultural Officer concerned.

Hence I could not find any authority which gives any privilege to a consumer whose agricultural service connection is dismantled for default of payment of current charges. If the appellant desires having a service to her premises she can apply for the same as a fresh applicant.

Decision

If the appellant desires to have a service connection to her premises she can apply for the same as a fresh applicant after complying with the formalities required. If the appellant is making such an application then the respondent is directed to issue a new service connection to the appellant after observing the formalities without any delay. The order of CGRF-CR/Comp/7/2016-17/101 dated 02-06-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/043/2016/_____/Dated _____

Delivered to:

1. Smt. Anita Poulouse, 7F, Skyline Gateway apartment, Kalamassery, Ernakulam.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Angamaly, Ernakulam.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.