

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/019/2017
(Present: V.V. Sathyarajan)
Dated: 21st April 2017

Appellant : Sri Ashraf P.M.
Aravassery House,
Thalikulam P.O.,
Thrissur

Respondent : The Asst. Executive Engineer,
Electrical Sub Division,
KSE Board Limited
Thriprayar, Thrissur.

ORDER

Background of the case:

The service connection with consumer No. 1648 under Electrical Section, Thalikulam was registered in favour of the appellant's father, Sri Muhammed, who expired during 2005. Since the appellant failed to remit the electricity charges of the above service from 4/1999 onwards, the respondent disconnected the service during 2009 and subsequently dismantled. So, the appellant had filed a petition before the Consumer Disputes Redressal Forum (CDRF), Thrissur against the dismantling of the service connection. The appellant also requested for reconnection and to compensate the loss sustained to him due to the dismantling of service by the respondent.

The Hon'ble CDRF, Thrissur, disposed of the complaint vide order No CC.66/2010 dated 16-05-2014 after allowing the complaint partially and the following orders are passed.

- a) "To restore the power supply is made absolute.

- b) The complainant is directed to submit application for exemption to the Agricultural Officer within one month, who should dispose the same within a month. If he is found eligible for exemption, he has right to get exemption from the inception.
- c) No order as to costs”.

Even though the respondent reconnected the service as per the orders of CDRF, the appellant had not produced any sanction from the Agricultural Officer for exemption of payment of electricity charges. Hence the respondent issued notice for disconnection along with arrear bill. But the appellant has not remitted the arrear bill; the service was disconnected and later dismantled after issuing notice to the appellant and revenue recovery proceedings initiated to recover the arrear amount. Aggrieved against this, the appellant filed a petition before the CGRF, Ernakulam on 23-01-2017 which was not admitted but rejected on the ground that the complaint does not come under the category of grievance of an ‘Electricity Consumer’ as specified in the Regulations, vide letter No. CGRF-CR/Misc/2016-17 dated 31-01-2017. Feeling aggrieved with the above decision, the appellant has filed this appeal petition before this Authority with a request to restore the electricity connection, to set aside the arrear bill and also to cancel the RR action already initiated against the appellant.

Arguments of the appellant:

The appellant has adduced the following contentions in the appeal petition.

The service connection having consumer number 1648 was availed in his father’s name, for agricultural purposes. As a matter of general policy, the Government had allowed exemptions from payment of electricity charges to those agriculturists who have been fulfilling the requirements as per the guidelines issued by Agricultural Department. The Hon’ble High Court of Kerala, in its judgment dated 26-02-2002 in OP No. 3065 and 5808 of 2002, it was held that a farmer to be eligible for exemption should not own more than 2 hectares of land, other than land used for paddy cultivation, and there is no limit on the extent of ownership of paddy land. The further condition is that only those farmers who are registered up to 20-05-2001 and whose names are forwarded by the Agricultural Officer to the concerned Electricity Board official will qualify for exemption. The appellant’s argument is that all the farmers in the State are eligible for the exemption based on this judgment.

According to the appellant, he was eligible for exemption, since his father had applied for free electricity and since then, no electricity charge has been remitted. During December 2009, the respondent had disconnected the

electricity connection for agricultural connection and issued arrear bill from 1995 onwards, to the registered owner, the appellant's late father, Sri Muhammed who expired in 2005. No demand notice was issued in the name of the registered owner before 2005. The appellant approached the respondent several times for restoring the connection, but denied and due to non restoration of supply, the appellant sustained damage to his agricultural cultivation. The appellant's contention is that the agricultural service connection cannot be dismantled unless otherwise if there is a misuse or theft detected. Further, the respondent has not issued any bimonthly bills or details regarding non exemption from Agricultural Department.

So, the appellant has sought for the reliefs to restore the service connection, to set aside the revenue recovery proceedings by cancelling the arrear bills and to take proper disciplinary actions against the concerned officers for their lapses. The appellant filed a petition before the CGRF which was not admitted and rejected on the ground that the complaint does not come under the category of grievance of an 'Electricity Consumer' as specified in the Regulations, vide letter No. CGRF-CR/Misc/2016-17 dated 31-01-2017.

Arguments of the respondent:

The respondent has put forward the following arguments in his statement of facts.

The appellant is an agricultural consumer under Electrical Section, Thalikulam. As per tariff notification, the KSEB sanctioned concessional rate of tariff to agricultural consumers who availed connection only for agricultural purposes. The beneficiaries are selected among the agricultural consumers who submitted applications after considering their eligibility by the concerned Krishibhavan offices. The Agricultural Officer who are preparing the eligibility list and handed over to concerned Electrical Section office. It is the responsibility of the consumers to verify whether their details are included in the list and to ensure their eligibility for enjoying the concessional tariff. Here in this case, the appellant's name was not included in the eligibility list furnished by the Krishibhavan. Hence the claim of the appellant that he was exempted from the payment of electricity charges is not correct. An amount of Rs. 25,848.00 towards the arrear current charges including interest was pending against the appellant for the period from 4/1999 to 03/2016.

Since the name of the appellant was not included in the beneficiaries list and he has not remitted the current charges from 4/99 onwards, the service was disconnected during 2009. The appellant had filed a petition before the Consumer Disputes Redressal Forum (CDRF), Thrissur challenging against the dismantling of service connection and requested for reconnection. The Hon'ble

CDRF, Thrissur, in its order No CC.66/2010 dated 16-05-2014, disposed of the complaint by directing the respondent to restore power supply and also directed the appellant to submit application for exemption to the Agricultural Officer, within one month, who should dispose the same, considering the eligibility for exemption. The connection was reconnected by the respondent as per the orders of CDRF.

On expiry of the period of one month specified by the CDRF in its orders, the appellant has been informed to submit application for exemption before the Agricultural Officer and later a notice was also sent to the Agricultural Officer requesting to inform whether consumer number 1648 is eligible for exemption from paying electricity charges. It was replied by the Agricultural Officer that the appellant is not included in the list of beneficiaries since the appellant has not given an application for enjoying the benefit of exemption of payment of current charges. So, a disconnection notice was issued on 28-09-2015 and service connection was disconnected on 09-11-2015. After that a dismantling notice was issued on 22-12-2015 and the connection was dismantled on 21-03-2016.

Further, either the appellant has not produced any documents from the Agricultural Officer for exemption from payment of current charges or not turned up to remit the arrears, the respondent initiated the revenue recovery procedures for collecting the arrears. The appellant was given ample opportunities for clearing the pending arrears and to restore the service connection. But, either the appellant has not turned up to remit the arrears or to produce necessary documents from Agricultural Department. Hence the appeal petition deserves any merits and liable to be dismissed.

Analysis and findings:

The hearings of the case were conducted in my chamber at Edappally, Ernakulam, on 08-03-2017 and 17-03-2017. Sri Ashraf and Sri Padma Prabha Jyothi appeared for the appellant and Sri. T.S. Anandan, Assistant Executive Engineer, Electrical Sub Division, Thriprayar represented the respondent's side. Both sides have presented their arguments on the lines stated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments made in 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.

The appellant has filed a complaint dated 23-01-2017 before the CGRF, Ernakulam and the Forum concluded that "the complaint does not come under the category of grievance of an 'Electricity Consumer' as specified in Regulations 2(1) (e) and 2(1) (g) of KSERC (CGRF and Electricity Ombudsman)

Regulations, 2005. Hence the complaint does not qualify to be considered as a grievance by the CGRF and rejected herewith. Also on enquiry with the Assistant Engineer, Electrical Section, Thalikulam it is understood that the matter is already taken up with Additional District Magistrate for revenue recovery action". Aggrieved against the above decision, the appellant has filed this appeal petition before this Authority.

The CGRF has not admitted the petition stating that the complainant has no manner of rights to file above complaint before the Forum, as the complainant is not a consumer of electricity. As per Regulation 2(1) (e) of 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.

In the 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".

As per Regulation 2.1 (g) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a consumer is defined as:

"(g) 'Consumer' means any person who is supplied with electricity for his own use by a licensee and includes any person whose premises are connected for the purpose of receiving electricity with the works of a licensee or a person whose electricity supply is disconnected by a licensee or the person who has applied for connection for receiving electricity from a licensee, as the case may be."

The appellant is coming under the purview of consumer defined as per the Regulation cited above and hence the complaint filed by the appellant is maintainable. Hence, the averment of the CGRF that the appellant is not a 'consumer' cannot be admitted. Moreover, the finding of the Forum that the

respondent initiated revenue recovery procedure against the appellant is not a bar for preferring a complaint before the Forum.

On going through the records, it is revealed that the appellant was not either served with the bimonthly bills towards the current charges for the period from 04/1999 onwards or issued any disconnection notice. However, the respondent issued a consolidated arrear bill only during 2009 which not seen remitted by the appellant. Hence the respondent disconnected the service after issuing notice. According to the respondent, disconnection of service was made due to non-remittance of arrears as his name was not included in the list of beneficiaries for free electricity for agriculture purpose. Since the appellant's name is not included in the beneficiary list, the respondent has no option but to issue bimonthly bill or to disconnect service, if the amount is not remitted, as per rules.

Further, the respondent argued that it was the duty of the appellant to ensure that his name is included in the list of beneficiaries for free electricity. Against this argument, the appellant stated that he has applied twice for free electricity but the Agricultural Department has not taken any steps on his application, nor even issued any receipt as a token of having received the application. If the appellant is not included in the list of beneficiaries for exemption, the respondent is duty bound to give the bimonthly bills to the appellant directly and incase of non-remittance, the respondent has to disconnect the service, after serving disconnection notice. Hence the action of the respondent in giving a consolidated arrear bill during 2009 for the period from 1999 onwards has no justification.

In pursuance of the orders issued by Hon'ble CDRF, the respondent reconnected the service of the appellant. The Hon'ble CDRF also directed the appellant to submit application to the Agricultural Officer, within one month for exemption, who should dispose the same, considering the eligibility for exemption and if he is found eligible for exemption, he has the right to get exemption from the inception. The records revealed that the respondent has sent letters to the appellant as well as the Agricultural Officer on 05-05-2015 and 08-07-2015 respectively. On 27-07-2015, the Agricultural Officer informed that the appellant is not included in the list of farmers as he has not given an application for power tariff exemption. But the appellant has argued that he had complied with the instruction received from the respondent and applied for power tariff exemption.

The factual matrix shows that the appellant has not produced documents to prove that his name is included in the list of beneficiaries for free electricity for agricultural purposes. In order to enable a consumer to have electricity on free of charges, he is bound to produce a certificate from the Agricultural Officers concerned as per GO(MS)No.30/99/AD dated 04-02-99.

Admittedly, the appellant has not produced certificate from the Agricultural Officer for claiming free electricity for agricultural purposes. While evaluating the rival contentions it is essential to look into the provisions contained in Regulation 136(3) of Supply Code, 2014, which is extracted below. **“No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied”**.

In the instant case, it is pertinent to note that neither the respondent served bimonthly bills regularly on the appellant nor to the Agricultural Officer concerned. The appellant defaulted the payment on the assumption that his payment was made by the Agricultural Department. There is serious lapse on the side of respondent in dealing with agricultural consumers. It is quite surprising to note that the respondent issued arrear bill from 04/1999 only during 2009 for which no reason is forthcoming. Further, the respondent has not shown this amount continuously as recoverable arrears in the subsequent bimonthly bills thereafter. So, a probable conclusion can be arrived at that a prudent interference from the part of respondents would have taken, the issue could have been settled then and there. But, unfortunately, this was not seen done.

The respondents, who are duty bound to issue bimonthly bills to a consumer, has not done the same with respect to the appellant. Hence there is no justification issuing a consolidated bill during 2009. In view of the above facts, the consolidated demand issued to the appellant is not sustainable. In this case, if at all any loss sustained to the licensee it is only because of the lapses on the part of responsible officers of the licensee. Hence it is advisable to conduct an enquiry to find out the reason and the person responsible for the issue. However, the records show that appellant's name is not included in the list of beneficiaries for free electricity for agricultural purpose; the appellant has to remit the electricity charges as per Regulation 136(3) of Supply Code, 2014.

The prayer of the appellant is to restore the service connection could not be admitted, since the registered owner of the dismantled service connection was expired during 2005. So, the appellant is directed to apply for new connection after remitting the arrears as ordered, if he desires so.

Decision

Having considering the totality of the facts and circumstances, I hold that the demand issued to the appellant is not sustainable and hence the same is quashed. The respondent is directed to issue fresh demand towards the

electricity charges for the period after 2009 in accordance with the Regulation 136(3) of Supply Code, 2014. This shall be done at any rate within 30 days from the date of receipt of this order. No surcharge shall be levied from the appellant during the appeal pending period.

Having concluded and decided as above, it is ordered accordingly. The appeal petition filed by the appellant stands disposed of with the decisions ordered as above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/019/2017/_____ /Dated: _____

Delivered to:

1. Sri Ashraf P.M., Aravassery House, Thalikulam P.O., Thrissur.
2. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Limited Thriprayar, Thrissur.

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.