

## STATE ELECTRICITY OMBUDSMAN

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### REPRESENTATION No: P 78/09

Appellant : Sri P.C.Muraleedharan  
S/o M.K.KuttisankaraMenon,  
Ambilikala, Mission Quarters Road, Thrissur 680005

- Respondents: 1. Thrissur Municipal Corporation (Licensee)  
Represented by  
The Assistant Secretary  
Electricity Department Thrissur
2. Sri C.M.Prathapan S/o Madhavan (Owner)  
Represented by  
Sri K.S.Mohandas S/o Sankaranarayanan  
Thailath Veedu, Chazhoor (Po), Thrissur Dt

### ORDER

Sri P.C.Muraleedharan, S/o M.K.KuttisankaraMenon, Ambilikala, Mission Quarters Road, Thrissur submitted a representation on 26.5.2009 seeking the following relief :

*To set aside the Order dated 27.4.2009 bearing No: CGRF/TCED-8/09 of the CGRF Thrissur Corporation  
Grant permanent electrical connection to the premises by name Nakshathra Apartments, Building No: VII /168/ 1 to 12, Udaya Nagar, Near St Thomas College, East Fort, Thrissur.*

The Appellant also pleaded that the operation of the impugned order may be stayed and the electric connection to the said premises may be continued until the disposal of the main representation. The undersigned carefully considered the representation and the plea for interim order and issued an interim direction on 26.5.2009 to keep in abeyance all

steps to disconnect or dismantle the electrical connection to the said building until further orders from the undersigned.

Counter statements of the Respondent was called for on 27.5.2009 which was received on 16.6.2009. Mean while Sri Prathapan S/o Madhavan , Chakkamadathil house, Vadanappally, who is the owner of the building concerned, made an appeal to implead him as a party in the above case through Sri K.S.Mohandas, Power of Attorney holder. The undersigned considered the request , heard all the parties concerned on 02.07.2009 and decided to grant the request.

The 2<sup>nd</sup> respondent also submitted their objections on 2.7.2009. A detailed hearing of all the parties was conducted on 19.8.2009.

The Appellant is occupying the premises by name Nakshathra Apartments, Building No: VII /168/ 1 to 12, Udaya Nagar, Near St Thomas College, East Fort, Thrissur from June 2007 owned by the 2<sup>nd</sup> Respondent . A large number of disputes and legal actions related to alleged building rules violations, rent enhancements etc are going on between the Appellant and 2<sup>nd</sup> Respondent .

There is an electric connection by number T11251-A to the building in the name of the Owner. In accordance with the request of the Owner the Electricity Distribution Licensee Thrissur Municipal Corporation initiated action to disconnect the service. The licensee also rejected the request of the Appellant for providing permanent connection to the building in the name of the Appellant. The Appellant approached the CGRF of the Licensee .The CGRF upheld the actions of the licensee .

The representation with the pleas noted above was submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

1. The Appellant is in possession and occupation of the building in pursuance of the rent deed and even after the expiry of lease period the Appellant is a statutory tenant as per the definition of tenant under Cl (b) Sec.2 of the BLR Act. Since the proceedings for eviction is pending before the Rent Controller Thrissur, the Appellant is recognized and accepted as tenant by the owner and possession is legal and valid until duly evicted. The Appellant is entitled for electric connection until he is duly evicted.
2. Right to electricity and other amenities of life are fundamental rights and it can not be denied on unsustainable grounds.
3. The Appellant is paying rent even at enhanced rates as per lease deed by cheque and the cheque is being collected to the 2<sup>nd</sup> Respondent's bank accounts.
4. The suit OS 2034/07 in the courts has nothing to with granting electricity connection. The suit OS 446/2008 has no relation with the apartment .
5. The 2<sup>nd</sup> Respondent filed a request to the Licensee to disconnect the electric connection to the Nakshathra apartments in December 2007 stating that the connection was taken for construction purposes and was not needed any more. But he had leased out the building with the above connection much earlier, in April 2007 . Evidently the subsequent request to the Licensee was intended to harass the Appellant and hamper the running of the Hostel in the apartments.

6. The Appellant had filed applications on 23.4.2008 and 30.4.2008 for obtaining electricity connection in his name .But the Licensee rejected the applications on the ground that the required documents were not produced. The reasons attributed for rejection were neither proper nor legal nor sustainable.
7. The monthly current charges of the connection are being paid by the Appellant to the Distribution Licensee Thrissur Corporation directly.

The contentions/arguments/points raised by the 1<sup>st</sup> Respondent Licensee in the counterstatement and during the hearing are summarized below:

1. The electric connection to the apartments under dispute vide no: T-11252-A was effected on 11.3.2004 with Connected Load 1386W as a temporary connection for construction purposes. The service was disconnected on 18.12.2007 as per the request of the building owner dated 7.12.2007 on completion of construction. But the connection was restored as per the order of the Hon:High Court on 19.12.2007.
2. The Appellant had applied for permanent electric connection to the building .But he did not produce the required documents as per the rules.
3. There are violations of provisions of building rules and there are number of court cases pending between the Owner and the Appellant .
4. The Appellant has not produced consent agreement or current lease agreement from the owner to prove that he is a tenant now. Hence he has not proved himself that he is a *lawful occupant* in accordance with the clause 1(9C) of Terms& Conditions of Supply 2005 of KSEB .Hence the permanent connection was denied by the Licensee.

The contentions/arguments/points raised by the 2<sup>nd</sup> Respondent Owner in the counterstatement and during the hearing are summarized below

The Appellant had submitted a petition before the Ombudsman for Local Self Government against disconnection of electric connection. The Ombudsman passed orders on May 15,2009. The Electricity Ombudsman had given orders on the petition of the Appellant on May 26,2009.Two Ombudsmen issuing orders on the same matter will attract res-judcate application. The order dated 26.5.2009 of the Ombudsman may be withdrawn .

The Appellant will not incur any loss or damage if connections to the building under question is disconnected since he is running a number of hostels in Thrissur town. The 2<sup>nd</sup> Respondent had been incurring heavy losses and suffering innumerable difficulties consequent to the use of the temporary connection by the Appellant .

Discussion and Findings:

1. The contention raised by the 2<sup>nd</sup> Respondent that the order issued by the undersigned on 26.5.2009 would attract application of res-judcate, a matter [already] judged, shall be seen first. The order dated 26.5.2009 was not a final order. It was only an interim direction to keep in abeyance all steps to disconnect or dismantle the electrical connection to the said building until further orders from the undersigned. This interim

direction had been issued after carefully considering the representation of the Appellant and do not result in loss or damages to any person involved. This interim direction has nothing to do with the orders of the Hon: Ombudsman for Local Self Government Institutions. In fact the Hon: Ombudsman for Local Self Government Institutions has issued orders on 15.5.2009 based upon the provisions of the KPR Act. The Consumer Grievance Redressal Forums and Electricity Ombudsman are functioning to safeguard the rights of electricity consumers and provide relief to them under The Electricity Act 2003. The Thrissur Municipal Corporation, a Local Self Government Institution, is also an Electricity Distribution Licensee under the Electricity Act 2003. The appropriate authority to look into the complaints of the citizens of the Corporation under the Acts and Rules related to Local Self Government shall definitely be the Hon: Ombudsman for Local Self Government Institutions. The appropriate authorities to look into the complaints of the citizens of the Corporation *as Electricity Consumers under the Distribution Licensee* shall be the CGRF and State Electricity Ombudsman. As such the contention of the 2<sup>nd</sup> Respondent that the consideration of the representation of the Appellant by the Electricity Ombudsman and issuing orders will attract res-judicate is not correct.

2. The 2<sup>nd</sup> Respondent has also stated that since the Appellant had other establishments he would not suffer any loss or damage by disconnection the existing service. But I feel that this aspect can not be taken as a basis for deciding the continuation of an essential service like electricity to a building. The 2<sup>nd</sup> Respondent has also stated that he had suffered heavy losses due to continuation of the connection. But this was not supported by evidence. On the other hand the Appellant has produced receipts for making payments of demands from the licensee. In short the 2<sup>nd</sup> Respondent could not support his contentions with appropriate evidences and hence I am inclined to dismiss the contentions raised by the 2<sup>nd</sup> Respondent. It is clear that he had been trying to utilize the provision of *electricity service as a tool* for attaining other motives. I think it is not fair.

3. Now the main issues raised in the representation of the Appellant shall be examined. The Appellant has pleaded to grant permanent electric connection to the building occupied by him. The Distribution Licensee had denied this request mainly on the ground that he could not prove that he is *lawful occupier* of the building. Prolonged legal battles are going on between the 2<sup>nd</sup> Respondent and the Appellant involving issues related to Building rules, Rent and Leasing rules etc. Consent from the owner of the building shall not be available for the Appellant. The main point to be decided is whether the Appellant is eligible for getting permanent connection in his name to the premises he is occupying.

4. The Section 43(1) of the Electricity Act 2003 says :

*43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

The regulations called the Kerala Electricity Supply Code 2005 had been framed by the Kerala State Electricity Regulatory Commission under section 50 of the Electricity Act 2003 and

these regulations are applicable to all Distribution Licensees. Section 6 of the above regulations read as follows:

**6. Duty of the Licensee to supply electricity.-** (1) *The Licensee shall provide electricity connection to the owner or occupier of any premises requiring supply as per the timeframe under clause 8 subject to the payment of required fees, charges and security and satisfying the conditions stipulated in the approved 'terms and conditions of supply' of the Licensee by such owner or occupier of the premises.*

*Provided that, the Licensee shall not be responsible for the delay, if any, in extending supply, if the same is on account of delay in getting statutory clearances, right of way, land acquisition, or the delay in consumer's obligation to provide necessary clearances, or payment of required cost of works as per clause 7 and security deposit as per clause 13, or for any other similar reasons beyond the reasonable control of the Licensee. In all such cases, the Licensee shall take all reasonable steps to avoid delay.*

*Provided also that, the Licensee shall prepare and submit to the Commission within a month of the publication of this code, a scheme for providing connections in a time bound manner for all pending applicants requiring connection as on the date of publication of this Code and maintain a separate priority register for such applications. The Commission shall decide on the modality for regulating the funds required for completing the pending connection within a reasonable time frame.*

(2) *Before effecting any connection, the Licensee shall make sure the applicant has complied with all requirements regarding safety as per the law in force.*

(3) *If any Licensee fails to comply with the time frame stipulated under clause 8 shall be liable to pay penalty as may be determined by the Commission in accordance with sub-section (3) of section 43 of the Act.*

(4) *The liability of the Licensee to pay penalty under this Regulation shall be without prejudice to the liability to pay compensation to the affected person as per the regulation notified under sub-section (2) of section 57 of the Act.*

(5) *The Licensee shall provide if required any electric plant or electric line required for providing supply to the premises.*

The Supply Code 2005 also defines the term Occupier:

Section 2(cc): *'Occupier' means the owner or person in occupation of the premises where energy is used or proposed to be used;*

The Respondent Licensee claims that they are following the 'Terms & Conditions of Supply 2005' regulations of KSEB. These regulations framed under Section 30 of the above Supply Code 2005 are applicable to all consumers under the Licensee. As per Section 1 definitions :

*'Occupier' means the owner or person in lawful occupation of the premises where energy is used or proposed to be used;*

*and "Applicant" means Owner /lawful occupier of premises desirous of getting electric service connection*

Section 14 specifies the records to be produced for getting connection:

**14. Records to accompany the Application for Service Connection**

*After completing the wiring satisfactorily, the following records should be forwarded to the Assistant Engineer's Office.*

*(1) Completion Report of the Consumer's installation in Form No.3 annexed.*

*(2) Test Report of the consumer's installation of the wiring contractor (Form No.3 annexed).*

*(3) A neat sketch of the premises showing the position of all lamps and other fittings*

*(4) If the intending consumer is not the owner of the premises to be electrified, he shall furnish a consent agreement in Form No.4 annexed from the owner of the premises. If he is unable to produce the consent agreement from the owner of the building, the service connection can be effected if the applicant executes an Indemnity Bond in Form No.5 annexed. A special deposit equal to the amount of Security Deposit is also payable whenever service connection is effected to the occupier/tenant and not the owner.*

From the above it is clear that the Electricity Act 2003 as well as the regulations framed under the Act clearly recognizes the right of an occupant of premises to obtain electric connection. The Terms & Conditions regulations also specify the procedure to follow in the matter where the occupier is not able to produce the consent from the owner : Execute Indemnity Bond , pay Special Deposit etc.

The only difference pertains to the definition of the term 'occupier'. The Terms& Conditions 2005 qualify the term occupier with the adjective 'lawful'.

In the instant case, in the absence of valid lease agreement and rent receipts the Licensee Corporation is not ready to accept the Appellant as a 'lawful occupier'. But the Appellant claims that he is still in occupation of the premises. He had occupied it on the basis of a valid lease agreement. He is regularly paying the rent etc. He claims that *until he is duly evicted* he will continue to be occupier. More over as per the BLR Act '*Tenant means any person by whom or on whose account rent is payable for a buildings and includes (i) heir of a deceased tenant, and (ii) persons continuing in possession after the termination of the tenancy in his favour ----- etc*'.

The Appellant claims that in view of the above facts he should be recognized as lawful occupant.

In the circumstances explained above, I do not feel it would be fair to deny the services like electricity to a person on the grounds that he could not produce current and valid lease deed , rent receipt etc to prove that he is lawfully occupying the premises. The

Clause 14(4) of the Terms& Conditions regulations is clearly and exactly meant to cover such situations of tussle between the owner and occupier. The Electricity Distribution Licensee need not sit on judgment to decide whether he is occupying the premises legally or not. The Appellant has a case when he states that he *had occupied* the premises legally with valid lease deed and *continue to be a tenant* under the relevant statute until he is evicted by the orders of the appropriate court or forum.

Under the above circumstances I conclude that the Appellant is eligible to get electric service connection from the Licensee. Also, I conclude that the existing electricity service shall not be interrupted without valid statutory reasons and shall not be disconnected without proper disconnection notice, as per the rules, served upon the *occupant* also , due to non-payment of current charges etc. These directives are issued without prejudice to the decisions of the appropriate forums/tribunals/courts etc in relation to building rules, rent control statutes etc.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondents on the matter, the representation is disposed off with the following orders:

1. The Appellant shall be eligible to obtain new electric service connection in his name in accordance with Section 14(4) of the Terms& Conditions of Supply 2005, Section 6 of Kerala Electricity Supply Code 2005 and Section 43(1) of the Electricity Act 2003 to the premises occupied by him , namely, Nakshathra Apartments, Building No: VII /168/ 1 to 12, Udaya Nagar, Near St Thomas College, East Fort, Thrissur.
2. The Appellant shall submit new application forms/formats for getting connections along with the prescribed agreements, Indemnity Bond etc and pay the necessary Special Security Deposit to the satisfaction of the licensee.
3. The existing service connection to the premises shall be disconnected/dismantled only after the new connections are effected / energized.
4. The Order dated 27.4.2009 bearing No: CGRF/TCED-8/09 of the CGRF Thrissur Corporation is set aside.
5. No order on costs.

Dated this the 26th day of August 2009 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P 78 /09/335 / dated 08.09.2009

- Forwarded to:
1. Sri P.C.Muraleedharan  
S/o M.K.KuttisankaraMenon,  
Ambilikala, Mission Quarters Road, Thrissur 680005
  2. The Assistant Secretary  
Electricity Department  
Thrissur Corporation  
Thrissur
  - 2 Sri K.S.Mohandas S/o Sankaranarayanan  
Thailath Veedu, Chazhoor (Po), Thrissur Dt

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram 695010
2. The Chairman CGRF  
Electricity Department  
Thrissur Corporation  
Thrissur