

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/021/2019
(Present: A.S. Dasappan)
Dated: 23rd May 2019

Appellant

1. Sri. Khader
Kollarukandy,
Paramba P.O., Kozhikode
2. Sri. Ali Mohammed
Kadavathu, Paramba P.O.,
Kozhikode
3. Smt. Shyni D
Payanaarambath,
Paramba P.O., Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Balussery,
Kozhikode

ORDER

Background of the case:

The appellants were the applicants for electricity connection for their houses under the Total Electrification Programme of the Kerala State Government. The appellants also remitted application fee Rs. 50/- each at Electrical Section, Unnikulam and also submitted Wiring Registration Certificate, ELCB paper, agreement in stamp paper of Rs. 200/- for effecting the connection. The respondent had denied electricity connection to them on the basis of various grounds. So the appellants had approached the CGRF Kozhikode by filing a petition in OP No. 199/2016-17 which was dismissed vide order dated 15-06-2017. Aggrieved against this, the appellants had submitted appeal petition before this Authority vide appeal petition No. P/85/2017. The appeal was disposed of by ordering that the appellants are eligible for electric connections for domestic purposes under Total Electrification Programme and also directed that the respondent shall take action to obtain sanction

from the higher officers of KSEB Ltd to provide electricity connection to the appellants and to effect the connections within a period of three months, vide order dated 31-10-2017. The KSEB filed WP (C) 12064/2018 before the Hon'ble High Court of Kerala challenging the findings rendered by the Ombudsman that the order has been issued without properly analysing the factual factors and without appreciating the fact the KSEB had denied electric connection to the said applicants only because the implementation committee constituted of the representatives of the Local Self Government and the Electricity Board had not recommended them for connection under Total Electrification programme. On the other hand, the appellants in appeal petition No. 85/2017 also filed WP (C) 25881 of 2018 before the Hon'ble High Court requesting orders that the action of the KSEB in having denied the benefit to them earlier was incorrect and illegal. The Hon'ble High Court, in its common judgment dated 29-01-2019, remanded the matter to this Authority to reconsider the case after affording fresh opportunity of being heard to them as also the competent authorities of the KSEB, but only after obtaining a report from the Implementation Committee constituted under the Total Electrification Programme and directed to take a decision thereon not later than two months from the date of receipt of a copy of the judgment. Accordingly the appellants have produced a copy of the judgment on 25-03-2018 and have also submitted the following arguments in the matter afresh and the KSEBL had also submitted the statement of facts on the arguments of the appellants.

Arguments of the appellant:

The applicants applied for electricity connection under the 'Total Electrification Programme' also known as '100% Electrification' by remitting Rs.10/- as application form by each on 01.12.2016. The field verification officers of the Respondent's office examined twice the houses and premises of the applicants in the expense of the applicants. After satisfying the conditions of the houses of the appellants, the Respondent accepted the applications of the appellants and advised to do the wiring work of the houses.

After completing the wiring work the Respondent demanded the appellants to submit photos, identity cards, tax receipts, possession certificates, wiring registration certificates, ELCB papers, agreements in stamp paper of Rs. 200/- and to remit Rs. 50/- as AF by each. The applicants had to spend an amount more than Rs. 30,000/- by each towards the cost of wiring, ELCB paper, obtaining documents and arranging hired vehicles for the field verification officers of the licensee. After this there was no communication from the part Respondent for effecting the electricity connection to the appellants, in spite of their repeated visits. Even the information sought under the Right to Information Act was not replied. Under such circumstances, the applicants approached the CGRF, Kozhikode by filing a petition OP No. 199/2016-17. But the respondents misrepresented the CGRF, failing to appreciate the facts involved property, dismissed the petition vide order dt.15.6.2017.

Aggrieved by the above order of CGRF the applicants submitted an appeal petition before the State Electricity Ombudsman by appeal petition No. P/085/2017. The State Electricity Ombudsman, by the order dated 31.10.2017 directed the respondents to take action for providing electricity connection to the appellants.

But the respondents approached before the Hon'ble High Court of Kerala against the above order of Ombudsman by WP (C) No. 12064/2018. The appellants also approached before the Hon'ble High Court by filing WP(C) No. 25881/2018 for giving direction to the respondents for providing electricity connection to the appellants. The Hon'ble High Court considered both the two writ petitions jointly. But unfortunately the order of High Court dated 29.1.2019 is solely based on the misrepresentation and the fabricated evidence produced by the appellants in WP(C) 12064/18. The Hon'ble High Court quashed the order of Ombudsman in appeal petition No. P/085/2017 dated 31.10.2017, directing to reconsider the case and to take appropriate decision thereon. The order is solely relying on the statements and false documents produced by the appellants in WP (C) 12064/18.

The appellants pray to reconsider and pass an order purely on merit, on the basis of true facts involved in this case.

Arguments of the respondent:

For determining the beneficiaries under TEP, an implementation committee consisting of KSEBL and Grama Panchayath President concerned was constituted and the said committee rejected the applications, as the premises of the applicants 1 and 3 were not being used for domestic purpose and the applicants were residing at some other places. The 2nd petitioner also not bound to be a permanent inhabitant at that premise and he was using solar panels for the structure situated at the premises.

The implementation committee was formed and held meetings on 3.11.2016, 04.02.2018 and 16.02.2017. After conducting field Survey and verification, the implementation committee came to the conclusion that it would be misuse of public fund, if electric connection under TEP was extended to the appellants and as a result their request for electric connection under TEP was rejected. The Ombudsman, as per order dt. 31.10.2017 directed the respondent (2) to obtain sanction from higher authorities of KSEBL to Provide Electricity connection to the appellants.

Obeying the order of the Ombudsman, the respondent took the matter with the higher officers. The matter was examined in detail in KSE Board level and it was decided as per Board Order dt: 20.01.2018, to file writ petition before the Hon'ble High Court of Kerala, against the Order of the State Electricity Ombudsman and accordingly KSEBL filed the WP(C) No, 12064/2018 against the order of the Ombudsman.

The applications of the appellants for electric connection, under TEP were rejected by the implementation committee, on field verification report and detailed evaluation. The committee which was headed by the President, Panangad Grama Panchayat, did not find the appellants as eligible for Electric Connection under TEP.

The implementation committee which consists of the Members of Local Self Government and KSEBL was a ground level committee and it was well versed with the geographical and the entitlement of the applicants for getting electric connection under TEP. The implementation committee had considered many applications and only those applications which do not meet the requirement criteria were rejected.

The Government announced a scheme, like TEP, only with an aim to uplift the underprivileged or the weaker section of the society

The TEP has come to an end as on 31st March 2017. TEP was carried out using funds from local self-government, MLA fund, MP fund etc. These funds are no longer available to KSEBL for giving electric connection under TEP. That means if the applicants are allowed electric connection as applied for by them, the whole fund will have to be met by KSEBL alone, which would be a huge blow to KSEBL. In the instant case 1Km Over Head line is to be constructed for giving connection to the applicants, for free of cost and this is not what meant by the Government, through a scheme like TEP.

The appellants, who are permanently residing at other places with electric connection in domestic tariff, are not entitled to be beneficiaries under TEP. KSEBL is a public sector undertaking which manages its affairs on the funds generated from the public. Therefore it is accountable for each paise it spends for various activities. To use the above funds for giving some benefits to undeserving persons is an act that goes not only against the KSEBL but against the ordinary people of this state as well.

The Hon'ble High Court has now remanded the matter back to Ombudsman to consider only after obtaining a report from the implementation Committee constituted under the Total Electrification Programme.

The averments made by the appellants that wiring of their buildings was carried out under the assurance that they would get electricity connection under TEP are denied. No assurance was given to the appellants that they would be provided with electricity connection under TEP. On their petition the appellants take to task the CGRF Kozhikode and the Hon'ble High Court of Kerala for not having issued order in their favour. It betrays their approach to matters like these. These appellants are residing else were with domestic electricity connection and they have applied for electric connection to certain temporary structure for reaping undue benefit for free of cost.

In the light of the above, it is prayed that this State Electricity Ombudsman may be pleased to issue an order to the effect that, the applicants are not eligible to be the beneficiaries under Total Electrification Programme.

Analysis and findings:

The Hon'ble High Court of Kerala in a common judgment dated 29-01-2019 in WP (C) Nos. 12064 and 25881 of 2018 quashed the orders issued in Appeal Petition No P/085/2017 and also have directed this Authority to reconsider the case afresh within 2 months of receipt of a copy of the judgment, after affording fresh opportunity of personal hearing to the parties concerned and after obtaining a report from the Implementation Committee constituted under the Total Electrification Programme. The appellants have forwarded a copy of the judgment to this Authority and the same received in this office on 25-03-2019. Accordingly, the hearing of the case was conducted on 04-05-2019, in my chamber at Edappally. Sri. Unnikrishnan K and Sri. P. Rajidasan represented the appellant's side and Sri. Vijayakumar S., Assistant Executive Engineer, Electrical Sub Division, Balussery represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all 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.

As per the appellant, the implementation committee was not constituted strictly as per government orders issued in this regard. According to the appellants, as directed by the KSEBL the appellants carried out the wiring works in their premises. The appellants contended that no committee meetings were conducted by the Board/Panchayath under head "Implementation Committee for Total Electrification".

As per respondent, now there is no fund for the total electrification. The appellants were expelled from the list of beneficiaries after proper investigation by them. The respondent has also denied the averments made by the appellants that wiring of their buildings was carried out under the assurance that they would get electricity connection under TEP. No assurance was given to the appellants that they would be provided with electricity connection under TEP. According to the respondent, these appellants are residing elsewhere with domestic electricity connection and they have applied for electric connection to certain temporary structure for reaping undue benefit for free of cost.

To clarify the decisions taken by the implementation committee, the respondent was asked to furnish the following documents/details, but no proper reply was furnished by him.

1. A copy of the orders forming implementation committee in the Electrical Section, Unnikulam.

Reply – Implementation committee was formed based on the GO (MS) No.18/2016/ Energy Dept. Tvpm 26-08-2016 of the Govt. of Kerala.

Findings – No implementation committee formed based on the norms prescribed in the GO, in the Electrical Section, Unnikulam and no orders issued in this regard.

2. Details of members included in the implementation committee with their names and other details.

Reply – copy of the meeting held by the implementation committee on 03-01-2016, 04-02-2017 and 16-02-2017 are produced to furnish the details of members thereof.

Findings – the persons attended the meetings were the KSEB staff and members of Grama Panchayath. No others represented in the committee as specified in the GO.

3. Whether ward members of Panchayat, representatives of all the political parties, trade unions, officers association, cultural organizations, NGOs, CDs/ADs and kudumbasree volunteers included in the implementation committee and if so, their details.

Reply – Yes. Copy of the documents attached.

Findings - No documents attached. No persons of the above organizations are included in the committee and attended the meetings as per the Minutes.

4. How many meetings held by the implementation committee and the attendance of the committee members shall be furnished.

Reply – Three meetings were conducted in this regard. Copy of the minutes attached.

Findings – On 3-01-2016, 5 persons attended the meeting. Assistant Engineer and ward members were the participants and signed in the minutes. On 4-2-17, 11 persons attended the meeting. Assistant Engineer and Sub Engineer and other 9 members attended. On 16-02-2017, 5 members attended including Assistant Engineer and Overseer of KSEBL and 3 ward members.

5. Whether site inspections were conducted by the implementation committee members in the premises of the appellant and the details of members attended the inspection and date of inspection.

Reply – Yes. Details attached. (Field verification report relevant serial No.22,23,24)

Findings – Field verification was conducted by the KSEBL staff only. The report was signed by the Assistant Engineer and the Panchayath president.

6. Whether proper wirings have been done by the appellants in their houses.

Reply – Wiring done.

Findings – No remarks

7. Whether all the conditions specifying in the Government Order were complied with by the appellants for applying connections under Total Electrification Programme.

Reply – No.

Findings – Non compliance of any conditions are not specified by the respondent.

8. Total electrification is a State Government Policy. As per Government Order the fund for implementation of the scheme can be collected from individuals and organizations by accepting donations. Whether any such fund is collected and utilized. If so, details of fund collected and the utilization may also be furnished.

Reply – The fund referred to this para is received at higher level offices of KSEBL. Details of such fund are not available at sub division level office.

Findings – No remarks

On going through the records and documents, the following facts are revealed.

The Kerala State Government have targeted to achieve 100% electrification of the households in the state. The appellants residing in the jurisdiction of Electrical Section, Unnikulam, have applied for electric connection under the 'Total Electrification Programme'. The aim of the programme was to extend the usage of electricity as a basic need to the poor people for which certain relaxations were declared by the Government and ordered accordingly. As per the Government order No. G.O. (MS) No.18/2016 dated 26-08-2016; a Panchayath level implementation committee has to be formed in each Panchayath for the identification of 100% beneficiaries. Grama Panchayath president as Chairperson, an employee not below the rank of a Sub Engineer of concerned Electrical Section as Convener and ward members of Panchayat, representatives of all political parties, trade unions, officers associations, cultural organisations, NGOs, CDS/ADS and Kudumbasree volunteers are the members of the committee for identifying beneficiaries, ensuring 100% registration of beneficiaries and for the timely completion of project etc.

From the details furnished by the respondent the following facts are revealed.

1. Any such implementation committee was not seen formed by the respondent in the Unnikulam Section as per the norms prescribed in the Govt. Orders. In the statement of facts furnished by the respondent "For determining the beneficiaries under TEP, an implementation committee consisting of KSEBL and Grama Panchayath President concerned was constituted and the said committee rejected the applications, as the premises of the applicants 1 and 3 were not being used for

domestic purpose and the applicants were residing at some other places”. As per the Government order No. G.O.(MS) No.18/2016 dated 26-08-2016, a Panchayath level implementation committee consisting of Grama Panchayath president as Chairperson, an employee not below the rank of a Sub Engineer of concerned Electrical Section as Convener and ward members of Panchayat, representatives of all political parties, trade unions, officers associations, cultural organisations, NGOs, CDS/ADS and Kudumbasree volunteers are the members of the committee for identifying beneficiaries, ensuring 100% registration of beneficiaries and for the timely completion of project etc., are compulsory.

2. Some limited persons attended the meetings and decisions taken according to their wishes.

3. It is revealed from the minutes, the list of beneficiaries has been finalized by Assistant Engineer, Panchayath President and ward members after considering the result of field inspections conducted by the KSEB officers only and not an implementation committee.

4. The applications of the appellants rejected on the basis of field inspection conducted by KSEBL staff and as per the decision of the meeting held on 04-02-2017. According to the respondent the reasons for rejection of the applications of the appellants are that there was no permanent inhabitation in the premises of appellants and the premises of appellants (1) and (3) are used as godowns for procuring agricultural products and not for domestic purpose and the appellant (2) is also not a permanent resident and the building is already electrified by solar panels. The respondent further averred that the buildings of the appellants are not for domestic purpose and are not comes under BPL category. The appellants denied all the averments raised by the respondent.

5. The first appellant Sri. Khader belongs to BPL category and he produced a certificate from Secretary, Panangad Grama Panchayath to prove his argument. This appellant was also seen included in BPL category in the list 2 prepared by the respondent. It is further stated that the reason for non occupancy as he is suffering from acute cardio vascular diseases and he is temporarily residing with his brother at Ekarur for getting proper medical facilities. Copies of the medical reports produced for proving this. In the case of the 2nd appellant Sri. Ali Muhammed, his name was deleted from the list of beneficiaries on the premises that he has installed “solar connection as an alternate energy source” and not an occupant in the house. He denied the averment of the respondent regarding non occupancy in the house and argued that there is nothing in the government order or the order of KSEBL that prohibits the consumer having alternative energy source from applying electricity connection under the scheme. The 3rd respondent Smt. Shyni D has a small house and denied the version of the respondent that the house is not conducive for human occupation and kept as godown for agricultural products. The respondent has not made any remarks that the premises are not safe to provide the connections.

6. Five persons were additionally included in the list of beneficiaries who were deleted in the field inspection and the decision was taken in the meeting held on 4-2-2017. The field inspection team earlier found that these persons have no permanent inhabitation in the premises and deleted from the list of beneficiaries. The reason for their further inclusion in the list beneficiaries is not mentioned in the minutes and it is found that the decision for inclusion of the names was not based on any further field inspections by an implementation committee.

7. Though the respondent has stated that the appellants were not complied the conditions specified in the GO, they have not pointed out which condition was not complied with by the appellants.

8. In this case, KSEBL and Grama Panchayath members have approved the list of the beneficiaries under the scheme after field verification conducted by the KSEBL officers only. But the appellants are not satisfied with the reasons stated for their applications rejected on flimsy grounds. Absence of permanent inhabitation in the houses is not a sufficient reason to deny the connection. The reasons for rejection shown was not convincing as similar persons were seen included in the list of beneficiaries.

9. The appellants were not given an opportunity for being heard by the respondent.

10. The respondent has failed to submit a report of the implementation committee as directed by the Hon. High Court of Kerala. He submitted minutes of the meetings of some ward members and Board officials and a field verification report prepared by the Assistant Engineer in which the beneficiaries were listed out. The field verification report having no date of preparation but signed by the Assistant Engineer and the Panchayath President. The names and designation of the KSEBL officers and the details of the members who conducted the verification are not mentioned in the report.

The appellants claimed that the wiring of the appellants' premises was done by the appellants as directed by the respondent after conducting inspections. As per B.O.(FTD)No.3058/2016(D(D&S)/D6Total Electrification-Ph3/2016 dated 27-10-2016, KSEB Ltd., has accorded sanction to grant electric connections to residential structures of plinth area not more than 100 sq.m without insisting proof of ownership/legal occupancy on the basis of an undertaking from the applicant in plain paper that

1. The total plinth area of the building is not more than 100 sq. m.
2. The building is/will be used exclusively for domestic purpose
3. The grant of electric connection will not be considered as proof of legality of the structure or ownership or possession.

4. The connection is liable to be disconnected either temporarily or permanently, if any statutory authority requests the officer of the licensee to do so.

From the above it can be seen that there was no harm in providing electric connections to the appellants within the period of Total Electrification. The rejection of appellants' eligibility to include in the beneficiaries list is doubtful and not supported by any valid grounds. The respondent has not put forward any conclusive evidence to prove that the buildings of the appellants are not used exclusively for domestic purpose. The appellants have produced some photographs of the buildings owned by them and they are also willing to give an undertaking as prescribed above. The KSEB Ltd., have enough mechanism for the inspection of the premises of the consumers whether they are misusing the electric connection to other purposes and can take actions as per rules. Here the appellants had applied for electricity connections for domestic purpose during the period of Total Electrification Programme, i.e., registered before 31-03-2017.

Now the respondent has argued that the TEP has come to an end as on 31st March 2017. TEP was carried out using funds from local self-government, MLA fund, MP fund etc. These funds are no longer available to KSEBL for giving electric connection under TEP. That means if the applicants are allowed electric connection as applied for by them, the whole fund will have to be met by KSEBL alone, which would be a huge blow to KSEBL. In the instant case one Km Over Head line is to be constructed for giving connection to the applicants, for free of cost and this is not what meant by the Government, through a scheme like TEP.

Decision:

Whether the objections submitted by the appellants are sustainable is a matter which requires to be decided based on the above aspects. Since those aspects were not considered by the KSEBL and the Grama Panchayath ward members, this Authority is of the opinion that rejection for inclusion of the appellants in the beneficiaries list of TEP without considering the objections cannot be sustained. Considering facts of the case, it was confirmed that an implementation committee was not formed in the jurisdiction of Electrical Section, Unnikulam for selecting the beneficiaries under the Total Electrification Programme and the appellants' applications were found rejected by the KSEBL and the Panchayath members on trivial grounds without properly verifying the genuineness of the applications. I am fully convinced that the request of the appellants is reasonable and justifiable. For the above reasons, the appellants are eligible to get electric connection under Total Electrification Programme. The respondent shall take action to provide electric connection to the appellants.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is allowed and stands disposed of as such. No order as to costs.

ELECTRICITY OMBUDSMAN

P/021/2019/_____ /Dated:_____

1. Sri. Khader, Kollarukandy, Paramba P.O.,Kozhikode
2. Sri. Ali Mohammed, Kadavathu, Paramba P.O., Kozhikode
3. Smt. Shyni D, Payanaarambath, Paramba P.O.,Kozhikode
4. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Balussery, Kozhikode

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