

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/086/2018
(Present: A.S. Dasappan)
Dated: 10th January 2019

Appellant : Dr. Stephan Kuruvila
Ottathycal House,
Chingavanam P.O., Kottayam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Pallom,
Kottayam

ORDER

Background of the Case:

The service connection bearing consumer No. 5003, under KSEB Punja Section, Pallom was originally stand registered in favour of Sri Jacob Kuruvila. The connection was disconnected on 06-04-2016 due to non payment of electricity bill and on 15-02-2018 a dismantling notice was stuck near the meter. The grievance of the appellant is that he was not issued a notice either through post or in person before disconnecting the connection. The appellant's version is that he had remitted Rs. 50/- for tariff change on 05-05-2018. The complaint of the appellant is that a bill of Rs 4779/- as arrear was accrued due to non issuance of the electricity bills and his application for tariff change was not processed properly and delayed unnecessarily. The appellant aggrieved by this arrear bill and delay for tariff change, then approached the CGRF praying for a direction to set aside the arrear demand notice issued and to change the present tariff. The Forum dismissed the petition vide Order OP No. 93/2018 dated 28-09-2018 and also directed the appellant to apply for tariff change with required documents. Aggrieved by the decision of the CGRF, the consumer has filed the Appeal Petition before this Authority.

Arguments of the appellant:

The contentions of the appellant in the appeal petition are the following.

1. The appellant is a doctor employed at Italy for long time and he has family house and properties at Chingavanam. He used to visit his native place only one or two times a year. During his absence from India, his properties and residential house are being looked after by his aforesaid nephew, who is duly authorized to file this Appeal. The current charges in respect of appellant's buildings are also being paid by the said nephew. The old family house of the appellant was reconstructed few years ago and the construction was completed during the middle part of 2014. The consumer number allotted to that residential house from the local KSEB is 1359.

2. The appellant is also the owner of a small plot of land with a well located nearly 200 metres south from his residential house. Few years ago the appellant had taken an electric connection from second respondent, as Consumer No. 5003, to operate a pump set in that small plot to collect water from the well in that plot, to use for the construction works of his residential house. That connection was taken in the name of Sri. Jacob Kuruvilla, Ottathycal, Chingavanam, another nephew of the appellant. He was supervising the construction works of the aforesaid residential house during the period 2008 to 2012. The construction works of the residential house were completed by the end of 2014 and the transformer installed at the residential premises was energized in October 2014.

3. The electric bills in respect of Consumer No. 5003 were being issued in the name of aforesaid Jacob Kuruvilla and they were being paid till 2013. Thereafter no bill or demand notice relating to Consumer 'No. 5003 was served to anybody from the office of the second respondent. Besides, no disconnection notice was served to anybody relating to consumer No.5003. As a result, arrears of Rs. 4,779/- were accrued during 9.7.15 till 12.3.18.

4. This fact could be noted only towards the end of April 2018, when the present authorized agent, met second respondent to get information relating to the power supply given to a new building illegally constructed at Chingavanam to be used to as the retail outlet of the Kerala State Beverages Corporation. If proper demand notice was issued from the office of 2nd respondent at the proper time relating to Consumer No. 5003, the arrears of Rs. 4,779/- would not have been accrued at all and the current charges would have been paid in advance for a considerable period, as has been done in the case of appellant's residential house.

5. When information regarding the aforesaid arrears was so obtained towards the end of April 2018, the authorized agent of the appellant immediately contacted the superintendent under the 2nd respondent, the 3rd respondent herein. Then it was revealed that the aforesaid arrears includes surcharge of Rs. 875/-. It is submitted that the consumer is not liable to pay the surcharges of Rs. 875/-, since no notice or bill was issued to the consumer or to the appellant at the proper time. In fact, no current was used from the consumer premises for any construction work after September 2014. This fact could be easily discovered from the meter reading.

6. Stating the aforesaid facts, the authorized agent of the appellant submitted a letter dated 02-05-2018 to second respondent on 05-05-18, requesting to waive the surcharge of Rs. 875/- and to reduce the current charge arrears of Rs. 3,904/- to proper extent, considering that the appellant was not using any current for his construction works after September 2014.

7. On 05-05-18, the respondent issued a notice dated nil directly to the authorized agent of the appellant, informing that the arrears said to have remaining due in Con. No. 5003 is Rs. 4,779/-. At that time, she admitted that no notice could be served to the actual consumer or to the appellant or to his authorized agent indicating the aforesaid arrears and copy of that notice could not be affixed at the actual premises. However on that day the respondent advised the authorized agent of the appellant to pay the outstanding arrears in three monthly installments, to avoid disconnection of powder supply. At that time, the authorized agent expressed protest to pay the surcharge of Rs. 875/-, since surcharge is accrued for nonpayment of bills and such bills were not issued to the consumer or to the appellant, who is obligated to pay the Electricity Bills for using current in consumer No. 5003.

8. The respondent advised the authorized agent of the appellant to remit a fee of Rs. 50/- for-changing the present tariff indicated in Consumer No. 5003 to a lesser tariff. Accordingly, Rs. 50/- was paid on 05-05-18 itself in the office of second respondent and obtained a receipt. On 05-05-18, the respondent issued an installment plan to the authorized agent of the appellant, directing to pay the arrears demanded by three monthly installments and the first installment of Rs. 1,609/- should be paid on or before 19-05-18. Thus the authorized agent of the appellant paid the first installment of Rs. 1,609/- on 19-05-18 itself and obtained a receipt. On the same day, the bill amount of Rs. 271/- was also received by the office of respondent, towards current charges in respect of Consumer No. 5003 for May 2018 and issued a receipt.

9. As per the installment plan, the due date for payment of the 2nd installment was 19-6-2018. Since the appellant was planning to file a complaint before the respondent prior to 19-06-2018, he could not remit the 2nd installment. Meanwhile, the appellant could not lodge the complaint to 1st respondent before 19-06-18 due to an oversight. While so, the respondent

reminded the authorized agent of the appellant about the non-payment of the 2nd installment through a telephone call and the possibility of effecting disconnection in the near future. Hence, the authorized agent reached the office of first respondent on 16-07-18 to remit the 2nd installment under protest. But the said office refused to receive the 2nd installment of Rs. 1,609/- stating that the due date for payment has already expired. As a result, the 2nd installment could not be remitted.

10. The impugned order dated 28-09-2018 of the CGRF, Kottarakkara is highly illegal, contrary to law, arbitrary and against the facts and evidence of the case.

11. The CGRF went wrong to close the hearing of the complaint on 04-09-2018 in a hurry, ignoring appellant's written request dated 04-09-2018, seeking a short adjournment of the case due to the reason that he was unable to travel on that day and for few other days due to serious sickness caused to his right knee- joint.

12. The CGRF considered the version given by respondent on 04-09-2018 in the absence of the appellant and without giving any chance to the appellant to test that version of the respondent. The version given by respondent was not even given to the appellant. So CGRF was acting unilaterally, denying justice to the appellant.

13. The bill dated 19-05-2018 for Rs. 271/- was paid as a condition to change the present tariff of consumer No. 5003 to a lesser tariff and the fee of Rs. 50/- was also paid for changing the present tariff to a lesser tariff. Moreover, a bill for Rs. 600/- was paid in consumer No. 5003 on 15-09-2018, since the respondent is not giving any intimation regarding the present tariff in the aforesaid consumer number. Thus it is really strange that the tariff already introduced in the aforesaid consumer number from the very beginning is still maintained without implementing the lesser tariff, in spite of passing the impugned order. This situation is highly illegal, arbitrary and not warranted by law.

14. Respondent failed to issue any notice or bill in respect of consumer No.5003 to the consumer or to the complainant/appellant or to his authorized agent after July 2015. They did not serve any disconnection notice to the consumer or to the complainant/appellant or to his authorized agent after July 2015. They did not even serve notice to the consumer or to the complainant/appellant or to his authorized agent until 05-05-18. Therefore, the first respondent should have held that the complainant/appellant is not liable to pay at least the surcharge amount of Rs. 875/-. But this important aspect was not considered by the CGRF while passing the impugned order.

15. It is highly illegal on the part of respondent to delay the changing of the higher tariff in appellants consumer' number to lesser tariff. The respondent has a legal duty and obligation to change the present tariff to a lesser tariff from the bills of the appellant that may be issued for the month of July 2018 and subsequently, since the required fee for the said purpose has already been collected on 05-05-18. But this aspect is not considered by the CGRF in the proper manner.

It is requested to set aside the impugned order dated 28-09-2018 in O.P. No. 93/2018 of the CGRF and pass an order granting all the reliefs sought in appellant's complaint dated 17-07-2018 lodged to CGRF.

Arguments of the respondent:

The appellant Dr. Stephen Kuruvilla, Consumer No. 5003 is a registered consumer of Electrical Section, Punja, Pallom. The service connection is under LT 6 F tariff availed for construction purpose on 22-03-2011. As per office records, the appellant was not paying his regular bimonthly bills since July 2015.

The averment of the appellant that bills were not issued during this period is false and hence denied. The connection is given on a water pump shed in a 5 cents land fitted with gate. As admitted by the appellant, the electric bills were issued and they were being paid till 2015 and the regular practice was to place regular bimonthly bills near the meter by the meter reader as there was no resident in the plot. The same way afterwards also the practice continued. However, on defaulting four subsequent bimonthly bills, the connection was disconnected on 6-4-2016. The connection was under disconnected status since then till May 2018.

On 15-02-2018, a dismantling notice was stuck near the meter and the matter was telephonically intimated in the number available in records (i.e., number of the representative of the appellant). Later he approached the office and demanded for a copy of the notice. As the copy of the notice was in file of the field staff, a fresh duplicate was prepared and issued to the representative, the receipt of which was duly acknowledged by him. He left office assuring to pay the arrears and requested for more time which was allowed favourably.

Later he was contacted several times over phone. On 05-05-2018 he arrived at the office and insisted for taking an interim reading and remitted AF for the same. The service history in ORUMANET against the AF of Rs. 50/- is recorded as "Request for Interim Bill". The appellant in his version has falsely claimed this to be for tariff change, which in practice should accompany an

application with other related supporting documents with respect to the purpose of tariff.

On 19-05-2018 he requested for allowing installments for paying arrears which was also allowed favourably and he remitted the first installment of Rs. 1,609.00 along with that month's regular bill on the same day. The installment plan issued to the appellant contained due date of each installment and disconnection notice if he failed to remit the same in time. However, the appellant defaulted the payment of rest of installments, and has approached the CGRF for setting aside the arrears and to change the present tariff to a lower tariff. The Forum fixed the hearing initially on 20th of August 2018. However due to the flood, as the traffic on MC road was hindered at many places between Kottayam and Kottarakkara the hearing was postponed for the benefit of all. This was later fixed on 4th of September 2018. On the day of hearing, a representative of the appellant presented himself, and the case was examined in his presence, after which the Forum ordered to dispose the petition.

The respondent in OP 93/2018 acted on behalf of KSEB Ltd and the actions are in order. The appellant being consumer disconnected of non-payment of regular bills, the connection should have been dismantled in six months after disconnection. As submitted a dismantling notice was rightly issued on noting the connection on which dismantling was due. However as the notice could not be served in person, it was stuck near the meter board and matter was telephonically intimated to the available phone number. Only after repeated calls, the representative of the owner of connection came to the office. The demand recorded in dismantling notice is only a consolidation of bi-monthly bills regularly delivered to the connection site.

Further, as per the request of the appellant facility for paying the arrear in 3 installments was granted. On remitting the 1st installment, the connection was re-effected. In all the above, the action of the respondent was in order and as per the regulating codes.

With respect to the claim of irregularity in not sanctioning a lesser tariff on the connection, the connection 5003 is a temporary connection accorded under 6F tariff, i.e. for construction purpose which is the only tariff that could be given in the premises of the connection 5003. For effecting a permanent connection in lower tariff, the consumer needs to apply along with documents to substantiate eligibility for securing a lower tariff. The appellant has not so far applied for the same. On application, this can be considered favourably, if he is eligible for the same.

The respondent continued to serve the bi-monthly in the same manner as it used to be done until July 2015. Details of the bi-monthly bills delivered by sport biller of KSEB Ltd at the premises are submitted. If the party regularly

paid the bill served in the like manner until before July, then he has no ground to either claim non-receipt of bill or plead ignorance of payment obligation for a connection he had not requested to dismantle and still wished to maintain. Further as clearly provided under Regulation 122 of Supply Code, "non-receipt of the bill shall not entitle the consumer to delay payment beyond the due date stipulated in the original bill." Thus there is an equal responsibility on the part of the consumer to contact the licensee concerning non-receipt of bills of a connection for which he had been paying regularly, as long as he had not requested for connection dismantling.

All the arrear bills raised by KSEBL are just and as per rules. Although there was no consumption, the consumer preferred to retain the connection and that he still desires to do so is evident from the plea presented by him before the forum. Under such circumstances he was charged only the minimum charge mainly comprising of the fixed charge during each billing cycle. The appellant is liable to pay these arrears for having maintained the connection so far along with surcharge.

Concerning the second demand, i.e., for assigning a lower tariff, the appellant has not so far applied for the same showing change in purpose. On application, this can be considered favourably, if he is eligible for the same.

The respondent has requested to dismiss the petition and direct the appellant to remit the bill amount.

Analysis and Findings: -

This appeal is submitted by Sri. Stephan Kurvila on behalf of late Jacob Kuruvila, the registered owner of consumer number 5003. A hearing of the Case was conducted in the office of the State Electricity Ombudsman, Edappally, Kochi on 20-12-2018. Sri Kuruvila Jacob represented by the appellant, Sri Stephan Kuruvila and the respondent, the Assistant Executive Engineer, Electrical Sub Division, Pallom, represented by Sri Anilkumar P.R., Assistant Engineer, Electrical Section, Punja, Pallom, were present and they argued the case on the lines stated above. On perusing the Appeal Petition, the statement of facts filed by the Respondent, the arguments of both sides in the Hearing done and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant had taken a temporary electric connection on 22-03-2011 with consumer no.5003 for construction works of his residential building under LT 6 F tariff. The connection was taken in the name of Sri. Jacob Kuruvila. The construction of the building was completed in 2014 and he had availed electric connection to the residential house with consumer number 1359. The appellant has paid regular electricity bills till 2015 and thereafter

defaulted payment of bi-monthly bills for the consumer number 5003. On defaulting four subsequent bimonthly bills, the connection was disconnected on 06-04-2016. Thereafter the respondent had not taken any further action to dismantle the connection and to claim the arrear amount pending till he issued a notice on 15-02-2018. As per the notice the arrear amount was for Rs. 4431/- (current charge Rs. 3,652/- + surcharge Rs. 779/-) which covers a period from 09-07-2015 to 10-01-2018. Later a revised arrear notice was seen issued for Rs. 4,779/- for the period from 09-07-2015 to 12-03-2018. The appellant's contention was that he was not issued any bills during the period which caused default of the bills. But according to the respondent, the regular practice was to place regular bimonthly bills near the meter by the meter reader as there was no resident in the plot. On examining the above versions of the appellant and the respondent, this Authority has found serious lapses on the part of the appellant and respondent. Non receipt of electricity bills is not a sufficient reason for defaulting payment of electricity bills for such a long period. As per rules specified in Regulation 122 of the Kerala Electricity Supply Code 2014, non-receipt of the bill shall not entitle the consumer to delay payment.

Similarly, omission has occurred on the part of the Assistant Engineer (AE) in serving the dismantling notice. The appellant has argued that he was not served the dismantling notice in person or by regd. Post. The respondent's version is that the notice pasted in the premises of the house but he admitted that this notice pasted without adhering procedural formalities. Hence it is revealed that a proper service of the dismantling notice was not done as stipulated in Regulation 175 of the Kerala Electricity Supply Code, 2014. If the respondent took action to serve the dismantling notice on proper way and in time, this issue could have been avoided.

The appellant had argued that he remitted the required application fee Rs. 50/- for tariff change on 05-05-2018. It is revealed that the consumer number 5003 is a temporary connection for construction purpose taken by Sri Jacob Kuruvila and the appellant on completion of the construction work availed another connection for the residential house having consumer number 1359. Hence there is no question of a tariff change for a temporary connection. In such a situation, if the appellant submits an application for a permanent connection under appropriate tariff, the respondent is ought to have processed the application as per Regulation 76 of the Supply Code, 2014.

As per Regulation 76 Of Kerala Electricity Supply Code, 2014, "On receipt of application form for new service connection, the licensee shall verify the application form along with enclosed documents, and if found deficient prima facie, shall issue a written intimation on the spot as far as possible, regarding the deficiencies of the application."

On verifying the records, it is found the appellant had not submitted such an application with documents required for a new connection in the place of consumer number 5003.

Under the above circumstances, this Authority only checks whether there was any intentional or otherwise lapse or dereliction of duty or deficiency of service towards the consumer and want to set it right to mitigate the genuine grievances of the consumer, as per Law. On perusal of the statements from either side, it is convinced that there was lapse on the part of the respondent in effecting the dismantling of the old service connection. Hence the collection of surcharge from the consumer number 5003 is not justifiable.

Decision:

From the analysis done above and the conclusions arrived at, I take the following decision.

The surcharge of Rs. 875/- is exempted from the payment of arrears by the appellant. Connection can be effected under the eligible tariff after obtaining application with required documents as per rules, if the appellant desires so. The order of CGRF, Kottarakkara in OP No. 93/2018 dated 28-09-2018 is set aside. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/086/2018/_____/Dated:_____

Delivered to:

1. Dr. Stephan Kuruvila, Ottathycal House, Chingavanam P.O., Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pallom, Kottayam

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, Kottarakkara - 691 506.