

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/011/2020
(Present: A.S. Dasappan)
Dated: 24th June 2020

Appellant : Sri. M.B. Priyakumar
Manghat House, Vennala P.O.,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBL,
Palarivattom,
Ernakulam

ORDER

Background of the Case:

The appellant is a consumer having a three-phase service connection bearing consumer no: 1157327001790 with registered connected load of 3000 watts under LT 5A tariff (Agriculture tariff) under Electrical Section, Vennala. The payment of the connection is being paid by the Krishi Bhavan and an amount of Rs.958/- was pending against the consumer number 1790 of the appellant for the period from 09/2017 to 09/2018. Disconnection notice was served on 27/10/2018. The appellant was aggrieved by the disconnection done on 05/12/2018, approached the CGRF, Ernakulam by filing a petition in OP No. 57/2019-20 for reconnection. The Forum disposed of the case in favour of KSEBL and dismissed the petition due to lack of merit, vide order dated 31-12-2019. Against the decision, the appellant has submitted this appeal petition before this Authority on 11-02-2020.

Arguments of the appellant:

The appellant is an LT agriculture consumer having consumer no 1790 under Electrical Section, Vennala. The connection was in operation for more than 50 years and the appellant was enjoying an uninterrupted usage of such benefit for the past 50 years. However, the said connection has been disconnected with effect from 05,12.2018 as the agricultural department had not

made the payment to KSEB. The appellant's connection is under a special scheme and the liability of making payment vests upon with the Agricultural department, it is illegal to have the agriculture connection disconnected and which has defeated the intended purpose of the state government, as well causing great damage to the crops of the appellant.

The appellant submitted the argument note by hand on the day of hearing i.e 23.12.2019 at the registry of the CGRF without receiving the statement of facts from the respondent. The appellant's argument note was not considered by the Forum while deciding the petition. The CGRF dismissed the appellant's petition on the ground that the petition lack merit. The CGRF has stated that the appellant is the beneficiary and not the direct consumer of the licensee and concluded that the licensee executed their duties as per law, by placing reliance on regulations 136(3) and 152(3) of the Kerala Electricity Supply Code, 2014.

The order of the CGRF under appeal are erroneous both on facts as well as law.

1. The respondent has admitted that the appellant is an LT agriculture consumer having consumer no 1790 under Electrical Section, Vennala and was in operation for more than 50 years, and the same was affirmed by the Forum stating that the appellant is the beneficiary and the payment is to be made by the Agriculture department. The Forum has failed to appreciate that there is any disqualification to the appellant to terminate the agriculture connection. Here the connection was terminated for no fault of the petitioner and is an injustice.

2. The CGRF has affirmed the position of the appellant as beneficiary. The beneficiary is a person who receives benefit from a particular entity or a person. The eligibility to be considered for the benefits is confirmed either as per the specifications in the policy documents or by other legal norms. Thus, the appellant is entitled for the benefit of free electricity supply for the said purpose under the special scheme for agriculture by the State Government, hence the normal provisions as applicable to a direct consumer under regulations 138 and 139 along with regulations 136(3) and 152(3) of the Kerala Electricity Supply Code 2014, cannot be applied. The principle of *Generalia Specialibus Non Derogant* is applicable. The enjoyment of the benefit conferred upon cannot be extinguished without any proved disqualification of the appellant.

3. The Forum has not made any order to redress the grievance of the appellant by giving instructions to the KSEB to persistently take efforts to settle the payment with the Agricultural department. Reliance is made on Kerala HC M.K. Saidalavi Vs Assistant Executive Engineer March 2003 wherein it states that once a person is certified by agricultural officer of Krishibhavan his eligibility for free electric supply has to be resumed for coming years also unless some factor which justifies withdrawal of the benefit comes to notice of the agricultural officer /KSEB officials. Further reliance is made on Kerala HC P. Sankara Narayanan Vs The KSEB. June 2009.

4. The appellant had asked in the argument note submitted before the CGRF that he may be supplied with a copy of the correspondence made by the KSEB to the agriculture office in this regard and also the file noting and approval for disconnection.

5. The Forum has failed in applying the principle of natural justice. Principle established by natural justice controls all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. The underline object of rules of natural justice is to ensure fundamental liabilities and rights of citizen. The golden rule which stand firmly established in the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

6. The CGRF in the order has stated that the respondent had submitted the statements of facts on 9.10.2019, but the statement of facts was received by the Forum only on 23.12.2019, the date of hearing. During the hearing on 23.12.2019, the Assistant Engineer, Vennala gave a paper which is said to be the statement of facts. On receipt of it the appellant said that this is without signature and date and the Assistant Engineer then signed for Asst. Executive Engineer with date. The Forum admits the statement of facts by the respondent without proper verification and signature.

In the above facts and circumstances the appellant prays that this appeal be allowed, the order under appeal be set aside and the decree prayed for by the appellant in his petition before the CGRF be passed together costs.

Arguments of the respondent:

An amount of Rs. 958/- was pending against the consumer number 1790 for the period from 9/2017 lo 09/2018. Disconnection notice was served to the consumer on 27/10/2018 as per the direction of the Executive Engineer, Electrical Division, Ernakulam. The current charges were not remitted and the connection was disconnected on 5/12/ 2018.

As the payment is being done by the Krishi Bhavan, Vyttila, several intimation letters were sent to the Krishi Bhavan Office for the timely remittance of the arrear amount. But the amount was not remitted. For increasing the efficiency of the collection, the pending consumers were disconnected as per the direction from the higher office. Even for the last month one letter was served to the Agricultural Officer, Krishi Bhavan, Vyttila for the payment of the arrear bills of consumers. An amount of Rs. 1629 is still pending against the consumer number 1157327001790.

Regulation 138 (a) of Kerala Electricity Supply Code, 2014 defines Ground of Disconnection: - (1) The licensee shall not disconnect the supply of electricity to any consumer except on any one or more of the following grounds: -

(a) If the consumer defaults in 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.

As per the rules, there is no provision for withholding the disconnection or reinstating the service connection without clearing the dues. The appellant has also failed to produce any such documents in this regard.

Moreover, Sec 45 of the Indian Electricity Act, 2003- power to recover charges: -

(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license". Regulation. 131 (1) of Electricity Supply Code 2014 empowers the licensee to collect the payment of electricity charges supplied by it. Regulation 131 of Electricity Supply Code, 2014 states that "The consumer shall pay to the licensee the full amount of the bill on or before the due date indicated therein, for which the licensee shall issue a receipt". Regulation 139 of the Code defines Procedure for disconnection: -

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.

(2) If the consumer fails to remit the dues within such notice period the licensee may disconnect the service of the consumer on the expiry of the said notice period, by cutting off the supply in the manner as the licensee may deem fit".

Therefore, it is submitted that the respondent has acted strictly in accordance with law. None of the grounds raised in the appeal are tenable and the appellant is not entitled for any reliefs.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 16-06-2020. Sri. M.B. Priyakumar was present for the appellant and Sri. Sunil N.V., Assistant Engineer i/c Electrical Sub Division, Palarivattom represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments 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 service connection of the appellant was disconnected on 05-12-2018 due to default of payment of bills. The pending of arrears is only from 09/2017 onwards and the amount shown in the latest bill dated 16-05-2020 is Rs.1548/- including ACD amount Rs. 57/-. The electricity charges for the agricultural connection of the appellant was being paid by the Krishibhavan and it has made default of payment since 09/2017. After lapse of a period of one year of default of payment, the respondent issued a disconnection notice on 27-10-2018. Normally the respondent had taken action as per rules and disconnected the connection. The Krishibhavan who is responsible to safeguard the interests of the agriculturists had not made any attempt to clear the pending arrears.

The appellant has argued that he is entitled for the benefit of free electricity supply for the said purpose under the special scheme for agriculture by the State Government, hence the normal provisions as applicable to a direct consumer under 138 and 139 along with regulations 136(3) and 152(3) of the Kerala Electricity Supply Code 2014, cannot be applied. It is pertinent to note that the appellant has executed an agreement for supply with the licensee and hence he is liable to obey the conditions in the agreement. The remittance of current bills by the Krishibhavan is based on the request of the appellant and there is no agreement in between the licensee and the Krishibhavan. Hence the argument of the appellant is not admitted.

As per regulation 143 (3) of the Kerala Electricity Supply Code 2014, "If the service connection of the consumer remains continuously disconnected for one hundred and eighty days, except upon the request of the consumer, the agreement may be terminated after giving a notice of fifteen days to the consumer". The service shall be dismantled if the grounds which the supply was disconnected are not removed or rectified within the notice period. The respondent has failed to adhere the above provisions.

During the hearing the appellant has expressed willingness to remit Rs. 1548/- as per the latest bill with protest and without prejudice to the rights. The respondent has also agreed to reconnect the agricultural connection soon after remittance. Regarding the default payment by the Krishibhavan under 5A tariff of the concerned farmers, the respondent shall take the matter with higher authorities for expedite action to clear all arrears. Recoupment of the amount remitted by the appellant shall be made on getting the arrear amount from the Krishibhavan.

Decision:

From the analysis done above and the conclusions arrived at, this Authority takes the following decisions.

The respondent shall give reconnection to the appellant on remittance of Rs.1548/- by the appellant and also take follow up action to realise the arrear

amount from the Krishibhavan. On receiving the arrear amount from Krishibhavan, Rs.1,548/- shall be refunded to the appellant. Since the benefit of free electricity supply is granted under the special scheme for agriculture by the state government and on the basis of application submitted by the appellant, he shall also approach the Krishibhavan for settling the arrears by them and for regular remittance of the bill amount in future.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to this extent. The order of CGRF, Ernakulam in Petition No. OP/057/2019-20 dated 31-12-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/011/2020/_____ /Dated:_____

Delivered to:

1. Sri. M.B. Priyakumar, Manghat House, Vennala P.O., Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Palarivattom, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.