

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/025/2021**(Present: A.S. Dasappan)****Dated: 06th September 2021**

Appellant : 1) Sri. Irshad. B.,
Darul Aman,
K.S. Puram P.O., Karunagappally,
Kollam Dist.

2) Abdul Manaf,
A.A.M. Manaf,
Pada North, Karunagappally,
Kollam Dist.

Respondent : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Oachira, Kollam Dist.

ORDER**Background of the case:**

An electric connection under domestic tariff was provided by the respondent to Smt. Rasheedabeevi, M.A.R. House, Pada North, Karunagappally with consumer number 33042 having a connected load of 660 watts, single phase, from Electrical Section, Karunagappally North. The appellants filed a complaint before the Assistant Engineer, Electrical Section Karunagappally North with a request to disconnect the above service connection on the ground that the appellants are enjoying the possession of the landed property where the electric connection was provided. Since no action was taken by the Assistant Engineer or by the superior officers of the respondent, the appellant filed a petition before the Consumer Grievance Redressal Forum (CGRF), Southern Region. The Forum registered the petition vide OP No. 88/2020 and issued order on 23-02-2021 without interfering in the subject matter, but directed the respondent to issue a letter to the registered owner of the service connection, Smt. Rasheedabeevi to produce any valid proof of ownership or

legal occupancy of the premises to which service connection has been effected. Aggrieved by the decision of the Forum the appellant filed the appeal petition vide P-025/2021 before this Authority.

Arguments of the appellant:

The argument of the appellant is as follows: -

The landed property having an area of 04 Ares 85 square metres have been acquired by the appellants herein through sale deed No. 232/2020 of the Principal Sub Registrar Office, Karunagappally and the appellants are enjoying the possession of the same by remitting the land tax in Karunagappally Village under 'Thandapper' No: 29440. There is a temporary shed in the property. Claiming the ownership on this property, one Smt. Rasheedabeevi, M.A.R. House, Pada North, Karunagappally regularly made problems and has been threatening the appellants to give complaints against the appellants before the police/court. She has strong enmity towards the appellants as they are not ready or willing to surrender for this unnecessary and illegal claim on the petition schedule property. She had made effort to reside in the temporary shed. Thereafter she had influenced the respondents and they effected an electric connection as consumer number 33042 in the name of this Smt.Rasheedabeevi for the temporary shed in the plaint schedule property. The respondents being the Govt. servants, had misused their official capacity and hence, their act is clear violation of the Service Rules.

The appellants have made a complaint before the Assistant Engineer, Electrical Section, Karunagappally North requesting to disconnect the illegal electric connection given in the name of a third person to the temporary shed in their own property, the concerned Officer has not taken any measures in respect of the matter, but has been making all support for this illegal issuing of the electric connection to Smt. Rasheedabeevi. The respondent was acting under the unlawful influence of Smt. Rasheedabeevi and was misusing their official capacity. Thereafter, the appellants had made their complaint before the superior officers of the respondent, however, they also made a report in support of the respondent stating that the electric connection given to Smt. Rasheedabeevi is legal, and the appellants had received the report/reply from the respondent on 25-08-2020 numbered as G B/Complaint/2020-21/421.

The CGRF in its order dated 23-02-2021 it is stated as follows:

“The Forum views that a right to minor dispute exists regarding the ownership of the property. The District Collector based on the report of the Tahsildar and referring to the opinion of the Govt. Pleader, observed that as the right to minor dispute exists, the sale deed by which the petitioner acquired the property is invalid. The dispute may be settled after filing petition before a Civil Court.”

The appellants are aggrieved by the order of the Forum. The appellants are the sole owners of the plaint schedule property as per the Sale Deed No. 232/2020 of the Principal Sub Registrar Office, Karunagappally and they are enjoying the possession. The Forum does not have any authority to adjudicate upon the veracity of the Sale Deed, or to express any opinion on that. The Sale Deed is conclusive regarding the ownership of the property. The Forum has to take the Sale Deed until it is set aside by a lawful and competent authority. The Forum has exceeded its power and authority and has leaned in favour of Smt. Rasheedabeevi, which is highly illegal, arbitrary and unfair. Hence, this appeal is filed for an order, directing the respondents to disconnect the electric connection issued in consumer number 33042 and to take necessary legal action against all the concerned officials of the respondent for misusing their official status as Govt. servants for issuing an illegal electric connection to a third person who has no authority or ownership in the scheduled property.

Arguments of the respondent:

The argument of the respondent is as follows: -

The appellants are not a consumer of the respondent and not come under the meaning “consumer” provided under the Kerala State Electricity Regulatory Commission Regulations, 2005, so they have no statutory right to file a complaint against the respondent and hence, this complaint is not maintainable before this authority either in law or under facts.

The challenged electric connection was effected to the disputed land vide consumer No.33042 owned by Smt. Rasheedabeevi is as per B.0(FTD)

No.1902/2018(DD&IT)D6AE3 lease of doing business / 2018-19 dated 02-11-2018 TVPM. It is the duty and responsibility of the Licensee to give electrical supply to the premises of the applicant when duly complied with the prescribed conditions. As per the order noted above, an applicant who wish to take service/electric connection to residential structures of plinth area not more than 100 Sq. m shall be released 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 or ownership or possession of the structure (4) The connection is liable to be disconnected either temporarily or permanently, if any statutory authority direct/order the Officer of the Licensee to do so in writing.

The respondents gave electric supply to Smt. Rasheedabeevi vide consumer number 33042 on the production of two documents such as proof of identity and an undertaking. The respondent is not required to go into authenticity of documents produced as well as Licensee is not bound by law to check the authenticity of the legal documents.

The appellant filed a writ petition before the Hon'ble High Court of Kerala on the same cause of action in W.P No.4708/2020 challenging the service connection. The Hon'ble High Court of Kerala vide judgment dated 6th March 2020 held that the disputes between appellants and the respondent are a civil nature. There is serious dispute regarding the immovable property so without determining the right and the interest of the parties in regard to the immovable property, the Court cannot give an order in the writ petition.

The respondents effected the challenged service connection by complying all due processes and orders of the Licensee and hence, all allegations of the appellants are denied.

The respondent requested to dismiss the appeal petition.

Analysis and findings:

An online hearing of the case was conducted at 4-45 PM on 29-07-2021 with prior intimation to both the appellant and the respondent. Advocate Sri. Innocent Francis Papali attended the hearing for the appellants and Sri. P.S. Pradeep, Assistant Executive Engineer, Electrical Subdivision, Karunagappally North holding the additional charge of Assistant Executive Engineer, Electrical Subdivision, Oachira and Sri. Nikilkumar, the Asst. Engineer at the time of effecting the electric connection to Smt. Rasheedabeevi from Electrical Section, Karunagappally North from the respondent's side attended the hearing. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The argument of the appellants is that a service connection was illegally provided by the respondent to one Smt. Rasheedabeevi, M.A.R. House, Pada North, Karunagappally in a temporary shed constructed in the property possessed by the appellants. Though the appellant had requested the respondent and their superior officers to disconnect the supply, no action was taken by the respondent to disconnect the supply. The requirement of the appellant is to disconnect the electric connection illegally provided and to initiate legal action against the respondent.

The argument of the respondent is that the appellant is not a consumer of KSEB Ltd. under the meaning 'consumer' as specified in Kerala State Electricity Regulatory Commission Regulation 2005 and hence, the appeal petition is not maintainable. The consumer Smt. Rasheedabeevi applied for the electric connection and effected as per Board Order dated 02-11-2018. The service connection was provided after producing proof of identity and furnishing an undertaking which contains certain conditions. Though the appellant had filed a writ petition before Hon'ble High Court of Kerala vide W.P. No. 4708/2020 challenging the service connection, the Hon'ble High Court vide judgment held that the dispute between the petitioners and respondent is of civil nature. The request of the respondent is to dismiss the appeal petition.

In this case, the respondent provided an electric connection to Smt. Rasheedabeevi for domestic purpose with consumer number 33042 for a connected load of 660 watts by drawing 20 metres weather proof wire. The service connection was effected with an undertaking furnished by Smt. Rasheedabeevi on 20-07-2020, that the total plinth area of house is not more than 100 Sq. Metre, the building is/will be used exclusively for domestic purpose, the grant of electric connection will not be considered as proof of legality or ownership or possession of the structure and the connection is liable to be disconnected either temporarily or permanently if any statutory Authority requests the officers of the Licensee to do so in writing. The respondent reported that the same connection was given on the strength of the order of KSEB Ltd. The order says “service connection to resident structures of plinth area not more than 100 Sq. m (1076 Sq. ft.) shall be released without insisting proof of ownership/legal occupancy on the basis of an undertaking from the applicant in plain paper.

The connected load in the premises is 660 watts having 6 Nos. 40 watts light points, 6 Nos. 60 watts plug points and one number 60 watts fan.

In this case, Smt. Rasheedabeevi is the consumer of electricity and Sri. Irshad. B. and Sri. Abdul Manaf are the appellants.

As per Regulation of 2 (1) (e) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2005 “complainant” means:

- (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.

As per Regulation of 2 (1) (f) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) “complaint” means any grievance made by a complainant in writing on:-

- (i) defect or deficiency in electricity service provided by the licensee;
- (ii) unfair or restrictive trade practices of licensee in providing electricity services;
- (iii) charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;
- (iv) errors in billing;
- (v) erroneous disconnection of supply;
- (vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or
- (vii) any other grievance connected with the supply of electricity by the licensee except those related to the following:
 - (1) unauthorised use of electricity as provided under Section 126 of the Act;
 - (2) offences and penalties as provided under Sections 135 to 139 of the Act and
 - (3) accident in the distribution, supply or use of electricity under Section 161 of the Act.

As per Regulation of 2 (1) (g) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2005 “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”.

As per Regulation 138 of Kerala Electricity Supply Code 2014, the “grounds for disconnection” are:

- (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;
 - (b) if the security provided by the consumer has become insufficient or the consumer fails to provide additional security as required by the licensee;
 - (c) if the consumer is found to have indulged in theft of electricity;
 - (d) if the failure to disconnect is likely to cause health hazard or safety risk or damage to property or to the consumer or to any other person;

- (e) if the conduct or continuance of any business or industry or activity being carried out in any premises becomes unlawful due to lack of necessary permission from the competent authority or due to withdrawal of such permission by any competent authority;
- (f) if the licensee is mandated to do so by an order of a legal authority, competent to issue such a mandate;
- (g) if the licensee is entitled to do so under an agreement with the consumer;
- (h) if the installation of the consumer does not comply with the applicable rules or any other reasonable requirements stipulated by the licensee;
- (i) if the consumer has contravened the provisions of the Code or of the Act, which entitles the licensee to disconnect the supply;
- (j) if the wiring, apparatus, equipment or installation at the premises of the consumer is found to be defective or unsafe or there is leakage of electricity;
- (k) if the consumer is found to have altered the position of the meter and related apparatus or if the consumer uses any apparatus or appliance other than the ones authorised by the licensee;
- (l) if the consumer uses the energy in such a manner as to endanger the service lines, equipment, electric supply mains and other works of the licensee;
- (m) if it is found that energy is being used in any manner which unduly or improperly interferes with the efficient supply of electricity to any other consumer;
- (n) if at any time the consumer is found to be using energy for a purpose other than for which it was intended or provided;
- (o) if the consumer extends or allows supply of electricity to any other premises from his connection without the permission of the licensee.
- (p) if the supply of electricity to the consumer is liable to be disconnected as per any of the provisions in the Code.

The service connection was provided to Smt. Rasheedabeevi on certain conditions contained in the undertaking furnished by the consumer and hence, the Licensee can disconnect the same if the consumer violates the conditions in the undertaking.

This Authority is not empowered to initiate legal actions against the officers/employees of KSEB Ltd.

Though the Licensee is not a respondent in the writ petition W.P. No. 4708/2020 (K) filed by the appellants before the Hon'ble High Court of Kerala, the order of Hon'ble Court says "the disputes between the petitioner and the party respondents are of a civil nature. There is serious dispute regarding the immovable property".

Decision: -

For the reasons detailed above, the appeal petition No. P-025/2021 filed by the appellant stands dismissed as it is found not maintainable before this Authority. The order dated 23-02-2021 in OP No. 88/2020 of CGRF, Southern Region is upheld.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/025/2020/ _____ dated _____.

Delivered to:

1. Sri. Irshad. B., Darul Aman, K.S. Puram P.O., Karunagappally, Kollam Dist.
2. Abdul Manaf, A.A.M. Manaf, Pada North, Karunagappally, Kollam Dist.
3. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Oachira, Kollam Dist.

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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.