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**Appeal Petition No. P/043/2023
(Present A. Chandrakumaran Nair)
Dated: December-01-2023**

- Appellant : Sri. R. Venugopal, Managing Partner,
M/s Ayyappas silk house, K.K. Road,
Kottayam (Dist.)
- Respondent : 1. The Special Officer Revenue,
Kerala State Electricity Board Ltd.,
Pattom, Thiruvananthapuram.
2. The Deputy Chief Engineer,
Electrical Circle, Kottayam.
3. The Assistant Engineer, Electrical
Section, Kottayam Central.
4. The Chairperson, Consumer
Grievance Redressal Forum,
Vydhuthi Bhavanam, KSE Board Ltd,
Kottarakkara - 691 506.

ORDER

Background of the case

The appellant is the Managing Partner of Ayyappas Silk House Kottayam and an HT consumer of the licensee with consumer No. 25/491 with connected load 104 kw and contract demand 100 kVA. The appellant was a defaulter in remitting the current charges since May 2020. The country wide lock down was declared with effect from 22/03/2020 and the shop was totally closed. Then the appellant could not pay the energy charges. The licensee has issued a circular stating that no power connection is to be disconnected due to non payment of current charges due to Covid-19 pandemic. The power was disconnected on 12/02/2021 due to non payment of regular current charges. On 25/02/2021, the appellant has submitted a letter to licensee to discontinue the power supply. The power connection dismantling notice was issued on 31/12/2021. The dismantling period was considered as 6 months from the date of disconnection and

accordingly the balance arrears payable by the appellant after adjusting the security deposit was arrived as Rs. 3,06,101/-. The demand notice was issued for the same. The appellant filed petition to the CGRF and CGRF issued order dated 1/08/2023 stating that the appellant is liable to the current charges till disconnection and also the demand charges for 180 days from 12/02/2021. Aggrieved with the order of CGRF, the appellant filed this appeal petition.

Arguments of the Appellant

The complainant is the Managing Partner of Aiyappas Silk House, Kottayam. This textile shop had electric connection for long time from the K.S.E.B. Kottayam Central Office, the 4th respondent herein, and the Consumer No. allotted was LCN25/4911. This business establishment was having very poor business after the middle of 2019. While so, there was declaration of national lockdown by the Central Government w.e.f. 22.03.2020 due to Covid-19 epidemic. As a result, the said shop had no business activity from 23.03.2020 and it remained closed since then. Consequently, the complainant could not pay any current charge from May 2020, especially due to the declaration of national lockdown and resultant closing of complainant's textile shop for long time and non functioning of the concerned office. While so, as instructed by 4th respondent, textile shop of the complainant was disconnected on 12.02.21 for non-payment of electricity bill arrears said to be due from May 2020. On 22.02.21 the complainant had given specific written request to 4th respondent to disconnect/discontinue the power supply with immediate effect of its business premises, as the entire business activities therein were ceased since 23.03.20 due to Covid-19 situation.

Upon submitting letter, the office of 4th respondent directed the complainant to pay Rs.238/- towards disconnection charge. Accordingly, that amount was paid on 25.02.21 and obtained receipt. In the above circumstances, the complainant is not liable to pay any electricity bill and interest for its textile unit after 25.03.21 and the K.S.E.B. is obligated to ascertain the electricity arrears of the aforesaid textile shop as on 25.02.21 including interest, if any, up to 25.02.21 and to adjust the said arrears from complainant's security deposit of Rs.312580/- available with KSEB and to refund the balance security deposit amount, without any delay. But the office of the 4th respondent did not take any such effort even by 31.03.21. Therefore, the complainant personally reached the office of 4th respondent during the first week of April 2021, requesting to ascertain the arrears of his textile shop as on 25.02.21 and to adjust the same from its security deposit of Rs.312580/- and to refund the balance security deposit. Thereafter, there was no positive action from the said office regarding the personal request made by the complainant.

While so, the 3rd respondent vide his letter No. EC/KTM/DBI/HT/DM/2021- 22/1665 dated 31.12.21, instructed 4th respondent to serve the dismantling notice to the textile unit of the complainant under Regulation 143(3) of the Kerala Electricity Supply Code 2014. 4th respondent dismantled the service connection of the textile unit. Notice should have been issued by 3rd respondent to 4th respondent at least during March 2021, since the power supply given to Aiyappas Silk House was already disconnected on 12.02.21 and the complainant expressed his intention to discontinue power supply with immediate effect. Therefore, it is evident that there is serious failure, and inaction on the part of respondents 3 & 4 to serve dismantling notice to the complainant at the proper time without delaying the same.

The complainant was very aggrieved by the said delay. Therefore, the complainant personally contacted 3rd respondent on 15.01.21 and submitted a detailed objection dated 15.01.21. It is submitted that the date of letter was wrongly typed as 15.01.21. Its actual date was 15.01.22, since it was submitted on 15.01.22. This mistake was intimated to 2nd respondent by sending letter dated 04.08.22 by speed-post. It is submitted that the objections in letter were not at all considered by 3rd respondent. Such an attitude is highly wrong and improper. The complainant is not against dismantling the service connection of its business premises. The complainant is very much aggrieved by the delay caused in dismantling the service connection. That dismantling should have been effected at least in March 2021, since the complainant intimated its intention to discontinue power supply with immediate effect as per letter and the disconnection fee of Rs.238/- was paid on 25.02.21 as advised by 4th respondent. At that time, the premises was already remained disconnected from 12.02.21.

While so, first respondent passed order dated 30.05.22 and communicated the same to the complainant. Whereby revenue recovery proceedings were proposed to be initiated against the complainant to recover the alleged balance arrears of Rs.306101/- including interest up to 31.05.22. The complainant is asked to pay the balance arrears demanded therein and it is informed that Revenue Recovery proceedings will be initiated, in case there is failure to pay the balance arrears of Rs.306101/-. The complainant forwarded a detailed representation dated 26.07.22 to the 2nd respondent by speed-post, highlighting its grievances and requesting to grant necessary reliefs as sought therein. Meanwhile, 1st respondent was proceeding with the demand made in the order. Hence the complainant filed WP(C) No.26307/2022 before the Hon'ble High Court of Kerala, seeking to get various reliefs sought therein. That writ petition was admitted and an interim order was granted by a learned Single Judge vide order dated 18.08.22. By the said order, the attempt of KSEB to take coercive steps for recovering the disputed arrears from the complainant was stayed for two weeks.

Subsequently, the said writ petition was brought up on 29.08.22 for the purpose of extending order. On that day, the matter was considered by another learned Single Judge and it was dismissed in a hurry by judgment dated 29.08.22, mainly relying on Regulation 143(3) of the Kerala Electricity Supply Code: The said judgment was passed even without obtaining any counter affidavit from the respondents. Aggrieved by the said judgment dated 29.08.22, the complainant filed writ appeal No. 1603/2022. The said writ appeal was elaborately considered on 04.11.22 and it was disposed on the same day, directing the complainant to approach 5th respondent herein with necessary complaint seeking necessary reliefs. Accordingly, a complaint dated 01.12.22 was filed before 5th respondent seeking necessary reliefs. It was numbered as O.P. No. 78/2022. During the proceedings of that O.P., the first respondent filed a statement of facts dated 28.12.22 and the complainant filed necessary reply statement dated 05.05.23 against the said statement of facts. Thereafter, the O.P. was finally heard by the 5th respondent and it was disposed by order dated 01.08.23. The said order was communicated to the complainant only on 07.08.23. In that order, certain reliefs are granted. But the main relief sought in the O.P. is not granted. Therefore, the complainant is very much aggrieved. Consequently, this complaint/appeal is filed, seeking necessary reliefs and seeking to set aside decision No.1 in the impugned order dated 01.08.23 on the following among other;

GROUND

The impugned order of the 5th respondent to the extent it is challenged in this appeal is wrong, contrary to the facts of the case and highly improper. While passing the impugned order, 5th respondent did not consider the grievances of the complainant in the proper manner. In fact, the grounds taken in the O.P. and the contentions raised in the reply statement are not considered in the proper manner. On the other hand, the 5th respondent supported the contentions of respondents 1 & 3 without proper justification. It appears that the impugned order is passed unilaterally supporting the contentions and lame excuses of first respondent. The complainant impleaded five respondents as opposite parties in O.P. No. 78/2022. But in the impugned order, the 5th respondent has indicated only the name and address of respondents 1 and 3 in the O.P. It is highly improper. In fact, all the parties in the O.P. should have been indicated in the impugned order. There are serious allegations against the 4th respondent in the O.P. and also in the reply statement. The said officer did not file any objection against the allegations levelled against him. As such, it is highly wrong and improper on the part of 5th respondent to delete that officer from the impugned order. When 4th respondent keeps absolute silence in the proceedings of the O.P. without filing any objection, 5th respondent should have accepted those allegations, since they remain unchallenged and granted all the reliefs sought in the O.P. But in the impugned order, the 5th respondent illegally protected 4th respondent from the allegations and unnecessarily blamed the complainant without valid

reason. The 5th respondent, while passing the impugned order, keeps absolute silence to the complainant's contentions raised in his reply statement. The 5th respondent should have set aside notice of 3rd respondent and order of the first respondent, considering the valid contentions raised in the reply statement. The 5th respondent did not consider the fact that 2nd respondent failed to consider the grievances highlighted in representation. Similarly, 5th respondent failed to consider the fact that 3rd respondent did not consider the objections and grievances raised by the complainant in letter. The demand in notice and order should have been set aside by the 5th respondent, considering that the meter at the premises clearly indicated that the shop was not functioning after 3rd week of March 2020. So, the bills issued from May 2020 are highly illegal and cannot be enforced, since the unit was already under disconnection from 12.02.21, the electrical connection in the unit was remaining discontinued from 25.02.21 upon paying necessary fee on 25.02.21 as advised by the 4th respondent. In view of the aforesaid grounds and other grounds that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble Ombudsman may be pleased to grant the following;

RELIEFS

To set aside the first decision in the impugned order to the extent holding that the complainant/petitioner is liable to pay the arrears outstanding for the period from May 2020, including the minimum charges applicable up to 180 days from the date of disconnection on 12.02.21, after adjusting available security deposit. To set aside the demand notice issued by 3rd respondent and order passed by the first respondent.

Arguments of the Respondent

Statement of facts filed by Deputy Chief Engineer, Kottayam & The Assistant Engineer, Electrical Section, Kottayam Central, Kottayam

All the averments of the petitioner which are not specifically admitted here under are false and hence here by denied. The petitioner is a consumer with consumer No. HT LCN No. 25/4911 (Consumer Code :1346340001510) named as M/s. Aiyappas Silk House, K K Road, Kottayam -01 under Electrical Section, Kottayam Central. The consumer is a High Tension connection(commercial purpose) with sanctioned connected load 104 KW and contract demand 100 KVA. The regular monthly current charges is not remitted by the Appellant from May -2020. The service connection was disconnected on 12.2.2021 due the non-payment of regular current charge from May -2020. The disconnection details recorded in the "Energise", HT billing software. An application dated 22.02.2021 was received from the consumer on 25.02.2021 to discontinue his service connection . On

inspection the service connection was already in disconnected condition due to the non-payment of current charge from May 2020, there was nothing to act on the aforesaid application. The above status was continued till 31.12.2021 and on that date a demand cum dismantling notice was issued to the consumer by the Deputy Chief Engineer, Electrical Circle, Kottayam showing all dues to be remitted by the consumer and with the notice for dismantling the connection on failure of payment of such dues.

The application fee of Rs.238/- remitted on 25.02.2021 by the petitioner was for disconnecting his KSEB supply. But for dismantling the Service connection the consumer has to abide with the conditions laid down in section 145 of the Kerala State Electricity Supply Code 2014. As per the section 145(5) the consumer has to pay all dues to the licensee for effecting the dismantling. Hence it is evident that the application of the petitioner dated 25.2.2021 is only for temporary disconnection of the service connection. An application dated 22.02.2021 was received from the consumer on 25.02.2021 to discontinue his service connection. On inspection the service connection was already disconnected condition due to the non-payment of current charge from May 2020, there was nothing to act on this application. Thus the contention of the petitioner that the Electrical Section Office has not taken any action against his application dated 25.2.2021 is false and baseless and hence here by denied.

As per section 143 (3) of the Kerala State 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". In this case the dismantling notice was issued on 31.12.2021 by the Deputy Chief Engineer, Electrical Circle, Kottayam with an arrear amount of Rs. 3,78,565/- after deducting the existing security deposit. The arrear amount notice of Rs.3,78,565/- was assessed from 07/05/2020 to 06/11/2021 with interest of Rs.84,786/-. The 1st respondent, the special officer (Revenue) has issued a proceedings dated 30.05.2022 vide reference No. SOR/ HTB 25/ 4911/ 2022-23 dated Thiruvananthapuram 30.05.2022 where in the arrear amount was recalculated with an amount of Rs. 3,06,101/- by limiting the period of disconnection minimum and arrear interest only up to 12.8.2021, that is six months from the date of disconnection and after deducting the existing security deposit amount of Rs. 3,12,580/-. The period of arrear calculated is only up to 12.08.2021.

The arrear notice dated 31.12.2021 was issued to the consumer as per the section 143(3) of the Kerala State Electricity Supply Code 2014. The consumer has not remitted the arrear amount within the notice period. Hence the service connection was dismantled. The allegation made by the appellant in Para (6) of the appeal, that, the notice should have been issued during March 2021 have no base or legal support. As per section 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. An objection was filed by petitioner before the Deputy Chief Engineer, Electrical Circle, Kottayam. The 1st respondent, the Special Officer (Revenue) has issued a proceedings dated 30.05.2022 vide order No. SOR/HTB 25/4911/2022- 23 dated, TVM 30.05.2022 where in the arrear amount was recalculated with an amount of Rs. 3,06,101/- by limiting the period of disconnection minimum and arrear interest only up to 12.08.2021, that is six months from the date of disconnection and after deducting the existing security deposit amount of Rs.3,12,580/-. The assessed period was revised upto 12.08.2021 as per the section 143(3) of Kerala Electricity Supply code 2014 and the bill is legally correct and binding to the petitioner.

The notice was prepared and issued as per the provision of section 143(3) of Kerala Electricity Supply Code 2014 and thus it is legal and binding to petitioner. The proceedings was issued as per the provisions of Electricity Supply code 2014. In this order, the fixed charges are levied only for 6months. But the petitioner had neither responded to this notice nor remitted the amount till date.

The application Fee Rs.238/- was paid on 25.2.2021 for temporally disconnection of supply. But the fixed charge calculated limited to 6months from the date of disconnection. This is legal and correct. The final settlement of arrear order issued on 30.05.2022 by the 1st respondent, the Special Officer (Revenue) vide order No. SOR/ HTB -25 / 4911 / 2022-23 dated, Thiruvananthapuram, 30.05.2022 with an amount of Rs.3,06,101/- including dismantling charge and interest.

Principal amount up to 12.08.2021 Rs. 5,07,359.00

Interest up to 12.08.2021 Rs. 55,021.00

Dismantling Charge Rs. 18,117.00

Total = Rs. 5,80,497/-

Less Security deposit Rs.3,12,580.00

Balance Rs. 2,67,917.00

Interest up to 31.05.2022(281 Days) Rs. 38,184.00

Total arrear amount = Rs. 3,06,101 /-

The petitioner filed a Writ Petition before the Hon'ble High Court of Kerala in WP No. 26307/2022. The Hon'ble High Court disposed and issued order on dtd 18.8.2022. The petitioner again filed a Writ Appeal against the above order before the Hon'ble High Court in WA NO. 1603/2022 and the Hon'ble court ordered to the petitioner to file appeal before the Statutory Appellate Authority. Though the notice was issued to the consumer, the same was superseded by order, following the provisions of section 143 (3) of

Kerala Electricity Supply Code 2014 and thus it is legal and binding to the petitioner. The petitioner has not followed any procedure for the request Dismantling of this Service Connection while on submitting the application on 25.2.2021 and he is highlighting this application as the request for dismantling with the malafide intention for not remitting the amount which is due for the services and electricity availed by him from the respondents. The amount demanded as per the order is purely legal and proportional to the cost of Electricity and Services that enjoyed by the petitioner. Hence he is legally bound to pay the amount. The opposite parties have acted purely according to the law and hence the reliefs sought by the petitioner is not justifiable.

Statement of Facts filed by Special Officer (Revenue), KSEBL

The petitioner M/s. Aiyappas Silk House was a HT consumer of KSEBL having consumer code HTB 25/4911 with contract demand 100KVA having connected load 104KW under the jurisdiction of Deputy Chief Engineer, Electrical Circle, Kottayam. The petitioner had defaulted payment of the monthly current charges and hence the service was disconnected on 12.02.2021 and later dismantled on 30.03.2022. The service connection was disconnected on 12.02.2021 since he had defaulted payment of current charge from May 2020. The delay had occurred in disconnecting the service connection as a matter of Government policy. Due to the Covid Pandemic, disconnection of defaulters were kept pending. An application dated 22.02.2021 was received from the consumer on 25.02.2021 to discontinue his service connection. On inspection, the service connection was already in disconnected condition due to the non-payment of current charge from May 2020, there was nothing to act upon the aforesaid application. The above status was continued till 31.12.2021 and on that date a demand cum dismantling notice was issued to the consumer by the Deputy Chief Engineer, Electrical Circle, Kottayam showing all dues to be remitted by the consumer and with the notice for dismantling the connection on failure of payment of such dues. As per the letter dated 22.02.2021, the petitioner had requested the Assistant Engineer, Kottayam Central for disconnection of the service connection since the firm temporarily ceased business operations.

Regulation 145 of the Kerala Electricity Supply Code 2014, "In case a consumer desires his service to be dismantled and the service connection agreement to be terminated, he shall apply for the same in the format specified in Annexure-20 to the code". In this case the consumer had not given any request in the form specified but only a request for temporary disconnection that too after he was actually disconnected for default. At the time of his request (22.02.2021), the consumer was having an arrear of 3,63,690/- (Principal) + 23,138/- (interest) + 18,117/- (Dismantling Charges) Total 4,04,945/- and the consumer was under disconnection. Here the consumer had not requested for termination of the agreement / dismantling

of the service connection as per Regulation 145. Regulation 143(3), "If the service connection of the consumer remains disconnected for 180 days, except upon the request of the consumer, the agreement may be terminated after giving a notice of 15 days to the consumer". Accordingly dismantling notice was issued to the consumer by the Deputy Chief Engineer, Electrical Circle, Kottayam and since the arrears were not cleared by the consumer the service connection was dismantled on 30.03.2022. Even though the consumer had acknowledged the dismantling notice he had not filed any objection to the demand raised in the notice. Detailed month-wise split up of the demand was given to the consumer.

The procedure to be followed by the consumer in the event of termination of service connection is clearly mentioned in Regulation 145 of Kerala Electricity Supply Code 2014. **Regulation 145- Dismantling on the request of the consumer.**- (1) in case a consumer desires his service to be dismantled and the service connection agreement to be terminated, he shall apply for the same in the format specified to the Code.

In the subject case, the consumer has not acted as per regulation 145. From this, it can be clearly inferred that he had only intended physical temporary disconnection of the service connection. If he intended to terminate the agreement he should have asked for the final invoice and NLC, but he did not do anything in this regard. He might have actually intended to reopen his service connection, but since he had not cleared the dues the service connection was dismantled. Hence, the petitioner is only intending to reduce the actual arrears due, which is up to 180 days from the date of disconnection. As per the rules in force he is liable to remit the minimum dues for 180 days from the date of disconnection. The allegation made by the appellant in Para (6) of the appeal, that the notice should have been issued during March 2021 have no base or legal support.

The petitioner himself had admitted the service connection was disconnected on 12.02.2021 for non-payment of arrears of current charges. He has stated that the service connection was disconnected on 25.02.2021. Since he was a defaulter and not given any request as per Regulation 145, the minimum six months period (180 days) was considered as per Regulation 143(3) of Kerala Electricity Supply Code 2014 for arriving at the final arrears. The arrear split up is as below:-

Demand month	Bill date	Due Date	Dues	Remarks
04/2020	07.05.2020	16.05.2020	15947	
05/2020	04.06.2020	11.06.2020	24750	
07/2020	06.08.2020	13.08.2020	41286	
08/2020	07.09.2020	14.09.2020	46164	

09/2020	05.10.2020	12.10.2020	42010	
10/2020	05.11.2020	12.11.2020	40042	
11/2020	04.12.2020	11.12.2020	39767	
12/2020	03.01.2021	10.01.2021	40776	
01/2021	05.02.2021	12.02.2021	38536	
02/2021	05.03.2021	12.03.2021	34412	D/C on 12.02.2021
03/2021	07.04.2021	14.04.2021	33000	
04/2021	06.05.2021	13.05.2021	33000	
05/2021	07.06.2021	14.06.2021	24750	MD Rebate reduced
06/2021	06.07.2021	13.07.2021	199919	SD interest Reduced
07/2021	05.08.2021	12.08.2021	33000	
		Total	507359	

Total Principal Due	5,07,359
Interest due up to 12.08.2021	55,021
Dismantling Charge due	18,117
Dues as on 12.08.2021	5,80,497
Less: - Security Deposit available	3,12,580
Balance due	2,67,917
Interest due up to 31.05.2022	38,184
Total Due	3,06,101

Further interest due per day = 133/- per day till date of realization.

On verification, it is seen that an amount of 12,100/- is not included and the actual arrear as on 21.08.2022 is given as below:-

Principal Amount (5,07,359 + 12,100)	5,19,459
Interest up to 14.09.2021	63,278
Dismantling Charges	18,117
	6,00,854
Less:- Cash Deposit	3,12,580
	2,88,274
Interest up to 21.08.2022 (341 days)	48,477
Total	3,36,751
@18% per day Interest is 142/-	

If the consumer had given a request as per Regulation 145, his dues would have become 4,04,945/- as on 12.03.2021 (Principal - 3,63,690/- + Interest upto 12.03.2021 - 23,138/- + Dismantling Charge - 18,117/-). After adjusting against the available Security Deposit the balance due could have been 92,365/- as on 12.03.2021 and 46/- per day would be further due towards charges for belated payment till date of realization.

However, the consumer had defaulted the payment due and not followed the conditions laid down in Kerala Electricity Supply Code 2014 and hence he is liable to remit the current charge arrears. Being a licensee as per the conditions laid down in Electricity Act 2003, KSEBL is liable to follow the conditions laid down in Kerala Electricity Supply Code 2014 and hence the petitioner consumer is liable to remit the dues. He is trying to delay the realization of dues and the initiation of Revenue Recovery action. The representation dated 26.07.2022 addressed to the Chairman & Managing Director, KSEBL as claimed by the petitioner received in the Office of the 1st respondent only on 19.08.2022. The WP (C) No.26307/2022 filed before the Hon'ble High Court of Kerala by the consumer was also disposed of in favour of KSEBL vide judgement dated 29.08.2022. **It was ordered that the consumer cannot be exempted from paying arrears. The Hon'ble Court viewed that the KSEBL send dismantling notice to the consumer in accordance with Regulation 143(3) of Kerala Electricity Supply Code 2014.**

Aggrieved by the above order the petitioner filed WA.1603/2022. The learned single judge, vide order dated 04.11.2022 directed the appellant to seek statutory remedies. As directed by the Hon'ble High Court of Kerala in WA 1603/2022, the complainant filed OP No.78/2022 before CGRF- SR. Consumer Grievance Redressal Forum (Southern Region) after elaborately going through the case ordered that the petitioner is liable to pay the arrears outstanding from May 2020, including the minimum demand charges up to 180 days from the date of disconnection. Since Hon'ble High Court of Kerala as well as Statutory Forum ordered that the consumer is liable to pay arrears, the petitioner is liable to clear the arrear.

If the petitioner wanted to dismantle the service connection he should have applied as per the conditions laid down in Kerala Electricity Supply Code 2014 Regulation, but he had applied only for temporary disconnection of the service connection and only the disconnection charges was collected by the Assistant Engineer. Detailed Dismantling Notice dated 31.12.2021 showing all the split up of the arrears was issued to the consumer and the same was acknowledged by the representative of petitioner on 05.01.2022. The petitioner was being issued a monthly invoice even after the date of disconnection for the monthly minimum, which was chargeable in his registered e-mail and via SMS. If he had any objections regarding the invoices being issued he could have filed objection with the bill issuing authority, Special Officer (Revenue) as per Regulation 130 of Kerala Electricity Supply Code 2014 but he did not prefer any appeal before the

Special Officer (Revenue) for the invoices being issued after the date of disconnection, which clearly proves that he wanted the service connection. However, since he was unable to clear the dues now with the sole intention of delaying the revenue due to KSEBL and the initiation of Revenue Recovery action he has approached the Hon'ble Consumer Grievance Redressal Forum, which may be denied. As per Regulation 1(2) of Kerala Electricity Supply Code 2014, the supply code shall be applicable to (i) all distribution licensees including deemed licensees and all consumers and users in the State of Kerala and as per Regulation 1(3) it shall come into force with effect from the first day of April 2014. The Hon'ble High Court of Kerala also ordered the consumer to pay arrears vide judgement dated 29.08.2022 in WP (C) No.26307 of 2022 filed by the consumer. The WA No.1603/2022 filed against the judgment in WP(C) No.26307/2022 the learned single judge, vide order dated 04.11.2022 directed the appellant to seek statutory remedies. In OP No.78/2022 filed by the petitioner as ordered by the Hon'ble High Court in WA No.1603/2022, CGRF-SR ordered that the petitioner is liable to pay the arrears outstanding from May 2020, including the minimum demand charges up to 180 days from the date of disconnection. Since Hon'ble High Court of Kerala as well as Statutory Forum ordered that the consumer is liable to pay arrears, the petitioner is liable to clear the arrear. Both KSEBL and the petitioner consumer are liable to follow the conditions laid down in the Supply Code 2014 and thus Regulation 143(3) and 145 of Supply. Code 2014 are applicable to the petitioner consumer and hence he is liable to remit the dues to KSEBL. Considering the aforesaid facts, the appeal No. P-043/2023 filed by M/s. Aiyappas Silk House, KK Road, Kottayam may be dismissed with cost.

Counter Arguments of the Appellant

The 4th respondent filed his statement with baseless contentions and without answering the allegations made against him and totally ignoring the fact that the petitioner closed down their textile business permanently from the 3rd week of March 2020 due to circumstances beyond their control and also due to the unexpected lockdown declared by the Central Government indefinitely from 22-03-2020 due to Covid-19 situation. The petitioner cannot be blamed for non-payment of bills due from May 2020 as the business activities in the country were totally closed indefinitely for many months from 22-03-2020 due to the declaration of lock down throughout the country. The meter reading clearly indicates that the shop was not functioning after the 3rd week of March 2020. As such, no bill can be issued to petitioner from April 2020, especially during the lock down period. The petitioner can be blamed for non-payment of electricity bills due from May 2020, if there was no lock down in the national level and the concerned textile shop was remaining closed due to any other reason and no request was made by the petitioner for disconnecting the power supply.. So, the bills

issued from May 2020 are highly illegal, arbitrary and is not enforceable. The 4th respondent in his statement is keeping absolute silence regarding the aforesaid aspect of petitioner's case.

In the statement filed by 4th respondent, it is admitted that there is delay in disconnecting the service connection. The request of the petitioner to discontinue the KSEB connection with immediate effect was given on 22-02-2021 and the required fee of Rs.238/- as instructed by the 4th respondent was paid on 25-02-2021. As such, the removal of the service connection should have been effected at least by the end of March 2021, instead of delaying it till 30-03-2022. So, there is serious failure and deficiency of service on the part of 4th respondent. The 4th respondent in his statement is keeping absolute silence regarding his aforesaid failures and deficiency of service.

The petitioner's request for disconnection of service with immediate effect was given on 22-02-2021 and the fee of Rs.238/- was paid on 25.02.21 at the advice given by 4th respondent. At that time, he was well aware of the fact that the textile shop was already disconnected on 12-02-2021 for non-payment of arrears remaining due from May 2020. Therefore, upon receiving such a request from the petitioner, no further disconnection can be effected by KSEB. As such, the said request can only be treated as a request for terminating the relevant agreement and to dismantle the service connection. But the said application dated 22.02.21 was not treated as a request for terminating the relevant agreement by 4th respondent and other KSEB authorities and the petitioner was unnecessarily being exploited till 30-03-2022 with illegal demands, which is highly wrong and cannot be justified in any manner. The 4th respondent is trying to take shelter under section-145 of the Kerala Electricity Supply Code 2014. But that provision cannot be applied in petitioner's case, since the petitioner requested to discontinue the KSEB connection with immediate effect and paid necessary fee of Rs.238/- as advised by 4th respondent. The provisions of section-145 is applicable in the instant case only if there was no request for discontinuing the service connection from the side of the petitioner. But there is specific written request for discontinuing (disconnecting) the service with immediate effect from the side of the petitioner.

The Managing Partner of petitioner is an ordinary layman. He is not expected to know all the technical procedures to be followed to carry out dismantling of service connection. It is the duty of KSEB, especially that of 4th respondent, to instruct the petitioner to follow required procedure if any, for dismantling the service connection. But he did not give such instruction to the petitioner other than instructing him to pay fees of Rs 238/-, which the petitioner readily and immediately complied with. Consequently, the petitioner cannot be blamed in that regard. So, there is serious failure and deficiency of service on the part of 4th respondent and he is keeping absolute silence in his statement regarding aforesaid aspect of the case.

Section-145 of the Kerala Electricity Supply Code, 2014 is applicable only during normal conditions, when business activities are going on smoothly and normally as usual. The said section cannot be applied, when the entire activities in the country are stopped/closed down for many months due to declaration of repeated lock downs. Therefore, any action taken by KSEB authorities contrary to the above concept is highly improper and against justice.

With reference to the contentions advanced in paragraphs 3 to 7 of the statement filed by 4th respondent, it is submitted that section 143(3) of the Kerala Electricity Supply Code-2014 is not applicable in the instant case, especially due to declaration of repeated lock down in the country. It is applicable only in a case, where the service connection remains disconnected by KSEB for 180 days and normal activities are going on as usual. The said provision cannot be applied during lock down periods, especially when there is a specific request from the consumer to discontinue the service, which is already disconnected by KSEB on 12-02-2021.

As a matter of fact, the contentions raised in paras 3 to 7 of the statement are devoid of any merit and cannot be taken into consideration. As submitted above, the petitioner remitted the fee of Rs.238/- on 25-02-2021 to disconnect/to discontinue the power supply with immediate effect, which was as advised by 4th respondent. The said advice was given by 4th respondent, knowing that the shop was already under disconnection from 12-02-2021 due to non-payment of current charges from May 2020. So, while remitting fee of Rs.238/- on 25-02-2021, the petitioner naturally considered the same towards dismantling the service connection from the premises of its textile shop. So, upon receiving the aforesaid fee of Rs.238/-, 4th respondent should have taken rapid action to recover the arrears remaining due from the petitioner from May 2020 till February 2021 from the security deposit of the petitioner and should have taken steps to refund the balance security deposit without causing any delay and should have dismantled the service connection by the end of February 2021 or at least by the end of March 2021. But 4th respondent failed to do so. As such, he cannot blame the petitioner for not complying with the provisions of section 145(5) of the Kerala State Electricity Supply Code and he cannot take shelter under section 143(3) of the said code.

The averments in paras 3 & 4 of the statement that the consumer had not filed any objection to the demand made in the dismantling notice even though he acknowledged the same and the further averments that detailed month-wise split up of the demand was given to the consumer are absolutely false and are already denied. An objection was submitted to 3rd respondent raising objection against the demand made in the dismantling notice dated 31-12-2021. But it was not considered and disposed off by 3rd respondent. It is a serious failure on the part of 3rd respondent causing much injustice to petitioner. As a matter of fact, the split-up of the demand

made in the dismantling notice was not given to the consumer at the proper time. They should have been issued and sent to the consumer by post, knowing that the shop was not functioning and the office was remaining closed from 3rd week of March 2020 due to repeated lock downs.

If the aforesaid provisions are actually applicable to the petitioner, the 4th respondent should have advised the petitioner accordingly and should not have advised the consumer to remit fee of Rs.238/- on 25-02- 2021. The impugned proceedings of respondents 1 & 2 are evidently an attempt to protect the 4th respondent from his failures and the petitioner is unnecessarily being exploited with illegal and arbitrary demand. Such highly wrongful and arbitrary acts are really unjust and the same may be set aside by this Hon'ble Ombudsman in the interest of justice. Therefore, it is submitted that the petitioner is not liable to pay balance amount of Rs. 267977.00/- and interest amount of Rs.38184.00 till 31.05.22 as indicated in the statement filed by 4th respondent. Moreover, the petitioner is not liable to pay any dismantling charge in view of the order passed by Consumer Grievance Redressal Forum, Kottarakkara. In fact, the petitioner is entitled to get the balance security deposit after adjusting current charges remaining due from May 2020 till February 2021. In the above circumstances, it is highly wrong and improper on the part of 4th respondent to contend that the application dated 25-02-2021 of the petitioner is only an application for temporary disconnection of power supply.

In view of the aforesaid facts and circumstances, it is humbly prayed that the contentions raised in the statement filed by the 4th respondent may be rejected and the Complaint/ Appeal submitted by the petitioner as per Appeal Petition No. P.043/2023, may be allowed by this Hon'ble Ombudsman in the interest of justice.

Analysis and findings

The hearing of the case was conducted on 09/11/2023 at 11:30 a.m. in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant's representative Adv. Shri. P. Kuruvilla Jacob and the respondent Sri. Binu B, AEE, Electrical Sub Division, Kottayam.

As this is an HT connection the main respondent is Special Officer Revenue (SOR) and there was no representation from SOR. The billing of the HT connection are done by SOR and the dispute is also regarding the billing. It is construed that the SOR is not keen in explaining the situation in the hearing. A vakkalath was filed for SOR only after the hearing along with some other documents which is submitted on later date. This is to be viewed very seriously by the licensee.

The appellant, managing partner of Ayyappa Silk House Kottayam was having an HT connection from the Licensee under the commercial tariff. The connected load was 104 kW and the maximum demand of connection was 100 kVA. The consumer was regular in remitting the current charges since May 2020. The shops were totally closed down due to the nation wide lock down declared by the Government of India with effect from 22nd March 2020 due to Covid-19 pandemic. Though the shop was fully close down there was power consumption in a very low level, this may be due to the working of the premises lighting, etc. The licensee have not disconnected the power though there was default in remitting the current charges. The Section 56 of the Electricity Act states about the disconnection of supply in default of payment.

56(1) “ Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’ notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer :

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,

(a) An amount equal to the sum claimed from him, or

(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.”

As per the above Section, the licensee is empowered to disconnect the power after giving a notice not less than 15 days when the power charges are not remitted by the consumer.

The Section 138 of Kerala Electricity Supply Code 2014 states the Ground of disconnection.

138(1) “The licensee shall not disconnect the supply of electricity to any consumer except”

(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;”

The Section 139 describes the procedure for disconnection.

139(1) “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:

Provided that the licensee shall not disconnect the supply to a consumer under this sub regulation, if the consumer deposits under protest, an amount equal to the sum claimed from him or equal to the electricity charges due from him for each month, calculated on the basis of the average charge for electricity paid by him during the preceding six months whichever is less, pending disposal of any dispute between him and the licensee:

Provided further that the supply shall not be disconnected after 1:00 PM on any day or on holidays so that the consumer is not deprived of a chance to remit the dues on the same day and get re-connection”.

The above Sections also are also derived from 56(1) of the Act and states that notice in writing has to be given intimating the reason for disconnection and 15 days are to be given to pay the dues with penal charges. If the dues are not cleared within this time, the power is to be disconnected.

The versions of the respondents are that the power was not disconnected due to the circular issued by the licensee in connection with Covid-19 pandemic. The power was disconnected only on 12/02/2021. If the licensee would have acted in time the power would have been disconnected by June 2020 itself. The disconnection date as per the bill of May 2020, is 30/05/2020. Then 15 days notice would have given before disconnection as per the Act and regulation, the disconnection would have effected at least by the end of June 2020. The licensee has issued internal circular stopping the disconnection as per their convenience; The question is that whether this circular can override the Act and Regulation?. The answer is no. If the disconnection date would have been June 2020, the maximum period by which the demand charge leviable could be maximum for 6 months from the date of disconnection as per the Section 143(3) of the Supply Code 2014.

143(3) “If the service connection of the consumer remains continuously disconnected for one hundred and eighty days, except upon the request of the

consumer, the argument may be terminated after giving a notice of fifteen days to the consumer”.

Then the deemed dismantling date would have been 180 days from end of June 2020, which is end of December 2020.

In the case in hand the power was disconnected only on 12/02/2021 and the reason for delay, the respondent mentioned is that the consumer was using the power.

The appellant has requested the licensee vide their letter dated 22/02/2021 to discontinue the KSEB connection with immediate effect. The application fee has been remitted only on 25/02/2021, hence the effective date of application can be treated as 25/02/2021. When the power is disconnected, the letter given by the consumer is only for dismantling. The consumer may not be aware about the technical terms which are regularly applied by the licensee. The respondents version is that they have not taken any action as the power was disconnected and the request was for disconnection. Why consumer has to give a request to disconnect for the supply already disconnected? The decision for dismantling was taken only on 31/12/2021 by Dy. CE of the licensee for the request submitted by the consumer on 25/02/2021 and the licensee have charged the consumer 180 days of demand charges from the date of disconnection which is 12/02/2021. The appellant is very clear in their version that the application given on 25/02/2021 is for dismantling of the service connection. Then the dismantling would have been effected by the end of February or beginning of March 2021, and then no demand charges applicable after the dismantling. The appellant is mentioned that he has personally attended the Section office on April 2021 and asked them to prepare the final settlement bill, which was seen to be a follow up of the application submitted on 25/02/2021. Even then the licensee has not taken any action to dismantle the power supply and settle the payment.

The power is disconnected violating the regulations and charged the consumer as per the conveniences of licensee is against the justice. The appellant filed case to the Hon'ble High Court of Kerala. The single bench dismissed the case and then filed writ appeal to division bench. The division bench accepted the appeal, setting aside the judgement of the learned single Judge and relegated the appellant to pursue its statutory remedies.

Hence in this case, the question arises, what could be the deemed date of dismantling, Though the date of deemed dismantling would have been end of December 2020, this cannot be applied as the consumer was consuming the power till 12/02/2021 and they have requested for dismantling only on 25/02/2021. Then the deemed date of dismantling could be maximum one month from the date of application March-2021 (25/03/2021). Then the date of dismantling is to be treated as 25/03/21.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The demand notice of the licensee is quashed herewith.
2. The licensee shall revise the demand notice considering the date of dismantling as 25/03/2021.
3. The appellant is liable to pay the charges as per the revised demand notice which will be prepared by licensee as per 2. above.
4. No interest is to be charged during the period when the case is in Hon'ble High Court, CGRF and Ombudsman.
5. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/043/2023/_____ dated: 01/12/2023

Delivered to:

1. Sri. R. Venugopal, Managing Partner, M/s Ayyappas silk house, K.K. Road, Kottayam (Dist.)
2. The Special Officer Revenue, Kerala State Electricity Board Ltd., Pattom, Thiruvananthapuram.
3. The Deputy Chief Engineer, Electrical Circle, Kottayam.
4. The Assistant Engineer, Electrical Section, Kottayam Central.
5. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.

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.