

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/010/2024
(Present A. Chandrakumaran Nair)
Dated: May-13-2024**

Appellant : Smt. K. Lalitha,
Executive Director,
Attukal shopping complex Pvt. Ltd.,
Mall Management Office,
2nd Floor, East Fort,
Thiruvananthapuram-695023.

Respondent : The Deputy Chief Engineer,
Electrical Circle, Power House,
Thiruvananthapuram- 695036.

The Special Officer Revenue,
KSE Board Limited,
Vydyuthi bhavanam, Pattom,
Thiruvananthapuram-695004.

Sri. A.V. Rengaraj, Residing at Sharenki,
TC 66/672-5, Poonkulam, Vellayani
P.O., Thiruvananthapuram 695522

ORDER

Background of the case

The appellant smt. Lalitha, Executive Director, Attukal Shopping Complex had purchased a property which has been sold by the M/s Dhanlaxmi Bank after taken over from a borrower namely M/s Ayyappas Textiles by the bank. Sri. A.V. Rengaraj, the owner of the M/s Ayyappas Textiles have borrowed loan from the Dhanlaxmi bank and defaulted the repayment. The bank has taken the physical possession of the mortgaged assets including the property as per the SARFASI Act and sold it on public tender/auction. The bank has handed over the property to the appellant on 02/11/2019. The electricity charges were not paid by the appellant since November 2019. The appellant has approached the licensee to transfer the connection to their name and transfer the deposit and also to reduce the contract demand. The request was not implemented by the licensee due to non payment of arrears.

Then the appellant had approached CGRF and then appeal to Ombudsman. Ombudsman issued order dated 29/07/2022 stating that the arrear amount is liable to pay by the registered consumer and the contract amount is to be reduced with effect from 07/11/2020. The licensee has implemented the decisions. The appellant has filed the petition to Hon'ble High Court of Kerala, the licensee also approached the Hon'ble High Court and also A.V. Rengaraj. Hon'ble High Court issued order on the WA 1248/23 along with WP(C) 3410/2023 & WP(C) 21067/2023 directing the state electricity ombudsman to review the order issued on P/029/2022 and decide the matter afresh after providing an opportunity of hearing to all concerned as early as possible. Accordingly, this case has been considered and numbered as P/10/2024 and issued notices to the appellant smt. Lalitha, the licensee (KSEBL), sri. A.V. Rengaraj, The Dhanlaxmi Bank to submit their written statement. The parties asked more time to submit the statement. Then hearing was conducted on 16/04/2024 and on 02/05/2024.

The statements submitted by the Appellant Smt. Lalitha

The demand of the 3rd respondent for disbursal of the entire security deposit amount to the 3rd respondent can only be subject to the licensee's claim for arrears of electricity charges, since even now the 3rd respondent remains as the consumer, irrespective of initiation of proceedings under SARFAESI Act by the 4th respondent bank. The arrears of electricity charges is to be recovered either from the 3rd respondent or from the Bank till the actual sale in favour of this appellant on 7-3-2020. In that respect, the 3rd respondent is the seller of the property and the 4th respondent bank is the buyer. So even the security deposit of the 3rd respondent is also answerable to the licensee's claim.

As per the records of the 2nd respondent, there is arrears of electricity charges to the tune of Rs. 3,91,302/- from November 2019 till 7-3-2020, the date on which sale deed was executed in favour of the appellant by the 4th respondent bank. The said auction sale was not done on "as is where is" basis, but it was a sale free of encumbrances, therefore the 4th respondent bank is liable to remit the electricity arrears prior to 7-3-2020, amounting to Rs. 3,91,302/-. However, the 4th respondent bank claims that they issued letter dated 25-11-2019 to the licensee stating that future correspondences and electricity bills are to be forwarded to the new owner, i.e., the appellant. In fact, the said intimation is wrong, misleading and without basis. The sale deed got registered only on 7-3-2020 and possession also was surrendered only on that date. As per provisions of the Transfer of Property Act, a sale can be effected only by a registered instrument. So the claim of the 4th respondent bank that they stand exonerated from the liability by issuance of letter on 25-11-2019 informing about the proposed sale on a future date is a wrong and baseless contention which cannot be given credence to.

Admittedly, there was default in remitting the electricity charges for the month of November 2019. Therefore, the licensee was at liberty to disconnect the electricity due to non-remittance of electricity charges, irrespective of the irresponsible and wrong letter by the 4th respondent. The licensee is not authorized to collect electricity charges for the periods during which the electricity connection ought to have been disconnected, and neither the consumer nor the subsequent purchaser can be made liable for the charges for the period during which the connection ought to have been disconnected. Arrears accrued due to the careless exercise of powers of the licensee, which is void, cannot be made use of to fix liability either on the consumer or on the subsequent purchaser since the said failure on the part of KSEB is void ab initio.

It is seen that electricity charges have been claimed by the 2nd respondent pursuant to the order of this Hon'ble Ombudsman in Appeal Petition. No. P/29/2022, and an amount of Rs. 2,06,359/- is seen claimed for the month of November 2021. The said appropriation is without basis because the premises was not being actively occupied and moreover the similar state of the preceding and succeeding months' electricity charges show a meagre stable figure. Therefore, the impugned calculation of Rs. 2,06,359/- is a wrong figure, which is only to be corrected by the 2nd respondent and must bring it down in parity with the average figure that is seen calculated for the months preceding and succeeding the month of November 2021. [If the electricity connection is deemed to be disconnected due to non- remittance of the electricity bill for the month of November 2019, then this prayer would become infructuous].

Hence it is humbly prayed that this Hon'ble Ombudsman be pleased to allow the appeal granting the following:

A. The electricity connection bearing consumer no. LCN/4223 be deemed to be disconnected in the month of December 2019 itself and the licensee be restrained from demanding electricity charges from December 2019.

B. In the alternative, either the 3rd respondent or the 4th respondent bank be adjudged as liable for the remittance of the electricity charges till 7-3-2020.

C. Such other reliefs as the Hon'ble Ombudsman deems fit and necessary during the course of the proceedings may also be awarded.

The statements of fact submitted by the Licensee's

The Deputy Chief Engineer

An HT service connection bearing Consumer No.LCN 16/4223 with contract Demand of 250 kVA was provided to M/s Ayyappas Textiles, Near East Fort, Thiruvananthapuram which falls within the jurisdiction of Electrical Section, Fort. The Registered owner is Sri.A.V.Rengaraj. M/s Dhanlaxmi Bank took over possession of the building and landed property owing to default in

repayment of loan availed. After invoking the relevant provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The bank was remitting the current charges after taking possession of the building.

Thereafter the building and property were put to e-auction and the same was purchased by M/s Attukal Shopping Complex. The Bank vide letter dtd 25.12.2019 informed KSEB Limited regarding the sale. Later, the petitioner approached the licensee for change of ownership after remitting the requisite application fee in the Section Office. It was also requested to transfer the Security Deposit made by the registered owner and for reduction of contract demand. On the basis of Regulations 41 and 91 (6) of the Kerala Electricity Supply Code 2014, the petitioner was asked to produce a consent letter from Sri. Rengaraj, the previous owner to transfer the Security Deposit amounting to Rs. 5,59,860/- remitted by him. Though the licensee sent a letter to Sri. Rengaraj intimating the matter, he raised serious objection in transferring the deposit. Hence the petitioner was informed that change of ownership can be effected only after remitting the current charge arrears and the Security Deposit based on the revised connected load of the premises.

Aggrieved by the above, the petitioner filed O.P.No.51/2021 before the Hon'ble Consumer Grievance Redressal Forum, Kottarakkara. After examining the matter, the Forum held that the petitioner is liable to remit the current charge arrears and the required Security Deposit afresh while executing the agreement for transfer of ownership and reduction of contract demand in accordance with the relevant provisions of Kerala Electricity Supply Code, 2014.

Soon after the disposal of the Appeal Petition by the Hon'ble Ombudsman, the petitioner Smt.Lalitha approached the Hon'ble High court having felt aggrieved by the Decision No.5 in the Order dtd 29.07.2022. WP(C) No.172/2003 was disposed by the Hon'ble Court modifying the said decision in favour of the petitioner. Since the said modification was prejudicial to the interests of the Board, it was decided to file Review Petition. But R.P No.187/2023 was dismissed by the Hon'ble High Court. Following this, W.A.No.1248/2023 was filed. In the meantime, W.P(C) No.3410/2023 was also filed by the Board challenging Decision No.5 contained in the order of the Hon'ble Ombudsman. Thereafter, W.P(C)No.21067/2023 was filed by Sri.A.V.Rengaraj, the erstwhile owner for refund of Security Deposit amounting to Rs. 5,59,860/-.

The Writ Appeal and both the Writ Petitions were heard together by the Hon'ble High Court and disposed on 08.01.2024. Intimation regarding the disposal of the cases was given by the Hon'ble Ombudsman vide letter dtd 07.02.2024 which was received in this office on 12.02.2024. In the letter it was stated that the Hon'ble High Court has directed to decide the matter

afresh providing an opportunity of hearing to all concerned. In this context, it may kindly be noted that the copy of the said judgement has not been received in this office till date. The judgement is not seen uploaded in the website of the Hon'ble High Court as well.

May I humbly submit the affirmative steps taken by the respondents consequent on the Order dtd 29.07.2022 of this Hon'ble Authority.

1) The Arrears of energy charges were deducted from the Security Deposit of the previous consumer Sri.A.V.Rengaraj. This action was objected by him which in turn resulted in the filing of W.P.(C) No.21067/2023. 2) The contract demand was reduced from 250 kVA to 25 kVA with effect from 07.11.2020.

3) With regard to Direction No.5, the Board decided to challenge the same and filed W.P.O(C) No.3410/2023 before the Hon'ble High court.

4) In compliance of Direction No.6, though this respondent sent communications dtd 11.11.2022 (Ext.R1) and 12.12.2022 (Ext.R2), the petitioner has shown scant regard in implementing the same.

Now the building owned by Smt. Lalitha, Executive Director, M/s Attukal Shopping Complex has been leased out to M/s R.K. Wedding Mall to run their business. In view of the above, It is implored that the Hon'ble Ombudsman may be pleased to record the afore-stated position and this respondent may be permitted to file additional statement/documents after examining the Judgement dtd 08.01.2024 of the Hon'ble High Court of Kerala in W.A. No.1248/2023, W.P.(C) Nos. 3410/2023 and 21067/2023 which is yet to be obtained.

The Special Officer Revenue

The HT Agreement for supply of power was in force upto the date (07.03.2020) on which sale deed issued to the petitioner by the concerned bank which took over the property through SARFAESI Act, 2002. Therefore the 3rd respondent is liable to remit current charges upto 06.03.2020. As a licensee in Distribution Sector, KSEBL can demand current charges only from its consumers where an agreement for power supply was executed. The Arrear/Disconnection Notice was issued to the respondent 3 owing to the non validation of new consumer is M/s. Attukal Shopping Complex in the billing software ENRGISE and the non-execution of HT Agreement for power supply in the light of dispute raised/pending litigation. On verifying demand, collection and balance account of the consumer as on 06.03.2020 it was observed that M/s. Ayyappas Textiles has an arrear of ₹4,11,679/- including interest. In compliance to the order of Hon'ble State Electricity Ombudsman dated 29.07.2022 in Appeal Petition No.P/029/2022 the Security Deposit is Rs.5,59,860/- was adjusted against the arrear. Hence an amount of Rs.1,48,181/- has been arrived as the refund amount of the 3rd respondent.

The balance amount 1,48,181/- has been transferred to the Agreement Authority but the 3rd respondent refused to accept the same. The arrear bill amounting to 32,31,390/- was issued by mistake to the erstwhile consumer due to the absence of mandatory Termination Notice for HT Agreement from M/s. Ayyappas Textiles or from the Agreement Authority. Later as per the direction of Hon'ble State Electricity Ombudsman dated 29.07.2022 the licensee has decided to recover the arrear charges from the Security Deposit of the registered owner and consequently Exhibit P1 has been issued thereby incorporating the arrear upto 07.03.2020 i.e., the deemed date of termination of Agreement.

The principal current charge arrears upto 06.03.2020 is Rs.3,91,302/-. The split up details are given below: The said adjustments against Security Deposit were made as per the orders dated 29.07.2022 from that end.

Consumption Month	Demand
November 2019	Rs. 92,602/-
December 2019	Rs. 91,646/-
January 2020	Rs. 94,541/-
February 2020	Rs. 91,105/-
March 2020 (Upto 07.03.2020)	Rs. 21,590/-
Total	Rs. 3,91,302/-

The balance refundable amount comes to the tune of 1,48,181/- and the same was refused by the respondent 3.

The statements submitted by sri. A.V. Rengaraj

The 3rd respondent herein was a partner of 'Ayyappas Textiles', Pazhavangadi, East Fort PO, Thiruvananthapuram. The business was going on without any issues and for further development of business, the 3rd respondent had availed the financial assistance from Dhanlaxmi Bank Ltd(hereinafter referred to as 'bank') by offering properties jointly owned by his wife and children as security. For reasons beyond the control of the 3rd respondent, his business went into rough weather and the Bank initiated of for realization the tune proceedings Rs.5,25,14,214.84(Rupees Five crore Twenty-five lakh Fourteen thousand Two hundred and fourteen and Eight-four paise only) under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (SARFAESI Act 2002) and Rules framed thereunder. Thus, the Bank took over possession of properties belonging to the firm of the 3rd respondent on 22.10.2018 and 3rd respondent was out of possession of subject land and building from then onwards. Pursuant to the same subject property was notified for sale and was bid in auction by the appellant on 28.06.2019 for an amount of Rs. 12,45,00,000/-. The sale was confirmed in favour of the appellant on 02.11.2019 and sale certificate was executed in her favour on 07.03.2020.

It is submitted that an agreement was entered into between the 1st respondent and 3rd respondent on 23.07.2009 for supply of energy for Ayyappas Textiles. As per agreement, the 3rd respondent had remitted an amount of Rs. 6,61,180/- towards power allocation charges for subject premises. True copy of the High Tension (HT) service connection agreement dtd. 23.07.2009 is attached herewith. There were no arrears due from 3rd respondent towards electricity charges and from 22.10.2018 and the auctioned building was in possession of the Bank and thereafter with the appellant who is the purchaser of the said building from 28.06.2019 onwards.

The 3rd respondent sought for release of security deposit from KSEB Ltd. After purchasing the said property, the appellant constructed a new building in the premises and applied for a service connection on 13.10.2020. She sought for transfer of ownership and adjustment of security amounts remitted by 3rd respondent. Since the 3rd respondent is the original licensee who remitted the power allocation charges to the tune of Rs. 6,61,180; 1st and 2nd respondents insisted on obtaining no objection certificate (NOC) from the 3rd respondent which was objected to by this 3rd respondent. Thereupon the appellant approached Consumer Grievance Redressal Forum (CGRF) seeking renewal of electricity connection in subject premises and also seeking adjustment of amounts in deposit. CGRF declined the prayer and appellant has approached this Hon'ble Appellate Authority-State Electricity Ombudsman, Kerala. The Hon'ble Ombudsman initially passed order setting aside the demand and directed adjustment of amounts in deposit made by the registered owner, ie the 3rd respondent as per the license. The same appeal has been revived by the Hon'ble High Court of Kerala with a direction to decide the appeal petition No. P/029/2022 afresh.

The 2nd respondent on 17.12.2022 made exorbitant demand ignoring change of possession and 2nd respondent passed revised orders appropriating amounts from the security deposit made by the 3rd respondent and also denied depositing interest for the security deposit. Thus 1st and 2nd respondents are now attempting to adjust the amounts from the security deposited made by 3rd respondent. Now amount due to him is sought to be appropriated against demand raised by KSEB Ltd for the period from 22.10.2018 date on which possession of the building was taken by the Bank and then by the appellant.

It is humbly submitted that when the business collapsed, the 3rd respondent was forced to close down operations in the month of October 2018 and on 27.10.2018 he made a written request with 1st respondent to dismantle HT supply in premises. As there was no reply from the 1st respondent, the 3rd respondent again requested to suspend connection saving minimum monthly charge of Rs.72,000/-. Disregarding the above said communications the 2nd respondent demanded arrears in power charges from November 2018 till January 2019. In the meanwhile, the Bank proceeded with and subject property along with building was put in auction and was bid by appellant. Thereafter, she filed an application before the 1st respondent for transferring electric connection in her favour and also to credit Rs.5,59,860/- which was deposited by 3rd respondent with 1st respondent as security. The 1st respondent sought the 3rd respondent's consent for transferring security deposit owned by him as per Letter No.DB2/Ayyappas/2020-21/199, dtd 02.03.2021 as he objected transferring said security deposit made by him in favour of appellant.

It is submitted that meanwhile the appellant applied for reducing power connecting from 250 KVA to 25 KVA and also for changing ownership. As security deposit was not returned, the 3rd respondent opposed transfer and 1st respondent issued letter to appellant to make fresh security deposit. Thereupon the appellant preferred OP No.51 of 2021 before CGRF, Kottarakkara. The 3rd RIG respondent was not arrayed as a party in said proceeding therein and the petition was dismissed. The CGRF held the appellant liable for arrears and required her to furnish fresh security deposit while executing agreement for transfer of ownership and renewal of contract. Against order passed by CGRF, the appellant has preferred this appeal.

It is submitted that a fresh demand notice was issued by 2nd respondent on the 3rd respondent demanding an amount of Rs.32,31,390/- . In this regard, it is brought to the notice of this Hon'ble Ombudsman that, the said demand by the 2nd respondent has disregarded the communications and requests placed by the 3rd respondent and perusal of the same reveal that the demand period is from 03.03.2020 to 02.12.2022; period while the Bank and the appellant were in, possession and enjoyment of the subject properties.

The 3rd respondent is entitled to get back his security deposit with interest from 1st respondent. It is submitted that on 27.10.2018 itself the 3rd respondent had requested the 1st respondent to dismantle the supply as the Bank had taken possession of assets and immovable property wherein the shop was functioning and HT connection was given based on service agreement. Up to 07.01.2019 even after taking possession of subject premises by the Bank, the 3rd respondent has paid all bills totaling to Rs.4,62,747.76. Thereafter, while subject premises were in possession of the Bank from 22.10.2018 onwards 2/11/2519 and it had remitted all dues from 03.02.2019 till 02.01.2019 to the tune of Rs.7,37,544.61. The auction

sale was confirmed on 02.11.2019. Therefore, it could be seen that up to sale confirmation held on 02.11.2019 arrears were NIL. All payments referred above are well documented.

While so, the 2nd respondent passed orders adjustment and refund of security deposit to 3rd respondent as there were no amounts due from the 3rd respondent. A perusal of said order reveals that 2nd respondent has disregarded all payments made by the 3rd respondent and issues with regard to possession of properties. It was wrongly calculated and tabulated the principal amount due is fixed at Rs.3,91,302/- and after all deductions directed to refund of meagre amount of Rs. 1,48,181/-. 1st and 2nd respondents have no right to withhold any amount from security amounts paid by the 3rd respondent. The fact that 3rd respondent had submitted letter to dismantle HT supply on 27.10.2018 itself was also ignored. The 3rd respondent objected to the same as it granted unilateral deduction in security deposit by a letter addressed to 1st respondent on 19.04.2023. The law provides that registered consumer is entitled to get back his security deposit lying with the 1st and 2nd respondents and hence is not liable to pay any amount from the date of taking possession of secured assets i.e, from 22.10.2018 by the Bank. As there was no action taken to release amounts actually due to 3rd respondent, he again addressed 1st respondent.

1st and 2nd respondents, the Bank and the appellant are colluding with each other and unauthorisedly withholding the security deposit amounting to Rs. 5,59,860/-. 1st and 2nd respondent are liable to return security deposit to 3rd respondent. Keeping a blind eye on all other previous communications 3rd respondent issued notice claiming Rs.32,31,390/- without any basis. The 3rd respondent has informed 2nd respondent that the Bank had taken possession of subject property on 22.10.2018, auctioned on 28.06.2019 and purchased by the appellant. The 2nd respondent averred that the entire dues till date of possession of subject property owned by the 3rd respondent was paid by him and it is the responsibility of the Bank to clear arrears from the date of taking possession till sale and thereafter by the appellant. The said aspects are revealed and stated in sale certificate executed vide document No. 751 of 2022 in favour of the appellant. It was under the above circumstances that the 3rd respondent sought for return of his security deposit coming to Rs. 5,59,860/- through letter dtd. 23.12.2022 which is lying unattended.

To conclude the written statement, it is humbly submitted before this Hon'ble Ombudsman that the acts of the 1st respondent in issuing demand notice dated 17.12.2023 and not returning security deposit of Rs.5,59,860/- is highly illegal, unauthorised, arbitrary opposed to law and it affects the rights of the 3rd respondent. The connection in subject premises was requested to be dismantled on 27.10.2018 itself, requests were placed by the 3rd respondent twice with the 1st respondent to record the same and relieve the 3rd respondent from future liabilities. This was done after clearing all

liabilities and it is learnt that future liabilities till sale was cleared by the Bank. Thus, no amounts are due from the 3rd respondent to 1st and 2nd respondents.

The 2nd respondent disregarded all payments made by the 3rd respondent, issues with regard to possession, calculated and tabulated made therein is without any basis. 1st and 2nd respondents have no right to withhold any amount from security amounts paid by the 3rd respondent. Kerala Electricity Supply Code, 2014 provides that registered consumer is entitled to get back his security deposit lying with 1st and 2nd respondents. Hence, he is not liable to pay any amounts from the date of taking possession of secured assets ie. from 22.10.2018 by the Bank and request made for disconnection are also lying unattended and attempts are made to adjust amounts.

The order No.SOR/HTB 16/4223/2022-23 dtd.04.04.2023 which wrongly calculates and tabulated the principal amount due as Rs.3,91,302/- and which directs refund after deductions of meagre amount of Rs. 1,48,181/- is erroneously adjusted from the security deposit of this 3rd respondent. If the impugned notice is allowed to sustain it will result in unjust enrichment of the appellant and consequential loss to the 3rd respondent and the same warrants correction. The request made by the 3rd respondent at different stages is ignored by the 1st and 2nd respondents. The decision by CGRF was also taken without hearing the 3rd respondent. While issuing the impugned notice, there was no notice issued on or received by the 3rd respondent and there was no process of adjudication by authorities concerned which included the 3rd respondent. Thus, the acts of respondents are in violation of all norms of natural justice warranting interference from this Hon'ble Ombudsman. For these and such other contentions that may be urged at the time of arguments, it is humbly prayed that this Hon'ble Ombudsman may be pleased to direct the appellant to clear the arrears pending since the sale and remit fresh security deposit if she wishes to set up a new connection, to direct 1st and 2nd respondents to the 3rd respondents to release the security deposit along with interest and to dismiss this appeal with costs in favour of the 3rd respondent to be recovered from the appellant or her estate.

The statements submitted by Danalaxmi Bank

Dhanlaxmi Bank Ltd a duly constituted Scheduled Bank having its Registered Office at Dhanlaxmi Buildings, Naikkanal, Thrissur, Kerala branches and one at having other Fort, among Thiruvananthapuram had granted various facilities to M/S Aiyappas Textile India Private Limited and M/s Ayyappas Textiles (hereinafter referred as Borrowers). The facilities, granted by the Bank is inter alia secured with the mortgage of properties located at Attingal and Pazhavangadi Thiruvananthapuram.

The Borrowers defaulted the repayment of loan and Bank classified the loan accounts of the Borrowers as Non-Performing Asset. Bank initiated recovery measures which include, action under SARFAESI Act. Bank issued demand notice to the Borrowers under Section 13(2) of the SARFAESI Act with the demand to pay an amount of Rs.23,20,34,425/- with future interest and costs.

The borrowers not responded positively to the demand made by the Bank and hence Bank has taken the physical possession of the mortgaged assets including the property having an extent of 30.305 cents of land comprised in Numbers 665,664/1-1,666,664/1,667A-2 of Vanchiyoor Village, Thiruvananthapuram Taluk, Thiruvananthapuram District with multi-storeyed building and other improvements therein (herein after referred as "said property"). Bank put the said property for sale under SARFAESI Act and M/s Attukal Shopping Complex Private Ltd the participant of the Public e auction conducted by the Bank on 28.6.2019, became highest bidder. When the purchaser has remitted the 25% of the bid amount, Bank confirmed the sale in favour of M/s Attukal referred as Shopping Complex Private Limited(hereinafter "Purchaser/Appellant") and intimated the purchaser about the same vide letter dated 5.8.2019. After the receipt of the entire sale price(i.e.the remaining 75 of the of the sale consideration), Bank issued Sale Certificate in favour of the Purchaser on 02.11.2019 as prescribed under Rule 9(6) of Security Interest (Enforcement) Rules 2002 and also handed over the possession of the property to the purchaser on the same date. The said delivery was acknowledged by the purchaser vide it's letter dated 2.1.2020. Since statement filed by the purchaser/Appellant that the possession of the property was handed over only on 7.3.2020 is false and hence denied. As per the SARFAESI Act, the sale of the immovable property is completed by the issuance of the Sale Certificate and delivery of the property to the purchaser. However Bank at the request of the Purchaser has registered sale Certificate in the form of sale deed in favour of the purchaser on 7.3.2020.

After taking the physical possession of the property, Bank paid electricity charges with respect to the building situated in the said property up to October 2019. After the issuance of the Sale Certificate on 2.11.2019, letter dated 25.11.2019 intimated Electricity Board Bank vide its about the sale of the above said Property and also advised the Electricity Board to issue electricity bills with respect to the said property to the purchaser. Unfortunately, in the said letter, the date of completion of the SARFAESI sale(i.e issuance of Sale Certificate and handing over the Possession of the property to the purchaser) is stated as 05.11.2019 instead of 2.11.2019.

As stated above, the sale under SARFAESI Act is completed by the issuance of Sale Certificate and handing over the possession of the property to the Purchaser. Bank issued Sale Certificate and handed over the possession of the above said property to the purchaser on 2.11.2019. Since this be the

true fact, the averments in the additional Purchaser/Appellant that Bank is liable to statement filed by the remit the electricity charge (Rs.3,91302) accrued prior to 7.3.2020 i.e on the date of execution of the registered deed is not tenable in the eye of law and hence denied. Hence the Bank pray before the Hon'ble Ombudsman to consider the above narrated facts and also the documents filed along with the statement and may find that Bank has handed over the above said property to the Purchaser/ Appellant on 2.11.2019 and Bank is no way liable for the electricity charges if any due after the said date.

Analysis and findings

The first hearing was conducted on 16/04/2024 at the O/o State Electricity Ombudsman, D.H. road & Foreshore Road Junction, Ernakulam. The second hearing of the appeal petition was conducted on 02/05/2024 at 10:30 am in the Meeting Room, Visvesvaraya Bhavan, Institution of Engineers of India, Kerala State Centre, Opposite Kanakakkunn Palace, Thiruvananthapuram Dist., Pin-695033. The hearing was attended by the appellant's representative Adv. Sri. Joseph Stephen and respondent's Sri. Biju R.R., Deputy Chief Engineer, Electrical Circle, Thiruvananthapuram, Sri. Ashokan S., Senior Superintend, O/o SOR, Adv. Sri. Navneeth Kumar, Smt. Rajasree U.K., Chief Manager, Dhanlaxmi Bank Ltd., Regional office, Trivandrum.

Sri. A.V. Rengaraj executed an agreement on 23/07/2009 to avail HT power supply connection to his shop Ayyappas Textiles with contract demand 250 kVA at 11 kV and connected load 270.6 kw. The sri. Rengaraj availed loan from Dhanlaxmi Bank and defaulted the repayment. The Bank has taken over the mortgaged property on 22/10/2018 as per the SARFASI Act 2002. The said property has been purchased by sri. Lalitha (Attukal Shopping Complex) through the public auction conducted on 28/06/2019. The confirmation of the sale has been intimated vide letter dated 05/08/2019 of Dhanlaxmi Bank. After the receipt of the entire sale price, Bank issued sale certificate in favour of purchaser on 02/11/2019 as per rule 9(6) security interest enforcement rule 2002 and handed over the possession of the property and the same was acknowledged and accepted by the purchaser vide their letter dated 02/01/2020.

Sri. A.V. Rengaraj has made all the bills raised by the licensee when the property was under his possession. He has issued a letter dated 27/10/2018 stating that the Ayyappas Textiles was closed down and there is no need of electric supply further and hence the power supply connection is to be dismantled. Then the Dhanlaxmi Bank has requested to the licensee vide their letter dated 05/11/2018, not to dismantle the power connection and the electricity charges will be paid by the bank. The bank was making the payment till October 2019. Vide their letter dated 25/11/2019, the bank informed the licensee that the property was purchased by M/s Attukal Shopping Complex and handed over possession on 02/11/2019 (it was wrongly mentioned as 05/11/2019 but the actual sale certificate was issued

and possession handed over on 02/11/2019). The sale certificate as per the SARFASI Act was issued and property was handed over to M/s Attukal shopping Complex on 02/11/2019 and this was confirmed by M/s Attukal Shopping Complex vide their letter dated 02/01/2020. Then the M/s Attukal Shopping Complex is liable to pay the electricity charges with effect from 02/11/2019.

The Act 2003, Section 45 empower the licensee to charge for the electricity supplied to the consumer. The owner or occupier is responsible for making the payment. Here, the occupier and owner of the building is M/s Attukal Shopping Complex since 02/11/2019.

In the case in hand, sri. A.V. Rengaraj was the owner and occupier upto 22/10/2018 and the Bank is the owner. Since 22/10/2018 to 02/11/2019. Sri. Rengaraj has to bear the power charges up to 22/10/2018 and from 22/10/2018 to 02/11/2019 the bank has to bear the cost of power charges. A.V. Rengaraj had requested the licensee to dismantle the power vide letter 27/10/2018 as they have closed down the shop. The licensee has not disconnected/dismantled the power as per the request of bank vide letter dated 05/11/2018 and the bank was regular in remitting the power up to 02/11/2019 and informed the licensee that the property has been sold to M/s Attukal Shopping Complex.

M/s Attukal Shopping Complex had applied for the transfer of connection to their name. The transfer of connection is subject the Regulation 41 of the Supply Code 2014 and also as per Regulation 91 of the supply Code.

91. Transfer of service connection-

(1) *“The consumer shall not, without prior consent in writing of the distribution licensee, assign, transfer or part with the benefit of the service connection agreement executed with the distribution licensee, or part with or create any partial or separate interest thereunder in any manner”.*

(2) *“The service connection may be transferred to another person on transfer of ownership or occupancy of the premises, by filing an application in the format specified in Annexure-8 along with the required documents in support of the request:*

Provided that such transfer shall not entitle the applicant to require shifting of the connection from the present premises”.

(3) *“The transferee shall pay the required security and execute a fresh service connection agreement”.*

(4) *“The licensee shall process applications relating to change of name of the consumer due to change in ownership or occupancy of the premises in with the procedure detailed below:-*

a) *the applicant shall apply for the change of name of the consumer in the format prescribed in Annexure - 8 to the Code, along with a copy of the latest bill, duly paid;*

b) *the request for transfer of connection shall not be accepted unless all recoverable dues in respect of the concerned connection are fully paid;*

c) *the application form shall be accepted on showing proof of ownership or occupancy of the premises;*

d) *a no objection certificate from the registered consumer or previous occupant of the premises or a person authorised by them shall be required in the cases involving transfer of security deposit in the name of applicant;*

e) *the licensee shall process the application form in accordance with the relevant provisions of the Code;*

f) *in case the no objection certificate from the registered consumer or previous occupant of the premises or a person authorised by them is not submitted, an application for change of name shall be entertained only if security deposit as stipulated in the Code is paid afresh by the applicant;*

g) *in such case, the original security deposit shall be refunded to the person who is entitled for the refund along with an intimation regarding the proposed transfer;*

h) *change of the name of the consumer shall be effected within fifteen days from the date of receipt of the application with all necessary documents*

and the necessary fees, under intimation to the transferor and the transferee;

(i) the change shall be effected in the bill within a maximum of two billing cycles after acceptance of application”.

(5) “A connection may be transferred to the legal heir or other successor in interest upon the death of the consumer, on filing an application in the specified format given in annexure-9 along with required documents in support of the request:

Provided that such transfer shall not entitle the applicant to require shifting of the connection from the present premises”.

(6) “The transferee shall pay the required security and execute a fresh connection agreement”.

The appellant is contenting that the energy charges up to 07/03/2020 is to be paid by the bank. As per the sale certificate the property has been handed over to M/s Attukal Shopping Complex on 02/11/2019 and the same has been agreed by them. The purchaser has demanded to the bank that the power charges of October 2019 is to be paid by the bank. Another contention is that why the power is disconnected by the licensee on not paying the charges. As there was no consumption, fixed charges only billed which would have been applicable even after disconnection also. The bank has requested the licensee not to dismantle the power and then informed that the property has been sold to M/s Attukal Shopping Complex. The new owner had never requested the licensee to disconnect or dismantle the power. Then the licensee has not disturbed the power supply.

During the hearing, the Dy C.E., the respondent had informed that the premises has been leased but to one wedding mall. All the dues were cleared and power charges also regularly paid. The demand of M/s Attukal Shopping Complex is to transfer the security deposit paid by the earlier owner Mr. Rengaraj. The transfer of security deposit amount to the new consumer is possible only with the consent of the existing consumer as per the regulation 91(4)(d) of the Supply Code. As the existing consumer has objected, the transfer of deposit is not viable.

Decision

On verifying the documents submitted and hearing both the petitioner and respondents and also from the analysis as above the following decision are hereby taken. This decisions are the revisions of the earlier decisions on appeal petition P/029/2022.

1. Power charges up to 22/10/2018 is liable to be paid by M/s Rengaraj.

2. Power charges from 22/10/2018 to 02/11/2019 is liable to be paid by M/s Dhanlaxmi Bank.
3. Power charges from 02/11/2019 is liable to be paid by M/s Attukal Shopping Complex.
4. The contract demand is deemed to reduced with effect from 07/11/2020 and the demand is to be revised accordingly.
5. The security deposit of sri. A.V. Rengaraj is to be return on clearing the dues if any as per decision 1. above.
6. The transfer of connection is to be done by meeting the requirement as per the regulation by paying the security deposit and executing fresh agreement..

ELECTRICITY OMBUDSMAN

No. P/010/2024/_____ dated: 13/05/2024.

Delivered to:

1. Smt. K. Lalitha, Executive Director, Attukal shopping complex Pvt. Ltd., Mall Management Office, 2nd Floor, East Fort, Thiruvananthapuram-695023.
2. The Deputy Chief Engineer, Electrical Circle, Power House, Thiruvananthapuram- 695036.
3. The Special Officer Revenue, KSE Board Limited, Vydyuthi bhavanam, Pattom, Thiruvananthapuram-695004.
4. Sri. A.V. Rengaraj, Residing at Sharenki, TC 66/672-5, Poonkulam, Vellayani P.O., Thiruvananthapuram 695522.
5. The Chief Manager, Dhanlaxmi Bank Ltd., Regional office, 2nd Floor, Amruth Plaza, Nalumukku, Petta P.O., Thiruvananthapuram Dist. Pin-695024.

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.