

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO: P /222 /2011.

(Present: T P Vivekanandan)

APPELLANT : Sri V.S.Jeevakumar, M/s Agro Tech,
Industrial Development Plot, AngamalySouth P O,ErnakulumDt.
RESPONDENT : The KSEB represented by;
The Assistant Executive Engineer,
Electrical Sub Division, KSEB,Angamaly, Ernakulam.

ORDER.

Background of the case: -

The appellant is running a Food Processing Unit, with effect from January 2009 onwards, in the Industrial Development Plot, Angamaly, purchased through Public Auction from KFC. This Plot was originally belonged to M/s Kerbo Meta Plant, a HT industrial consumer, bearing code No 13/1728 and the power connection was disconnected on 29.12.1995 due to default in the electricity charges payments. Before that, the Industrial Unit including the land properties were taken over by the Kerala Financial Corporation (KFC) on 16-11-1995, for the failure in Loan repayments. The electric connection was availed by M/s Kerbo Meta Plast industry on 29-4-1993, and has defaulted in electricity payments from 2/95 onwards. To recover the electricity arrears outstanding against the consumer pertaining to the period, 2/95 to 6/96, the Revenue Recovery action was initiated by KSEB on 18.11.1997, against the consumer for an amount of Rs. 240512/- including up to date interest. The District Collector, Ernakulam, returned the RR requisition form, intimating that the amount could not be realized, as the company ceased to exist and the same has been taken over by KFC.

The Appellant, the auction purchaser of the property from KFC, applied for fresh electric connection for starting a new industry in the same industrial plot. The KSEB objected it as the existing premise was having electricity arrears of the previous consumer and so they asked the appellant to clear the dues first, as the pre-condition to get the new electric connection. The appellant then approached the District Green Channel Clearance Committee seeking help to get the electric connection to his new Unit (industry) named Agro Tech and they recommended the KSEB to provide a new power connection temporarily, provided the appellant constructed a new building for running his industry. The appellant built an asbestos roofed shed near the existing building and obtained the electric connection to this new building. An arrear notice was issued to the appellant on 13.10.2009, by the Dy Chief Engineer, Electrical Circle, Perumbavoor, asking him to settle the arrears enjoying the interest benefit under the 'One Time Settlement Scheme' of KSEB. The appellant preferred a complaint before the CGRF, Ernakulam, against the orders of Dy. CE, Perumbavoor, claiming Rs 1,60,180/- from him, as the arrears of electricity charges were of the previous consumer and was not related to him. The CGRF disposed of the complaint and held that " the action of the Respondent, in issuing the notice to the successor is in order and the petitioner being the new owner of the premise having arrears is liable to pay the pending dues. It was also stated that the respondent shall not levy any interest on the amount due from

the appellant during the petition pending period with the CGRF". Aggrieved by the order of the CGRF, the appellant has submitted the Appeal before this Authority and is the gist of the Case.

Arguments of the Appellant:-

The appellant has adduced the following arguments in his Petition and in the additional representations submitted later.

- 1). The KSEB has taken over M/S Kerbo Meta Plast (P) Ltd on 16.11.1995, and at that time, there was no power connection in the premises and KSEB did not approach the principal owner of the premises i.e. the State Industries Department for collection of arrears if any.
- 2). The KSEB also did not proceed by way of Revenue Recovery through District Collector. If KSEB's demand had been genuine they would have proceeded legally with all details and documents. At present they do not have any documents to prove their claim.
- 3). The KSEB's dealing was with M/S Kerbo Meta Plast (P) Ltd and not with M/S Agro Tech. M/S AgroTech came to know about the arrears only when he approached for a new electric connection. The appellant complains that even after several requests, the KSEB did not produce details of the pending electricity arrears to him.
- 4). Though the CGRF has requested KSEB to produce the arrear documents of previous owner before it, the CGRF's final order did not contain anything about it.
- 5). Another argument advanced by the appellant is that, in the CGRF order it is highlighted that "the petitioner started a new industry having no relation with the old unit, M/S Kerb Meta Plast ". This clearly shows that the petitioner has no liability to pay for any amount which M/S Kerbo Meta Plast (P) Ltd is liable to pay the KSEB.
- 6). M/S Agro Tech is an Industry functioning under the same roof with different name. Hence an entire facility which is being granted to an industry for closed industries can also be extended to M/s Agro Tech.
- 7). At the time of taking over of the unit there was no electric service connection in the site or premise and more than that the new occupant have not signed any document with KSEB. He argues that he is not liable for the content of the agreement executed by the previous owner with KSEB. There was no intimation to the KSEB from the previous owner to this effect and KSEB has not bothered to give notice to the subsequent take over party, the KFC, before disconnection and dismantling.
- 8). Another argument of the appellant is that the entire documents in relation to the transfer of property were submitted to CGRF. It was the responsibility of KSEB to intimate KFC and DIC who were the Possessors and ultimate owners of the property.
- 9). It is evident from the documents that the property was handed over to the Appellant in February 2002, only. Subsequently the appellant made an enquiry with KSEB at Trivandrum and they have told that even if any arrears are there it can be adjusted against the Caution Deposit (CD) available. Till this date the value of the CD or the Accounts/Bill details of M/S Kerbo Meta Plast (P) Ltd were not made available to him.
- 10). The ultimate owner of the property is Industries Department. There is no agreement with Industries Department about the liability and its realization. Hence any kind of claim over the property by KSEB will not stand before Law.
- 11). The agreement with KFC and DIC or in the agreement signed with KSEB by the appellant nothing is mentioned about liability. The KSEB also have not proceeded against M/S Kerbo Meta Plast (P) Ltd. Although the electric connection was disconnected during February 1995, the KSEB have not proceeded for any legal remedy like civil suit etc. against M/S Kerbo Meta Plast (P) Ltd and KFC for subsequent 7 years, though KSEB is spending Rs10 crore as legal expenses.

The appellant has submitted another application dated 23/12/2011 and in it has advanced the following arguments.

- 1). The CGRF has rejected the request for re-connection on the ground that the consumer has not produced necessary certificate from concerned department.
- 2). Although the consumer has been running after KSEB for a settlement at various Adalath and CGRF, the matter could not be settled because KSEB could not produce the split up details of the impugned arrears of Rs.1, 60,180/= with Kerbo Meta Plast.
- 3). Even if the Liability of the arrears of the previous owner is fixed upon the present owner, the arrear will not stand good upon ' Auction Purchaser ' because KSEB is having enough time and opportunity to have an attachment upon the property in ' Auction '.
- 4). Entire court cases, regarding further liability of the Auction Purchaser's, is seen decided in favor of the consumer.
- 5). At present complying with Board Order, B.O (FB) (Gen) No.2713/2011 (Plg.com 4576/MD Waiver 2011-12) dated 19.11.2011, for waiver of Demand charges for closed industrial units, the consumer has submitted application before KSEB, Angamaly. After admitting the same, they have collected Rs.10/- as fees. As per the request of the KSEB, the consumer has also submitted the Indemnity Bond. Till date, KSEB has not given the split up details and bill copy of the impugned Liability. The appellant argues that, without having the details, it is not able to find out the 'energy charge' and 'fixed charge' portion of the Liability. The appellant is agreeable to remit the actual value of energy charge portion without interest, under protest for availing the facility of the respective GO's and BO's sanctioning Wavier of minimum demand charges meant for reopening of the closed industrial units.

The appellant has filed a note on 14/1/2012 in which he presented the following.

His argument is that KSEB is not accepting Agro Tech as a continuity of Kerbo Meta Plast. If they were accepting as continuity the appellant would have enjoyed the benefit of the closed unit. But when it is coming to the liability of the previous owner, KSEB is considering Agrotech, as its 'continuity', liable for the previous owner. The officers of the KSEB cannot conveniently take a stand in their favor. If they are entrusting the liability on the new consumer they should also transfer the benefit to the new consumer. Equality before law is a normal natural justice. The law cannot be made applying to the convenience and whims and fancy of the officer but it should be applied uniformly. He requests to direct KSEB, either to give the connection as if Agrotech is a continuation of Kerbo Meta Plast or give the connection as if Agrotech is totally a new consumer. If the liability is transferred to the auction purchaser, on the same way, the benefit should also be transferred.

Another point raised by the appellant is that there was dues of Rs.15,290/= as on 2/95. Without complying with the rule prevailing at that time the KSEB continued with the supply for further eight months without disconnecting the supply which is a serious lapse. Here the liability can be fixed only up on the Board for their negligence or willful default. Even after giving the supply without complying with the rule for disconnection or any other suitable action for 8 months, it is seen that KSEB is charging the minimum charge of Rs.7885/= each for the balance months i.e. $Rs.7 \times 7885 = Rs.55195/=$.

The electric connection was disconnected on 28.12.1995. After disconnection the consumer is not liable to remit the minimum charges as claimed by the respondent.

Various court orders are there, stating that Auction Purchaser is not responsible, for the arrear of the previous consumer. Details of two cases cited are as follows.

- 1). Leitner Shriram Manufacturing Ltd. (M/S) Vs Chairman, Tamilnadu Electricity Board and Another-2008 KHC 7914: AIR 2008 Mad.16 (Mad.16 (Mad) Auction purchaser is in no way connected with the liability of the erstwhile occupier as he cannot be considered as a consumer or occupier at the relevant date. The impinged proceedings calling upon the petitioner to clear

arrears of previous owner and order refusing to provide him electricity connection are liable to be quashed.

2). Jharkhand State Electricity Board Vs Anup Kumar Choudhary-2011 KHC 2118: AIR 2011 Jha.32 (Jhar). Purchaser of the property is under no legal liability to make payment of the unpaid dues of the erstwhile consumer.

Further, the Board Order, B.O (FM)(Genl.) No.2259/2009 (DPCI/C-GI/29/2008), Dated: 26.08.2009, is clear and gives stringent direction to release the connection to Auction purchaser without considering the liability of the previous owner.

Relief sought by the Appellant: -

(a). May declare the Bill as null and void.

(b). May declare the claim of SOR, KSEB, Dated 10.5.2002 for Rs 4,10,294/- as null and void.

Arguments of the Respondent: -

The respondent denies all the averments and allegations contained in the petition except to the extent he has specifically admitted.

The respondent argues that KSEB has not disconnected M/S Kerbo Meta Plast (P) Ltd on 19.11.1995. The service connection was disconnected only on 28.12.1995 and subsequently dismantled it on 11.11.1996, after issuing notice.

On 18.11.1997 for recovery of arrears due from M/S Kerbo Meta Plast (P) Ltd, recovery notice in Requisition form 24 was forwarded to the District Collector, Ernakulum through the District Collector, Thiruvananthapuram.

KFC has intimated vide letter dated 26.03.2002 of their intention to sell the land and buildings of M/S Kerbo Meta Plast (P) Ltd to Sri.V.S. Jeevakumar. On 10.05.2002, details of arrears were intimated to the District Manager, KFC with copy to Sri.V.S. Jeevakumar. The electricity arrears pertaining to the period 2/95 to 6/96 is Rs.2, 12,180/=. The details of these arrears have been informed to the consumer.

The old billing invoices of previous consumer for all months have already been forwarded at that time to the consumer. Copies of the said invoices are not available since the same are old records. The respondent has furnished the details of arrears of current charges due from the consumer as follows.

The Electricity dues from 2/95 to 6/96	= Rs.2, 12,180/-
Less CD adjusted	=Rs.52,000/-
Balance payable	= Rs.1, 60,180/-
Interest for belated payment up to 30.11.1997	= Rs.80,332/-
Total as on 30.11.1997	= Rs.2, 40,512/-

The petitioner has approached the District Green Chanel Clearing Committee for a new electric connection. The service was provided on 12.11.08, based on their recommendation to give electric connection to a new building constructed in the same plot since the existing old building was having electricity arrears. The new industry was named as M/S Agro Tech. An inspection held by the KSEB on 28.05.2010, detected unauthorized temporary extension from the premises of M/S.Agrotech to the old building. Therefore a bill for Rs.11,31,500/= for the same irregularity committed was served on the consumer, treating it as Temporary extension under tariff LT VIII, for unauthorized use of electricity to another premise.

The CGRF has stated in page 3 of their order, "the petitioner has purchased the premises from KFC with all its assets and liabilities. In this context it may be noted that the Board has intimated the arrear details to KFC, as well as with copy to Sri.V S Jeevakumar, on 10.05.2002 itself. So the petitioner is liable to pay the arrears of M/S Kerbo Meta Plast, since M/S.Kerbo

Meta Plast (P) Ltd was the owner of the property, and on purchasing the same by Sri.V.S. Jeevakumar, he became the owner of the property with all its assets and liabilities.

The statement alleging KSEB that it has not proceeded against M/S Kerbo Meta (P) Ltd is wrong since (1) the service connection was disconnected on non-payment of arrears (2) the service was dismantled after disconnection (3) Revenue Recovery action was initiated (4) on knowing the intention of KFC to sell the land to Sri.V.S. Jeevakumar, the details of arrears were intimated to both KFC and Sri.V.S. Jeevakumar.

In this connection it may kindly be noted that Sri.V.S. Jeevakumar has misled the KSEB by requesting for arrear details on 22.04.2002 and by approaching for one Time settlement scheme vide letter 14.01.2009, submitted in the KSEB Adalath, 2009, and deliberately kept away from remitting the arrears of electricity consumed by the firm.

Analysis and Findings: -

The brief facts and circumstances of the case which led to filing of the Petition before this Authority has been narrated above. On examining the Petition, the statement of facts filed by the Respondent, considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions.

The Hearing of the Petition was conducted on 20.12.2011, in my chamber at Edappally, and Mr. V.S Jeevakumar and Mr Shaji Sebastine represented the Appellant's side and Sri. Indrasenan, Assistant Executive Engineer, and Smt Shirly D C, Senior Supdt, Electrical Sub Division, Angamaly, represented the Respondent's side.

The property under Plot No.12, Industrial Development Area, Angamaly, was previously possessed by 'Kerbo MetaPlast', before its take over by Kerala Financial Corporation (KFC) for the default in Loan repayment. Due to mounting electricity arrears from 2/1995 onwards, KSEB disconnected the electric supply on 29-12-95 and later dismantled it on 11.11.96. The electricity arrears due from the consumer was reported to be Rs.1,60,180/-. It is learnt that the KFC took possession of the said industrial unit and the Land property on 16.11.1995, due to default in the repayment of the Loan amount taken from them. Later the said land property was sold in public auction and the auction purchaser was none other than the appellant, Sri V.S. Jeevakumar, itself. The KFC took possession of the land property of M/s Kerbo Meta Plast only on 16-11-95. But the electricity arrears were pending since 2/95 and KSEB did not take any action against the previous consumer in time i.e. during the default period of 2/95 to 11/95, including the disconnection of his electric supply. The supply was disconnected in 12/95 only, after taking over by KFC in 11/ 95.

The Special Officer Revenue (SOR) of KSEB initiated RR (Revenue Recovery) action to recover the electricity arrears through the District Collector, Trivandrum, lately vide their letter dated 18-11-97 only. The Dt Collector, Ernakulum, returned the request for RR proceedings on 22/12/1998, intimating KSEB that the company was not functioning and has been taken over by the KFC. But it is seen that the KSEB did not take any follow up action on this letter for the next four years, though there was scope for recovery of arrears through the KFC or through other means, as the land properties remained with KFC during this period. While so the KFC intimated the KSEB their intention to sell the land and the buildings of M/s Kerbo Meta Plast to Sri. VS. Jeevakumar vide their letter dated 26-3-02. In reply to this letter, the KSEB sent the details of electricity arrears pending against the industrial Unit, to the KFC with copy to Mr Jeevakumar, on 10-5-2002, and did not take any further follow up action till the year, 2009.

Meanwhile, the appellant approached the District Green Chanel Clearing Committee, praying for help to get a new electric connection. The new electric connection was provided, to a new asbestos roofed building, constructed very close to the existing disputed building having arrears,

on 12.11.08, based on their recommendation to give the same. The new industry was named as 'M/S Agro Tech'. The District Green Channel Committee also knew that it was not possible to give electric connection to the old building as it was having arrears and hence advised to give connection to the new building.

The respondent has cited regulation 19 (4) of KSEB Terms & Conditions of Supply 2005 in support of his arguments for denial of supply. It says "All dues to the Board from a consumer shall be the first charge on assets of the consumer".

Hence the issue to be decided is "whether the appellant is eligible for getting a new electric connection in a premise without clearing the electricity dues of the previous owner of the same premise?".

There was gross negligence on the part of KSEB in not disconnecting the electric supply, in time, after giving notice for nonpayment of bills. The electric supply was not disconnected for 10 months from 2/1995 to 12/1995, though the consumer failed to pay the monthly electricity bills. The supply was disconnected in 12/1995, after the take over of the industrial unit by the KFC.

Though the SOR, KSEB, has taken action to realize the electricity dues from the previous owner by initiating R R proceedings in 11/97, no proper follow up was seen taken by them. It is seen that RR requisition Form was sent to the Dt. Collector, Trivandrum and not to the District Collector, Ernakulum, though the land is situated in Ernakulum District. Further, even after knowing the fact that the property has been taken over by the KFC, from the letter dated 22.12.1998 of the Dt. Collector, Ernakulum, while returning the 'requisition' of KSEB for RR Action, no tangible steps were seen taken by the Board in this matter subsequently, other than sending a customary letter in 5/2002, to the Dt Manager, KFC, intimating the arrears pending, and that too when KFC informed their desire to sell the property to the appellant. After sending the above letter, no further follow up from KSEB side was seen taken till the year, 2009. In this case, though the KFC had intimated their intention to sell the property including the building to the appellant in 3/2002, the Board simply informed the details of dues to KFC and did not take any further legal action or follow up with KFC to realize the arrears at that time.

It was also proper to proceed with RR action against any other assets of the defaulter. But on getting reply from the Dt Collector, Ernakulum, on 22.12.98, that RR action is not possible as the Land belongs to KFC now, the Board did not proceed further and remained idle for quiet some time. From the above, I feel that the KSEB has taken steps against the previous owner to recover the dues, but in a casual way and did not pursue the case continuously and vigorously.

The consumer's allegation that, he was denied the benefit of concessions offered by the Govt (and KSEB), to closed industrial units, does not seem to have any merit. Firstly, it is not a closed industrial unit, which on reopening will facilitate its workers to have their employment opportunity back, as envisaged by the Govt. The industrial unit, M/s Kerbo Meta Plast, has been abandoned by the previous owner once it was taken over by the KFC. The machinery has been removed and the HT electric supply was also dismantled. So there remained nothing of the original consumer to provide the electric supply. Secondly, the Land property and building was sold through public auction by KFC to a new owner. The earlier Unit was a Plastic industry under HT electric supply while the present Unit set up by the new owner was a Food Processing industry under LT supply. It is a case of different industry under different Managements. Hence the new consumer cannot demand a 'concession or facilities' offered by the Govt. to a closed industrial unit of the old consumer, to a new consumer to set up a new industry with new workers and management, totally different from the original. The Concession is offered to a 'select' class by the Govt with a clear intention and motive and is not applicable to all Units and hence cannot argue it as injustice, citing the principle of natural justice.

Until the new Electricity Act, 2003, was enacted, the clause 15 (e) of the Conditions of Supply of Electrical Energy, 1990, contained safety provisions to the Board, wherein the buyers

of the defaulted premises would be entitled to electricity connection only if arrears in respect of those premises having dues are deposited. Further there was provision for refund of the said amounts to the buyers if recovery was later made from the defaulters.

As per Regulation 7 of KSEB Terms & Conditions of Supply, 2005, and Regulation 12 of the Electricity Supply Code, 2005, if a purchaser of premise requires a new connection, as the earlier connection has already been dismantled, the arrear if any shall be realized from the previous owner/occupier of the premises and not from the purchaser". It is clear from the above that the purchaser of the property is under no legal liability to make payment of the unpaid dues of the erstwhile consumer. But since the RR Action was initiated prior to the enactment of IE Act, 2003, I believe that this clause will not be applicable in this case.

Moreover, in a recent judgment of the Hon: Supreme Court in 'Paschimanchal VidyutVithan Nigam Ltd Vs DVS Steels and Alloys Pvt Ltd' reported in, 2009 (1) KLT 253 (SC) as; ".....A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premise, cannot be termed as unreasonable or arbitrary." Hence I think the Appellant cannot disown the liability of the electricity arrears of the premises he had bought.

The appellant has produced a document, the Board Order, 'B.O. (FM) (Genl) No2259/2009 (DPC1/C-GI/29/2008) dated 26.8.2009', where the cases of new industrial connections in the Industrial Estates including Development Area/Plots, having electricity arrears payable to KSEB by the former allottees were dealt with and ordered that "the existence of arrears against a tenant is not a bar on giving fresh connection to a new tenant if the owner is the Government". Here the Industrial Developmental Plot, Angamaly, is owned by the Govt, and therefore the appellant is eligible to get a fresh electric connection to the existing old building, based on the above said order, without waiting for the clearance of the previous consumer's pending arrears.

So far as the electricity arrears payable by the previous consumers of defaulted premises are concerned, recently the Division Bench of the Hon: High court of Kerala in W A No.2114 of 2009, between KSEB Vs KSERC and others, has issued an order directing the Hon: KSERC to incorporate appropriate provisions in the Electricity Supply Code for ensuring recovery of arrears of electricity dues and amounts, due to the Licensee, keeping in mind the Hon: High Court's and Hon: Supreme Court's Judgments delivered on the said matter referred. Till such regulations or rules are framed by the Hon: Commission, it was told to keep pending the arrears of previous consumers and the Licensee may raise the same, at the appropriate time as stated above.

DECISION: -

From the analysis done above and the findings and conclusions arrived at, I decide that the Appellant is eligible to get a new Electric connection to the premise (existing old building No XXV/561), in the Industrial Developmental Area/ Plot, Angamaly, owned by Govt, having arrears of the previous owner, based on the Board order dated 26.8.2009, stated above.

The request of the Appellant to set aside the Demands of KSEB, claiming the arrears of the previous consumer, M/s Kerbo Meta Plast, of the same premise, i.e. the reliefs sought are not granted. But the bills shall be kept pending Live, in line with the Hon: High Court's order referred above, till the Hon: Commission frames appropriate rules/ regulations, in this regard and the KSEB may take action at the appropriate time accordingly. Till such time, no punitive action shall be taken against the consumer with respect to the pending arrears of the previous consumer.

The Appellant is free to remit the dues, by enjoying the benefits under the "Adalath of One time settlement scheme" announced by the KSEB, if he so desires.

