

THE STATE ELECTRICITY OMBUDSMAN
Pallikkavil Building, Mamangalam-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/ 306/ 2012.

(Present T.P. Vivekanandan)

Appellant : Smt: C.R. Lakshmikutty,
Chanjaplackal House, Peringassery P.O,
Thodupuzha, Idukki Dt. Pin-685 595.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Thodupuzha (East),
Thodupuzha PO, - Idukki Dt.

ORDER.

Background of the Case: -

The appellant has presented the Appeal Petition before this Forum, challenging the electric connection given to Sri. Sajan C.D., Chanjaplackal, Peringassery, Thodupuzha, on 28.10.2011, by the Assistant Engineer, KSEB, Karimannoor. She alleges that the Electric line was drawn illegally through her property without seeking her consent. She admits that a court case is pending before the Hon High Court regarding the ownership of the property in question. Aggrieved by the above action of KSEB, she had given complaint to the Asst. Engineer, Electrical Section, Karimannoor and since no action was taken on the complaint, she had sent her grievances to the higher level authorities viz; Chairman of the KSEB etc.

Meanwhile, she also filed a petition before the CGRF, Kochi on 18.06.2012, upon which the CGRF has ordered (dated 20.06.2012), as; "On observing this complaint, this Forum finds that your complaint is not coming under the purview of CGRF and not maintainable before Forum. The petitioner shall approach the Executive Engineer, Electrical Division, Thodupuzha, who is the appropriate authority to attend and give necessary direction/ guidance as found necessary. As such your petition is returned herewith". Aggrieved by the said order of CGRF, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant: -

Challenging the said order, the appellant has made the following submissions.

1. The Vigilance Wing of KSEB had visited the alleged property on 13.03.2012, where the service connection was effected illegally, and they have taken the statement and prepared mahazar. As per the vigilance report, the following findings/recommendations were given;

a) The service connection application was registered in the section office on 17.09.2011, but the site inspection and preparation of estimate were done on 15.09.2011, which is against the prevailing rules of KSEBoard.

b) The Indemnity Bond executed by the consumer is not properly filled up. Hence explanations may be sought from Sri. P.K. Sreenivasan, Sub Engineer in charge, Electrical Section, Karimanoor for the above irregularities.

c) Explanations may be sought from Sri. T K Raveendran, Overseer, Electrical Section, Karimanoor, for taking the estimate by him before collecting the application fee for the service connection from the applicant.

2). The vigilance Wing is constituted to effectively combat corruption and misconduct on the part of Officers/employees of the Board. It deals with complaints like, misconduct, Malpractices, Irregularities, corruption etc. against Board Officials and also the security aspects of the Boards installations. However, the Vigilance Wing of the Board has not verified/overlooked the following glaring aspects.

(i)The ownership/title has not been given by the appropriate authorities in the alleged property till date. (ii). A Court case was pending with various courts since 1983 and (iii). No specific remark has been given by the Chief Vigilance wing in the investigation Report.

3. As per the judgment of the Hon Additional District judge (ADHOC) II, Thodupuzha (dated 30.03.2007) it has been stated inter alia "The plaint schedule property was given by the first defendant to his son Damodaran in 1980. Damodaran gave possession of two acre of property to his son Sanathan in 1990. The plaintiff and anybody else have no right over the plaint schedule property"

4). In addition it is observed that the Appellant of the case is Smt. Elayachi D/o Ettippennu, Chanjaplackal House, Perningasserry Kara, UdumbannoorVillage, (No more). Additional Appellant is Sri. Damodaran S/o Raman, Channjaplackal, Pernigassery, Udumbannoor Village. A plain reading of this judgment un-ambiguously proves that Sri. Sajan C.D. has not any possession and other rights over the property. Thus the electric service connection

given to Sri. Sajan C.D is totally illegal. The discrepancy could not be detected by the Chief Vigilance Wing which appears a clear lapse on their investigation.

5). Forest and Revenue authorities have clearly furnished in their RTI replies the following aspects. The Public Information Officer vide letter dated 17.08.2012 reported that nobody has been given the possession Certificate /title to the alleged property where the illegal electric service connection was effected. This aspect was also not seen in the purview of vigilance investigation.

6). The possession certificate produced by Sri.Sajan. C. D. to Electrical Section, KSEB, karimannoor for electric connection on 17.09.2011 and the actual nature of the alleged property as furnished by the Forest authorities differ. However the malpractice could not be identified by the Vigilance wing who visited and prepared the site mahazar in the alleged property appears a clear lapse on their part.

7). The Legal advisor & Disciplinary Enquiry Officer vide note to the Member (Distribution) dated 14.05.2012 (No.LA & DEO/LA/DPC/2012) stated that "electric connection seems to have been effected in the building shown in the certificate issued by the Panchayath. As KSE Board is not a party in the case mentioned in the representation we cannot comment on that matter". And a detailed report of the Assistant Engineer, Karimannoor on each of the contentions raised in the petition and furnish a reply to the petitioner, holding the electric service connection provided is legal. Subsequently the Executive Engineer, Electrical Division, Thodupuzha vide letter dated 03.07.2012, replied the petitioner. However the replies to the contention are not correct. The replies of the Executive Engineer, Electrical Division, Thodupuzha, on the contention in the petition and remarks included in the statement of facts attached, will indicate that the replies given to the petitioner are not factual and not sustainable.

Relief sought :-

(i). The illegal/irregular electric service connection provided on the basis of illegal document to Sr. Sajan C. D may be dismantled and action taken against the delinquent KSEB officials.

Arguments of the Respondent: -

The respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following.

(1). Sri. Sajan P.D, Chanjapakkal, Peringassery had remitted application fee for availing electric connection to his house at Electrical section, Karimannoor on 17/9/2011. The applicant had submitted the ownership certificate issued by the Udumbannoor Grama Panchayath, copy of voters ID card, community certificate issued by the Tahsildar, Thodupuzha and the consent of the applicant in stamp paper worth Rs.100/- as the property has no title deed, along with the application.

(2). Subsequently, the overseer of the Section had conducted a site inspection and informed the applicant that consent of his neighbor Sri. Somasekharan is required to draw the electric line to the premises. The applicant had obtained the property crossing consent from Sri. Somasekharan and produced the same.

(3). Based on the above documents, the applicant has been allowed to remit cash deposit on 23-9-2011, as per the existing rules of the Board.

(4). Later it was noticed by the Asst Engineer that there is a dispute regarding the ownership of the property and the same is pending in the Court. So he directed the consumer to execute an indemnity bond worth Rs.100/- which was executed by the consumer on 13.10.2011 and a special Caution Deposit was collected. The electric connection was effected to the consumer on 28.10.2011 under OTP category.

(5). On the basis of a complaint against the said connection, an enquiry was conducted by the Vigilance Exe. Engineer, KSEB on 13.3.2012, the following lapses were pointed out;

(i) .The service connection application was registered in the Section office on 17-9-2011, but the site inspection and preparation of statement were done on 15-9-2011.

(ii). The indemnity Bond was not seen properly filled up.

For the above lapses, explanations were called from the Sub Engineer in charge and the overseer by the Executive Engineer and they have submitted their reply on this matter.

(6). On a further inspection conducted by the Asst. Executive Engineer, he submits that it is proved that the house is of Sri.Sajan, bearing consumer number 13290 and the property is under his possession.

(7). As per the Indemnity Bond executed for effecting service to the premises of the consumer, he has agreed to dismantle the connection if the verdict of the case is not favorable to him.

ANALYSIS AND FINDINGS: -

The Hearing of the Case was conducted on 3rd April, 2013, in my chamber at Edappally, Kochi and Sri. C Suresh, the representatives of the appellant and Sri. Anil Paul, AEE, ESD, Thodupuzha (East) appeared, representing for either side. On examining the Petition and the argument notes filed by the Appellant, statement of facts of the Respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The appellant has raised allegations against the findings of the Vigilance Officer, KSEB who conducted an inspection and prepared a report on the complaint filed by the appellant. The CGRF has not admitted the petition filed before it, since the Forum decided that the complaint is not coming under the purview of CGRF and hence not maintainable before it. But the CGRF has not cited any valid reason or quoted relevant provisions of the Act or the Rules or Regulations on this aspect, in the letter returning the petition to the appellant. The petitioner has not put forward any detailed arguments along with the application for filing complaint with the CGRF. The Forum, if necessary, may call for any other additional information and it is the duty of the Forum to take up any kind of grievance/complaints as defined in Regulation 2 (1) (f) of the KSERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2005.

The relief sought by the petitioner was to dismantle the illegal Electric connection given to consumer No.13290, of Electrical Section Karimanoor, standing in the name of Sri CD Sajan, and to take action against the delinquent officials of KSEB for their wrongful deeds.

The crux of the allegation raised by the appellant is that Assistant Engineer, Electrical Section, Karimannoor had effected the electric connection to the premises of Sri. Sajan CD by drawing electric line through the land in the possession of the appellant without seeking her consent, even after filing objection through letter dated 28.9.2011 and knowing that a case was pending in the Hon High Court regarding the ownership of the same property.

In this case, the Electric OH (Over Head) Line consisting of two Posts with 90 meters of 1-phase Line was drawn to supply power to the house of Sri CD Sajan, Con NO. 13290, and was routed through the properties of the appellant. As per rules, the applicant who put in the request for new connection should also produce the written consent or no objection

letter from the parties whose properties are likely to be affected or crossed by the drawing of the new line. The Respondent (KSEB) then should inspect the site, verify and confirm that it is feasible to construct the line, enquire about the parties who are likely to be affected by the proposed work, confirm that the written consent of those affected parties are made available and after satisfying these conditions only, the respondent should effect the electric connection. In case of any dispute, the respondent has to file a Petition, before the District Collector and get orders and proceed accordingly. This is the procedure laid in the Sec.67 of the Electricity Act 2003, read with Sec. 10 of the Indian Telegraph Act, 1885, under the provision to opening up of streets to lay down or place electric supply lines.

In Clause 14(5) of the KSEB Terms and Conditions of Supply, 2005, it is clearly stated that the applicants for new electric service connection, the Licensee (KSEB) should not be held responsible for the delay caused unless the consumer produces the consent in writing of the owner or the person in possession of the property to be crossed over for drawing the electric line, so as to provide the service connection. The idea was to cause least damage, detriment and inconvenience to others, by paying full compensation to such actions, as per section 67(3) of the Electricity Act, 2003, under the provision to opening up of streets to lay down or place electric supply lines.

Similarly, "The Works of Licensees Rules, 2006", published by Ministry of Power, dated 18.4.2006, states as;

3 (b) ".....Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate....."

The respondent argues that they have obtained the consent of Sri Somasekharan, the neighbor from where the line begins and also the Ownership certificate from Udumbannoor Grama Panchayath. But it is a fact, that the petitioner has lodged protest against giving the electric connection crossing his property vide letter dated 28.9.2011. The respondent does not dispute the receipt of the said objection filed by the appellant and hence they ought to have considered the objection filed, seriously. Further, when any objection against drawing of Electric Line is raised and was not possible to settle it amicably, then the matter has to be placed before the District Collector for orders. In this case the KSEB (Respondent) has violated the said rule and acted in a high handed manner and drawn the Line and effected the service connection. How the KSEB can decide unilaterally that the land belongs to Sri

Sajan and not to the appellant? Only the appropriate Civil Courts can decide such matters like the ownership of disputed properties and in such a situation, I feel the decision taken by KSEB to effect the Electric connection, without considering the objection filed by the appellant, is not justifiable and surely has surpassed their official powers.

Here, it is seen that the present Case is only a part of a larger dispute of ownership of the Land, going on in between the appellant and other parties, which can be decided only through a Civil Court's ruling.

Further, in this case, the Electric service connection No. 13290 is understood to be enjoyed by the present occupier, Sri Sajan CD, who is not a party to this case and without hearing his version, to take any action on the said service connection, will be against natural justice, as his right to consume electric power cannot be denied arbitrarily.

Decision: -

From the analysis done above and the Findings and conclusions arrived at, I take the following decision.

(i.1). The Secretary, Udumbannoor Panchayath, has issued the ownership certificate dated 22.8.2011, in the name of Sri CD Sajan (Consumer No. 13290). The Panchayath has not cancelled the ownership certificate issued to the consumer so far. Any legitimate person can apply for electricity to his premises. There is no proof before me to suggest that a false document was submitted by the consumer to misrepresent the KSEB so as to avail the electric supply. Further it is not established that, consumer has obtained the said electric connection through malpractice ways. Only, the respondent has violated the rules, instead of filing petition before the District Collector, they have drawn the Electric OH line ignoring the objection filed by the appellant.

(i.2). The Respondent is found to have acted upon the request of the consumer Sri Sajan CD in a very hasty manner, violating the rules in force. Even if the request of the consumer is genuine, the respondent has to act as per rules only and as such has to approach the District Collector and get orders, when an objection was raised against the drawing of the Line across the disputed property. The respondent is not supposed to side with one party, totally ignoring the contentions of the opposite party. Moreover, the respondent is also not empowered to decide on the issue of 'who is the rightful owner of a property', when it is under dispute.

From the above, I am convinced that the Respondent or his subordinate officers in this case have indulged in abuse of power in providing the electric connection to Consumer No 13290, totally violating the rules in force and ignoring the objection filed by the appellant. Therefore the KSE Board authorities have to decide on this matter as the delinquents are its employees.

(ii). Then the question that arises is "*Whether the disputed electric connection was got by malpractice or by misrepresentation and if so whether it has to be dismantled?*"

(ii.1) The Regulation 21(8) of KSEB T & C of Supply regarding the detection of Electric connection obtained by malpractice/misrepresentation reads as follows:

"If it is found on inspection by the APTS or any Special Squad constituted for the purpose or any other officer of the Board not below the rank of Assistant Engineer that a service connection of a consumer has been obtained by malpractice/misrepresentation as envisaged in Clause 21(7) above, the service connection thus obtained shall be disconnected after giving 24 hours Notice to the party who obtained the connection. The notice will be served to the person who obtained the connection or to any other person available in the premises. In the absence of any person to receive the notice or if the person (s) present refuse to accept the notice, the same may be pasted in some conspicuous place near the meter board and the same shall be treated as valid service of notice for the purpose of the Regulation. The supply will be restored only after all formalities as required by the Board in respect of the service connection in question are complied with".

(ii.2). The appellant has not a claim that the house, for which the disputed electric service connection was provided, belongs to her but has the argument that the land upon which the Line was drawn belongs to her and a Case is pending before the Hon High Court on the ownership of the land and so the illegal electrical connection obtained should be dismantled. It is also seen from the documents filed that the Panchayath has issued notice dated 8.12.20011 to Sri Sajan CD against the appellant's contentions in the notice dated 28.9.2011 and the consumer has filed his reply to the said notice.

(ii.3). The KSEB states that the electric connection, Consumer No.13290 was given as per the ownership certificate issued by the Panchayath. As per clause 14(9) (a) of the KSEB Terms and Conditions of Supply, for giving domestic purpose connection, the building No. or the permit issued by a local body should be obtained by the KSEB. The clause 14-

“Records to accompany the application for service connection” does not insist the possession certificate of land for giving the domestic connections.

(ii.4). Even the tenant or occupier of a building is eligible to take electric connection and enjoy electric power, by executing an Indemnity bond in Stamp paper, if the real owner of the building objects to provide the Electricity. This is applicable in cases of disputes between the owner and the occupier, by indemnifying the KSEB from all further liabilities. In such a situation, the electric service connection obtained by Sri Sajan CD, cannot be termed as obtained by malpractice/ misrepresentation, as he has produced the ownership certificate of the house, where the electric service was requested, from the Panchayath authorities. And from the documents filed before me, it seems that the Panchayath has not cancelled the ownership certificate issued to Sri Sajan C D so far or has corrected and changed the ownership of the house in their records, after getting complaint from the appellant. There is no document produced before me suggesting that the connection obtained was illegal. The only thing proved is that the respondent has provided the Electric connection violating the rules in vogue, but it will not attract the clause 21(8), the Electric connection obtained by malpractice / misrepresentation and hence cannot be termed as an illegal connection.

Hence it is decided that the request of the appellant to dismantle the electric service connection provided to Sri CD Sajan, Consumer No.13290, under Electrical Section, Karimannur, is not maintainable.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by Smt. C R Lakshmikutty, is found having some merits and is allowed to the extent, it is ordered (i.e. KSEB officials have abused their power and are to be proceeded against), and is disposed of as stated. No order on costs. Dated the 2nd August, 2013,

Electricity Ombudsman.

Ref. No. P / 306/ 2012 / 1888 / Dated 02.08.2013.

Forwarded to : - : (1). Smt: C.R. Lakshmikutty,
Chanjaplackal House, Peringassery P.O,

Thodupuzha, Idukki Dt. Pin-685 595.

: (2). The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Thodupuzha (East),
Thodupuzha PO, - Idukki Dt.

Copy to: -

- 1). The Secretary,
Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,
Vydhyuthi bhavanam, Pattom, Thiruvananthapuram-4.
- 3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power House Building, Cemetery mukku,
Ernakulam-682018.