

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/327/2012.

(Present T.P. Vivekanandan)

Appellant : Smt. Rahmath Beevi.
Ponnilam, Mariathuruthu.P.O,
Kottayam. Pin- 686 027.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Kottayam.

ORDER.

Background of the case: -

The appellant is domestic consumer No.10343 of Electrical Section, Aymanam and has obtained the LT single phase electric service connection, using underground cable, as per the option of the consumer, some ten years back. On 11.06.2012, the appellant applied for conversion of the same existing single phase connection to three phase connection. The Assistant Engineer, had directed the appellant to remit an amount of Rs.35,156/- and also instructed that the position of the meter should be shifted from the existing place (at the wall of the consumer's house) and to install it, at the boundary or near the gate of the premises of the consumer. Being aggrieved, he filed petition before the CGRF and not satisfied by its decision, the appellant has filed the Appeal petition before this Forum.

Arguments of the Appellant: -

The arguments of the Appellant are based on the brief facts and circumstances which are narrated above. Further, the Appellant has adduced the following averments.

(1). The Appellant has obtained the electric connection to her residential house ten years back by laying underground cable. At that time she availed single phase connection and as per the Rules and Regulations, applicable the meter was installed on the wall of the house. On 11.06.2012, as there was necessity of higher load, she made a request for converting her single phase to 3 phase so as to have sufficient power supply as is needed for her house.

(2). The appellant had constructed the compound wall with R.C. Slabs and also concrete pillars and the underground cable was drawn underneath to the said construction. The laid cable is having

sufficient strength for 3 phase connection and it was in the same cable single phase connection was given by Board. So virtually when a conversion is requested, the Board is only requested to connect sufficient phases and no further work is required. On the basis of the application the Board officials inspected the premises and there was no difficulty to provide 3 phase connection by using the existing underground cable. There was no necessity for shifting the position of the meter. But however a notice was issued asking the Appellant to remit an amount of Rs.35156/-and also directed that position of the meter should be shifted by fitting the same at the boundary of the appellant's property, that is by fixing at the compound wall. As compliance with such work was possible only by demolishing the existing compound wall for the purpose of laying the cable and the cable was also to be drawn separately to meet the demand raised from the starting point which can be provided only by laying the cable by digging the road. So basically there were several handicaps in complying with the fresh demand made by the Board for conversion and legally such request cannot be ad-heard to by the Board as well.

(3). The appellant had put forward a submission before the Board officials that in her case no such stipulation can be made and there is no law to the effect that the existing meter should be shifted to the boundary etc. However the Board Officials were not inclined to accept the stand taken by the appellant, which was based up on relevant rules, has threatened the appellant that if he is not complying with the direction, dismantling will be done. It was accordingly for the Redressal of the appellant's grievances the matter was taken before the CGRF, Kottarakkara. But the said Forum without analyzing the law on the point, rejected the appellant's compliant, but without giving a reasonable order.

(4). The finding of the Forum is irrational, illegal and unsustainable under law. The Forum while considering the applicability of clause 57 failed to note the fact that supply, which commenced before coming into existence of the said rule, the relevant rule applicable so far as a consumer, is the rule in force when he or she was given connection. The point of connection of supply, as per clause 36, is a cut out in the case of electric consumer. The cut out is fixed in the very same place where the meter is installed. So up to the point of supply the cable for three phase connection is present and when a 1-phase is converted to 3- phases the position of the cut out is not changed and the point of supply remains as same. In such cases of the existing connections, clause 24 of the Regulations is applicable. In such cases no shifting of the installation is stated at all. Under clause 24, it is provided as under.

“Should the consumer, at any time after the supply of energy has been commence, desire to increase the number of wattage or capacity of lights, fans or motors etc. on his premises on a temporary or permanent basis notice should be issued and Board representatives after inspection, if necessary, change meters and fuses and alter the service line. For this purpose if a single phase service line is to be converted to three phase, the work should be done at the cost of consumer. The consumer should remit the testing fee”.

Thus it is evident that shifting of the meter is not contemplated at all except change or size of conductor and change of meters and fuses, etc. It does not mean, placing the meter point at a

different place other than the place in which it is already fixed. So, far as he is concerned, clause 24 is in existence at the time of her connection is applicable and not subsequent changes made.

(5). The CGRF had applied clause 57 denying the right of the appellant to change her connection which is only conversion which cannot be taken in to account as a new connection. So clause 57 even if it provides for laying of underground cable in the consumer's property, only after metering point is beyond comprehension of law. The intention was to prevent theft of energy, are not all applicable in the case of an existing connection. The Appellant has made application under the Right to Information Act to obtain information as to whether there is any provision to that effect in Rule or Regulation and was given reply to the effect that there is no such provision. Hence the CGRF did not distinguish the case in which Rule 57 applies and in cases in which it did not apply. The documents submitted by the appellant were not considered and the order is totally illegal.

(6). The finding of the CGRF that if conversion is effected as requested by the appellant, it will run counter to clause 57 is also incorrect and a misleading statement.

(7). The Forum was to be consisted of 3 members, but only 2 members had heard the matter and 3 members had signed the same. N.Sasidharan Unnithan was not present at the time of hearing but the order contains his signature. So while passing the order principles of natural justice is violated. The order is not supported by any reason and accordingly the order is liable to be set aside.

(8). The Forum ought to have found that the law applicable in the case of existing connection prior to 1.6.2007 is that of the earlier regulation clauses. A vested right for conversion has been accrued by the appellant and accordingly in respect of existing connection as regarding conversion, etc., the provision of old regulations is applicable.

Arguments of the Respondent: -

All the averments in the appeal are denied except which are specifically admitted here under.

(1). On 17.04.2012, the appellant has applied for changing his connected load to 5453 watts, as per completion report (Exbit P1). The site inspection was conducted on 24.04.2012 and it revealed that the actual connected load is 11426 watts. (Exbit P2). Here itself the appellant was misguiding the KSEBoard by giving wrong connected load instead of the actual load. The same leads to the bad intention of the appellant. The same informed the consumer and the appellant submitted the new application with connected load 11426 watts.

(2). For giving 3-phase supply to the consumer a system voltage change needed, i.e., low voltage (LV) to medium voltage (MV), where the Low voltage means, voltage which does not exceed 250 volts and the Medium voltage means the voltage higher than 250 volts but which does not exceed 650 volts under normal conditions. For effecting the three phase connection 27 meters over head line and 10 meters weather proof wire is required. The estimate amount for the same including the additional cash deposit comes to Rs.36156/- which was intimated the appellant.

(3). As per clause 19(5) & (6) of the Terms and Conditions of Supply, when there are change in the contract demand, connected load, tariff or provisions in the KSEB T & C of supply 2005, the Board may require in writing inform the consumer to execute a fresh agreement in the form applicable

with in 30 days of such change and the consumer shall comply with the same. In clause 19 (6) "In the event of no formal contract having been entered in between the Board and the consumer, the latter after once the supply of Electricity has been commenced, shall be bound but the Terms and Conditions of supply 2005, herein set forth". The consumer shall not refuse to enter into an agreement, if so required by the Board at any time after the supply is commenced notwithstanding that the same has not been entered into earlier i.e. before the supply has commenced. If the consumer fails to execute the agreement, the Board shall dismantle the service connection without notice and recover the dues by revenue recovery proceedings.

(4). As per clause 57, LT single phase or three phase service connections can be given using LT underground cable at the options of the consumer subject to the following conditions.

(i). Only OH lines will be permitted along public paths on realizing the cost as per clause 5 (2) of the KSEB T & C of Supply, 2005. The LT UG cable shall be permitted to be laid in consumer's property only, after metering point, at the cost of the consumer. The cable shall conform to BIS specification.

(ii). WP from service post to the metering point shall be provided on realizing the cost as per clause 5 (1) of the KSEB T& C of supply, 2005.

(iii). Energy meters shall be provided at the boundary of the consumer's own property, at a height of 1.5 meters above ground level on a suitable structure and placed inside a meter box. The meter box shall be weather proof and sufficient size to accommodate the Energy meter, CT, and cutout as applicable under each case. This weather proof box shall be provided, erected at the location fixed by Board and by the consumer at his cost. The meter box shall be installed either on the compound wall or on a permanent sturdy structure in case there is no compound wall. If the meter box is fixed on a compound wall it shall be on the side facing the property of the consumer. The location of the meter box shall be such that, there shall have easy access to facilitate meter reading. If the meter box is located on open land, it shall be protected from stray cattle etc by proper fencing all around at the cost of the consumer. The service wire from electric post shall be strung maintaining the statutory clearance from ground level and carried to the meter box through conduit pipe supported through a post either wooden or GI pipe fixed by suitable clamps adjacent to the meter box. The cost of the supporting post, conduit pipe, fixing clamps etc are to be borne by the consumer and erected at his cost adjacent to the meter box.

(iv). Only electronics meters shall be provided for UG cable connections.

(v). The consumer Number, Name of section, House Number, Tariff applicable shall be painted on the box by the consumer, etc.

(5).The respondent has only tried to implement the laws as per clause 57 of the T &C of supply 2005. As per existing rules, the LT UG cables shall be permitted to be laid in consumer's property, only after the metering point, at the cost of the consumer. So as per the rules in force now, the Meter connection cannot be given after the cable but has to be before the UG Cable.

(6). As and when the appellant denied to obey the clause 57 of T & C, the respondent has given the estimates amount to Rs.36156/-to effect the service connection as over head line.

(7). As per Reg.57 of the T &C of supply, LT UG cable shall be permitted to be laid on the property of the consumer, only after the metering point. The intention of this rule is to prevent the theft of energy in future.

(8). The CGRF has ordered that the action of KSEB officials is proper and in accordance with the rules and regulations. Also no intention is seen on their part to punish the consumer as stated in the complaint. The complaint is devoid of merit and hence may be dismissed.

Analysis and Findings: -

The Hearing of the Case was done on 16.5.2013 and 13.6.2013 in my chamber at Edappally, Kochi and the learned Advocate, Sri. T.M. Abdul Rasheed and Sri. Azeez PE, the husband of the appellant represented for the appellant and Sri. George Joseph, Asst. Exe. Engineer, Electrical Sub Division, Gandhinagar, Kottayam and the Asst. Engineer, ES, Kumarakom, appeared for the other side on 16.5.2013 and 13.6.2013 respectively. On examining the Petition, the counter statement of the Respondent, the documents attached and the arguments raised in the hearing and considering the facts and circumstances of the case the Forum comes to the following findings and conclusions leading to the decisions, thereof.

1.0. Point-1: - The appellant had requested for conversion of his Electric service connection from 1-phase to 3-phase, with sanction for additional load and also to install the 3 phase meter in the place of the existing single phase meter i.e. on the wall of her house. The appellant further argues that Clause 57 of the KSEB Terms and Conditions of Supply is a new clause and hence applicable only in respect of new connections. The main contention of the appellant is that as the service connection was taken 10 years back based on the, then prevailing electricity rules and provisions, the rules and regulations brought out after 1.2.2007 is not applicable to her Electrical connection, whenever any changes, like conversion to 3-phase from 1-phase, are requested to KSEB. According to the appellant the law applicable in her case is the earlier one namely, Conditions of Supply of Electrical Energy, 1990 and not the subordinate legislation like the Kerala Electricity Supply Code, 2005 and the KSEB Terms and Conditions of Supply, 2005, that came into being later in year 2005.

Analysis. The appellant had requested for conversion of her existing single phase electric connection (which was taken before the implementation of Electricity Act, 2003), into a 3 phase connection along with additional connected load. As per clause 19(8) of KSEB T & C of supply, 2005, the Agreement authority for a 3-phase connection is the Asst. Exe. Engineer, while that of her existing service connection (1-phase) is the Asst. Engineer. For conversion to 3-phase supply, the consumer has to execute a new Agreement, even though there is no change in the Consumer No. allotted earlier for the 1-phase. The Service line from the nearest post (to the consumer) with 3-phase supply and up to the Meter point has to be converted into 3 Phase Lines, for which the party has to remit fees at a rate as authorized by the Regulatory Commission. Hence it is evident that the request for conversion to 3- phase supply requires some work in the existing Lines of the Distribution Licensee and accordingly changes in the office records. In such a case, when a request

or application is received by the Assistant Engineer, he has to proceed by the prevailing rules only and not according to the rules that existed in earlier period, unless it is specifically stated so. For example, it is stated in the Electricity Supply Code, 2005, that vide clause 4 (4) (b) as;
“(b) For new consumers, the connected load permitted under LT may be limited to 100KVA. But consumers existing as on the date of implementation of Kerala Electricity Supply Code, 2005, may be permitted to operate in LT up to a load of 150 KVA”. In this case, there is no such rule that specifies the Licensee to follow the rules existing at the time of taking connection for the old consumers. In such a case, the rules will vary from consumer to consumer as time goes by, which is not envisaged. Thus it is evident that the superseded rules are not to be used in this Case.

2.0. Point-2: - The appellant has submitted a document, the information received as per RTI Act by her husband, enquiring whether there exists any KSEB order to shift the Meter in case the consumer requests for conversion of the service connection availed previously using UG Cable.

Analysis Whether there is any specific Board order, for the shifting of Meter, is not relevant in this case, as after the enactment of Electricity Act, 2003, the Distribution Licensees are bound by the Rules and Regulations issued by the Regulatory Commission only, other than the Electricity Act, 2003. The Board orders are only supplementary directions or clarifications issued to their officers and are used for their guidance only. It has no status of a subordinate legislation like Electricity Supply Code or KSEB T & C of Supply, 2005. Hence the Forum does not rely on the document filed.

3.0. Point-3: - The appellant argues that in her case the Clause 24 of the Conditions of Supply of Electrical Energy, 1990, is applicable. This clause is also incorporated as clause 26 in the new Regulation, under KSEB T & C of supply, 2005. The respondent insists that the provisions under Regulation 57 of the Terms and Conditions of Supply, 2005, which came into force with effect from 1/6/2007, is applicable in the case of Consumers requesting for any extension, alteration & renovation of his/her existing installations.

Analysis The main contention raised by the complainant was that the respondents could not have invoked clause 57 of the Terms and Conditions of Supply, for the matter of conversion of an already given connection. This argument does not find merit because; the said special provision which specifically deals with the situation like; giving new electric service connection using underground (UG) Cable is Clause 57. The clause 26 (old clause 24) is a general provision, which cannot be made applicable when the issue is governed by a special provision, which is Clause 57, in this case. It is well settled position in Law that, when the wording of one entry is general and another particular, effect should be given to both entries by reading general as including only the residue after excluding the particular. In AIR 1966 SC 1342 (The Commissioner of Income Tax, Patiala Vs M/S. Shahzada Hand & Sons & Others, the Hon Supreme Court has held that, “If a special provision is made on certain matter, that matter is excluded from the general provision”.

4.0 The Hon High Court judgment in WP (C) 21753 of 2012 (reported as 2013(1) KLT 25) produced by the appellant deals with a separate issue and is not an identical Case with that under dispute before me and hence decided as not applicable in this case.

During hearing, it is conveyed by the appellant that the UG cable has already been laid. The only thing that is remaining to be done by the party is to construct a small plinth of 1.5 Meter height (or on the boundary wall), of size just to fix the Meter in a Weather proof cubicle. Then connect the beginning of the UG cable at the outgoing terminal or Cut out of the Meter and terminate the cable on the Main switch fitted at the House of the consumer. I feel the consumer can arrange this work without much difficulty. At any rate, the consumer himself has to rectify or replace the Cable once a fault is developed on the UG Cable in the future and accordingly the UG Cable has to be laid considering the future maintenance aspects also.

DECISION: -

From the analysis done and the Findings and Conclusions arrived at, which are detailed above, I take the following decision.

(i). As per clause 19 (5) of the T & C of Supply, when there are changes in then contract demand, connected load, tariff or in the provisions of the KSEB T & C of Supply 2005, the Board may require in writing inform the consumer to execute a fresh agreement in the form applicable within 30 days of such change and the consumer shall comply with the same. Hence in this case also, there is change in connected load and so the consumer is liable to execute a fresh agreement.

(ii). Further, the appellant insists that in her case the earlier rules, prevailing at the time of taking her connection, i.e. "The Conditions of Supply of Electrical Energy, 1990" is applicable. But on a perusal of the same it is noted that the 'Condition -10' incorporated in the 'Agreement for the Supply of Energy (Low Tension)', executed between the consumer and KSEB, contains the following declaration.

"10. The consumer hereby declares that the Book containing "Conditions of Supply" by the Board has been carefully perused by him/her read to him/her and he/she agrees to be bound by the said conditions of supply in force from time to time, which shall always form an integral part of this agreement". Hence it is clear that the consumer is bound to obey the 'Conditions of supply of electrical energy', in force from time to time.

(iii). The clause 26 of KSEB T & C of supply, 2005, is intended for those existing consumers who wish to make any extension, alteration & renovation of his/her existing installations and is general in nature. But the clause 57 is specific rule for giving LT service connection using UG cable. The appellant is having an old LT service 1-phase connection (using UG cable) and has applied for conversion into a 3-phase connection (using UG cable), for which she is required to execute with KSEB a new agreement. The clause 22 (2) of the KSEB T & C of Supply 2005, reads as;

“All the agreements executed prior to the date of implementation of this terms and conditions of supply shall continue for such consumers as such till the expiry of the agreements provided that these conditions are consistent with provisions of the code”. The said clause stipulates that, once the existing agreement is terminated or is found inconsistent with the new rules, the consumer has to go by the new rules only. Here the appellant has requested for conversion of her electric connection to 3- phase in 6/2012 and as such she is liable to go by the new Regulations only.

Thus, it is certain that the consumer is bound to act as per the prevailing rules and regulations. The consumer has requested for the conversion of her electric connection to 3-phase supply on 11.6.2012 and accordingly, I decide that the same will fall under clause 57 of the KSEB T & C of Supply, 2005. In such cases, the Meter has to be installed at the beginning of the UG cable and not at the end of the UG cable laid.

Having concluded and decided as above, it is ordered accordingly. I find no merits in the Petition filed by the Consumer and as such the Appeal Petition is dismissed. No order on costs. The CGRF order vide OP No. 815/ 2012 dated 03.11. 2012 is also set aside.
Dated the 23rd of October, 2013,

Electricity Ombudsman

Ref. No. P / 327 / 2012 / 2019 / Dated 24.10.2013.

Forwarded to : 1). Smt. M A Rahmath Beevi,
Ponnilam, Mariathuruthu.P.O,
Kottayam-686 027.
: 2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Kottayam.

Copy to :- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam Thiruvananthapuram-10.
2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
3). The Chairperson, Consumer Grievance Redressal Forum,
Power House, Ernakulum-682 018.