

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/346/2013

(Present: T.P. VIVEKANANDAN)

APPELLANT : Sri. Subramanian G.
Driver, Yellappatty Division,
Chudavurri Estate, S P Puram P.O.,
Munnar. Idukki Dt. Kerala. Pin-685612..

RESPONDENT : The Sanction holder/The Manager,
Engineering Department, KDHP Company Pvt. Ltd.,
Munnar, Idukki Dt. Kerala. Pin-685612.

ORDER.

Background of the Case: -

The appellant was a driver in Yellapatty division of Chundavurrai estate in KDHP Co. Pvt. Ltd. and he retired from company's service in January 2012. He is staying in the quarters of the KDHP Co. and wants to stay in the same quarters for another three years after his retirement. Since he has not vacated the quarters, the company disconnected the power supply to the quarters on 30.5.2012 without giving him any notice. The appellant had requested to the Manager of KDHP Co. to restore the power supply, but the same request was not accepted by the Licensee so far.

Arguments of the Appellant: -

- (1). The complainant herein is a Driver, working under the first respondent and has retired from service. Due to non-settlement of issues, the accommodation provided to him is yet to be vacated and a civil case filed by the 1st respondent is pending before the Hon Munssiff Court at Devikulam and claims before various other forums also.
- (2). The respondent is the Sanction Holder for the supply of Electricity in Munnar Valley and the CGRF is the statutory authority constituted under the Electricity Regulatory Commission/Act & Rules and the Chairman of the said Forum is the Technical Officer under the 1st respondent, too.
- (3). The electricity charges in respect of the Connection, has been remitted by the complainant, and there is advance sum at the credit of the respondent. The power connection to the building occupied by this complainant was disconnected by the respondent on 30.05.2012, without any

notice or information, as contemplated by the statutes. Complaints were preferred against the same before this Hon Authority also, and other Forums and those were transmitted to the Co. for further necessary action. The Copy of the said complaint marked as Annex-1.

(4). The respondent submitted their version; copy enclosed as Annex -2, for which a rejoinder was filed by the complainant explaining the facts, copy enclosed as Annex- 3. After hearing the matter, the CGRF issued an order to the respondent to provide reconnection, vide their order No: KDHP/ CGRF/2012-13 dated 2.11.2012., copy enclosed as Annex-4. The order itself is bad and against the provisions of the Act and directions of the Hon State Electricity Regulatory Commission, in that, the petitioner is directed to produce a residential certificate from the local Panchayath, to get the power supply and on production, the 1st respondent shall issue the power connection till the OS No: 300/2012 is decided. And an agreement is also to be executed in Rs.100/- stamp paper.

(5). Though there is inconsistency and illegality in the order, considering the necessity and the delay involved, submitted an application to the respondent on 3rd December, along with Rs.100/- Stamp paper (Annex-5), the same was rejected and directed to produce the residential certificate from the Panchayath. Copy of the said communication dated 13.12. 2012 is marked as Annex- 6.

(6). The appellant has submitted an application for residential certificate from Devikulum Grama Panchayath dated 28.12.2012, Annex-7. The said request was rejected by the Secretary of the Panchayath, to get a consent letter from the respondent. The said direction is also illegal and being a Local self government body, the same is illegal. However, on enquiry it is understood that the Co. did give such an instruction to the Panchayath that shows the illegal action of the Co.

(7). Aggrieved by the order (Annex-4) this complaint has been filed. The order of the CGRF is not based on facts and provisions of law. There is no application of mind by the CGRF and they ought to have found the disconnection illegal and directed the respondent to reinstate the power connection with cost. They are staffs and cannot issue a direction against their own superiors.

(8). The entire proceedings were a mockery and a fair trial was lacking throughout the hearing and this complainant was humiliated. The occupation or accommodation is not illegal as alleged. At no point in time this complainant made any claims over the building. Further the subject matter is pending before the Hon Munsiff Court at Devikulum.

(9). The complainant is not a defaulter of electricity charges or committed any offence for a disconnection too. If at all it is presumed without admitting that the order is proper, it is only a re-connection is sought for and not for a new connection, for which a residential certificate is required as also a new agreement. Under any point of view, the action of the respondents is callous and against the provisions of the Electricity Act and regulations, purely intended to harass

this petitioner with ulterior motives. Hence it is prayed that, this Hon Ombudsman be pleased to direct the respondent to provide reconnection to the building occupied by the complainant and also allow damages of Rs.250/- per day from the date of disconnection till reconnection with cost.

Arguments of the Respondent: -

(1).The appeal filed by the complainant against the order passed by the CGRF, KDHP Company Ltd, Munnar is not sustainable either under law or on facts of the case. The party has no rights to file the complaint before the CGRF, Munnar or before the Ombudsman, as he is not a consumer of electricity under the sanction holder since many months as on the date of filling the complaint.

(2). The complainant, Sri. G.Subramanian was employed as Driver in Tata Tea Ltd, Munnar and subsequently promoted to the grade of staff Driver in the company and later in KDHP Co., Pvt Ltd. Munnar since the company is formed and started functioning from 1st April 2005 onwards. M/S. KDHP Co, has purchased many of the buildings owned by Tata tea Ltd, by sale deed No.1281/2005 of SRO, Devikulam including the building now illegally occupied by the complainant. The building is allotted to the complainant under section 15 of the Plantation Labour Act and Rule by Tata Tea Ltd. and later KDHP Co Pvt. Ltd as employee of the Company. While occupying the building he was permitted to use the electricity provided in the quarters by the company by the employer who is the original consumer of electricity in the building and Electricity provided was free up to 40 units.

(3). On attaining the age of superannuation, the party retired from the service of the company. As per rules 63 (1) (ii) of the Plantation Labour Act and rules on retirement from the service, he ought to have vacated the possession of the building, allotted to him within one month of retirement. And thus, on completion of one month of retirement from service, the complainant ceased to be a consumer of electricity in the building. The complainant was asked to vacate and surrender the building after receiving gratuity and other retirement benefits from the company many times. But he did not turn up to receive the retirement benefits and did not surrender the building.

(4). Since he did not vacate the building even after the time period as per Rules the electric supply to the building was disconnected after due intimation and the disconnection is legal and valid. A suit vide O.S. 300/2012 is filed before the Munsiff Court, Devikulam for recovery of the building after evicting him from the building. Facts being so, he has no right to approach the CGR Forum and get any reliefs. After retirement and completion of the one month period the complainant has no rights to consume electricity provided in the quarters. He is not a consumer of electricity and hence the complaint filed before the Forum is unsustainable.

(5). Considering the above facts, the Forum has passed an order rejecting his claims and directed him to approach the licensee KDHP Company with application for electric connection as a new

consumer with all necessary documents as per the procedure to be followed for application for fresh electric connection. The complainant ought to have pursued the procedure instead of filing the appeal before the Ombudsman. His above appeal is unsustainable and not allowable.

(6). Person like the complainant are consumers of electricity in the quarters during their service in the Plantation only and on retirement they cease to be consumers. Hence on completion of the 1 month period after retirement from the service of the company in the absence of pendency of any dispute regarding retirement, the party cannot claim any relief from the CDRF or the Ombudsman as consumer of electricity in the quarters allotted during service period.

(7). The present complaint is made with malafide objects. Further there is no prim facie loss or damages or inconvenience caused to the complainant by the disconnection. Therefore this Forum has to dismiss/reject the appeal as per Sec. 2 (2) of The KSERC (CGRF and Electricity Ombudsman) Regulations 2005.

(8). The disconnection of electricity from the quarter is not illegal but is legal with in the powers of the sanction holder/employer of the complainant. The contentions that the matter is pending at the Munsiff Court, Devikulam is incorrect. The Suit filed is for recovery of building after evicting the complainant from the building and not regarding the disconnections of electricity. The party is not entitled to any order of reconnection of electricity to the quarters.

Analysis and Findings: -

The Hearing of the case was conducted on 4.7.2013 and 11.7.2013, in my chamber at Edappally, and Mr. Subramonian G, the Appellant and Sri. V. Mohan Kumar, represented the appellant's side and Sri. P J Kurien, Learned Advocate represented for the Respondent's side on the 2nd hearing. On perusing the Petition, the counter statement of the Respondent, the documents filed and considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions.

The appellant has raised two issues in this appeal which are as follows;

1. To provide reconnection of power supply to the quarters occupied by the appellant, and
2. To compensate the loss sustained by the appellant due to the illegal disconnection of power supply by the respondents.

1.1. Firstly, the respondent has challenged the maintainability of the petition stating that the complainant has no manner of rights to file above complaint before the CGRF, KDHP Co. Munnar, or before the Ombudsman, as the petitioner is not a consumer of electricity under the sanction holder since many months as on the date of filing the complaint.

1.2. As per the definition of the 'complainant' given in the KSERC (CGRF and EO) Regulations, 2005, 2 (e), a complainant means *(i) any consumer of electricity supplied by the licensee including applicants for new connections*. It is necessary to refer the definition of a consumer in order to get a complete meaning of the above definition. As per the Regulation 2(g), a 'Consumer' means any person who is supplied with electricity for his own use by a licensee and includes any person whose premises are connected for the purpose of receiving electricity with the works of a licensee or a person whose electricity supply is disconnected by a licensee or the person who has applied for connection for receiving electricity from a licensee, as the case may be. Considering the above definition, particularly the underlined portion, it is clear that petitioner is a consumer. In this case, the party is occupying the building is a fact since the respondent has stated that a Suit for eviction is going on at the Munsiff Court, Devicolam and hence he will fall under the category of a 'premise connected for the purpose of receiving electricity....', referred above. Moreover, he is a person whose electric supply is disconnected by a Licensee. Both these points establish that the party's claim as a consumer of electricity. Hence, the argument of the respondent that the party is not a 'consumer', is found as not maintainable.

1.3. The appellant was a former employee of the licensee and while in service, he was provided with a quarters, but failed to vacate the same after his retirement. The former employer of the appellant wishes to evict him from the building and probably this might have led to the disconnection of the electric supply of the appellant, through the respondent.

1.4. Here, it is clear that the Licensee was aware that the appellant was staying in the building and is in dispute over its continued occupation of the same. The respondent has taken action to evict the appellant from the building by filing a Suit, vide O.S.300/2012 before the Munsiff Court, Devikulum and is pending for decision. In such a case, even if a request is received to disconnect supply from the registered consumer and not the appellant, then the Licensee has to issue notice to the occupier and act as per Law. But, in this case, the Licensee was seen to have disconnected the electric supply outright. Hence, I am of the view that the action of the respondent in cutting the electricity without issuing a notice to the occupant or the beneficiary enjoying the electric supply, is not proper and cannot be justified.

1.5. The CGRF or this Forum should not be concerned with the allegation of illegal occupation of the building by the appellant, violating the provisions of the Plantations Labour Act, 1951 etc. This type of matters are to be decided by the appropriate Civil Courts and the respondent has to wait till the verdict is issued. Here, the appellant is aggrieved by the disconnection of electric supply to his dwelling place. Further, I believe that, giving electric supply to an occupant of the building

does not confer him any legal right on the building/property or will affect the merit of the appellant's labor case or other cases, pending before the Courts of Law.

DECISION: -

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

(i). The main contention of the appellant is that the electric connection was disconnected without following any due procedures and without any notice. The Licensee argues that the electricity was disconnected as per the request of the registered consumer, who is the Manager of the Licensee, the Company and accordingly cut the electric supply. It is known to the respondent that appellant was residing or occupying the building, where the electric supply was disconnected. As per rules, the consumer is defined as; "...includes any person whose premises are connected for the purpose of receiving electricity with the works of a licensee... ". Hence, it is imperative that a disconnection notice should be issued to the occupant before taking such a drastic step. No such notice was seen issued by the Licensee to the consumer before disconnecting the supply.

(ii). Further, as per clause 14(4) of the Terms and Conditions of Supply, 2005, even if the intending consumer is not the owner of the premise to be electrified, he can be given electric connection, after executing an indemnity bond indemnifying the Licensee against any liability on that specific ground. The rent holders or occupant of the buildings, where dispute is going on, can take electric connection under the said provision, even if the real owner objects, unless there is specific Court order against it. In such a case, it is needless to mention about the obligation of the Licensee to retain the electric supply till the appropriate court takes a decision. Generally, it is the Civil Courts that decides on the issues regarding the ownership of properties, unauthorized occupation and its eviction etc. The Licensee cannot decide unilaterally the sanctity of occupation of a building and accordingly disconnect an electric supply of a premise, merely on the request of the real owner, if somebody else is using the electric supply being an occupant of the premise.

(iii). The Respondent (Licensee) has not a contention that the Electric connection, provided to the appellant's quarters, has any arrears of electricity charges. The CGRF, KDHP Co., (the Licensee for Distribution of Electricity in the Munnar area) has held that the appellant is eligible for a fresh electric connection to his Quarters, (disconnected by the Licensee), provided the party produce a residential certificate to the building. This direction is not supported by any rules in force. The direction given to the appellant by the CGRF, to get the residential certificate to the building from Panchayath and then apply for a fresh electric connection, is found as not sustainable.

(iv). The Respondent has not denied the fact that the appellant was staying in the building, where the disputed electric connection was existing. As the appellant failed to vacate the building even

after retiring from service, the Respondent has disconnected the electric supply to the occupant of the said building, under the pretext of the request of the Manager of the Company, without issuing any notice. This action of the Licensee is not justifiable. Further, I feel that the stipulation insisted by the CGRF to take a fresh connection with a new ownership certificate is nothing but denying the pray of the party. The consumer can be asked to execute an Indemnity bond when the owner fails to give consent, if he wants to retain electric supply and to continue to enjoy the electric supply, as per clause 14(4) of the Terms and Conditions of Supply. But the direction of CGRF endorsing the disconnection of the existing electric connection and asking the party to avail fresh electric connection with new residential certificate is not supported by Law. There is no Rule or Regulations in the Electricity Supply Code or in the Electricity Act, 2003, to support the direction of the CGRF. Therefore, the CGRF's order No: KDHP/ CGRF/2012-13 dated 2.11.2012 of CGRF, KDHP Co Pvt Ltd, Munnar, is set aside.

(v). I direct the respondent, to give reconnection of electric supply to the appellant occupying building /Quarters, within 24 hours of the receipt of this order. The respondent shall not collect any fees from the appellant to effect the reconnection of his Electric service, as the disconnection was seen done without observing the rules in force.

The Respondent is ordered to pay Rs.1000/- as compensation for illegal disconnection of Electric supply under Standard of Performance rules, 2006 and Rs 500/- (Rs five hundred only) as litigation costs to the appellant within 90 days of this order. Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to the extent ordered. Dated the 20th of December, 2013,

Electricity Ombudsman.

Ref. No. P / 346 / 2013 / 2112 / Dated 20.12.2013.

Forwarded to (1). : Sri. Subramanian G,

Driver, Yellappatty Division, Chudavurri Estate,
S P Puram P.O., Munnar- Pin-685612.

(2). : The Sanction holder/The Manager

Engineering Department, KDHP Company Pvt.Ltd., Munnar- Pin-685612.

Copy to:

- 1). The Secretary, Kerala State Electricity Regulatory Commission, KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
- 3). The Chairperson, Consumer Grievance Redressal Forum, KDHP Co. Pvt. Ltd., Munnar –Pin-685612.