

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/060/2016

(Present: V.V. Sathyarajan)

Dated: 5th December 2016

Appellant : Sri. K.P. Binumon
Kalarickal,
Sachivothapuram,
Kurichi, Kottayam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Changanacherry,
Kottayam

ORDER**Background of the case:**

The appellant is an agricultural consumer (LT V A tariff) with consumer No: 1889, under Electrical Section, Kurichi. On 24-04-2015, the APTS unit inspected the premises of the appellant and detected misuse of electricity. It is alleged that the appellant is dishonestly tapping energy for pumping drinking water from a well, which amounting to misuse and theft under Electricity Act, 2003. Based on the above findings, action was initiated against the appellant, as per Section 135 of Electricity Act, 2003 and the service was disconnected and also issued penal bill amounting to Rs. 786.00. A compounding fee of Rs. 4,000.00 was also realized from the appellant under Section 135 of the Act.

Subsequently the service connection was dismantled by the respondent. So the appellant filed a complaint before the CGRF vide order No. OP- 91/2016 dated 11-08-2016, which was dismissed, holding that the same was not maintainable, due to lack of jurisdiction since the case comes under Section 135 of Electricity Act, 2003. Aggrieved against the order of CGRF, the appellant has submitted this appeal before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition filed before this Authority.

The CGRF had dismissed the petition submitted by the appellant on 27-04-2016 without examining the documents and facts and on the basis of a bogus letter presented by the respondent. Some details shown in the letter dated 27-05-2016 presented by the Assistant Engineer-in-charge before the CGRF are not true. The appellant has not requested to dismantle the connection and respondent failed to produce such a letter before the Forum. The respondent has also not produced a copy of the petition which was filed before the SHO, Chingavanam Police Station regarding the appellant dishonestly used electricity for the purpose other than for which the usage of electricity was authorized and the acknowledgement for the same before the CGRF as proof.

As per notice dated 24-04-2015, the Sub Engineer, Electrical Section, Kurichi issued a notice only for disconnection of consumer number 1889 under LT V tariff. Though the appellant paid the penal bill and compounding charge, the respondent dismantled the connection without issuing a proper notice or without the consent of the appellant. Regarding this lapse, the respondent has not given a clear evidence or reply before the CGRF. The relief sought for by the appellant is to reconnect the connection and to return the fees unauthorisedly collected from him.

Arguments of the respondent:

The respondent has filed the following statement of facts.

The APTS, Kottayam unit inspected the premises of the appellant with consumer number 1889 of Electrical Section, Kurichi and detected theft of electrical energy by using the energy authorised for agricultural purpose to domestic purpose. It is found that by using 1 hp water pump, water from a well was pumped to a PVC tank fixed on a residential building where the appellant and family reside. The supply was disconnected and a penal bill for Rs. 786.00 served on the appellant as per Section 135 of Electricity Act, 2003. The matter was reported to the Station House Officer, Police Station, Chingavanam. The appellant requested to compound the offense as per Section 152 of Electricity Act, 2003 and remitted the compounding fee for Rs. 4,000.00 and discharged from the offense.

The version of the respondent is that the appellant submitted an application for dismantling the connection and remitted required fees in the Section office. Accordingly the connection dismantled and account closed on

29-05-2015. The balance security deposit for Rs. 63.00 will be returned on submitting the necessary documents by the appellant. The connection was dismantled on the basis of the application and fees remitted by the appellant. A petition was filed before SHO, Chingavanam PS regarding the misuse of tariff and no further follow up action taken since the appellant requested to discharge from the offense by remitting the compounding fee. No acknowledgement obtained from the police station and kept.

Since the appellant paid the fee for dismantle, no further notice is required to issue to appellant for dismantling. The appellant has not submitted any application for tariff change.

Analysis and Findings: -

A hearing of the case was conducted in my chamber at Edappally on 10-11-2016. The appellant, Sri Binumon K.P. was present for the appellant's side and Smt. Sabimol S, Assistant Engineer-in-charge of Electrical Sub Division, Changanassery represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition, the counter of the respondent, perusing the documents attached and the arguments raised in the hearing 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 site mahazar prepared by the APTS unit of the KSEB alleges the offence of theft and misuse of the electricity by tapping the supply from the premises with consumer No. 1889 under LT V A tariff to the residential building of the appellant for domestic purposes. The appellant has admitted that he took supply from the electric connection belonging to him, to his house for domestic purposes. The contention of the respondent is that the action of the appellant comes under the offence of theft of electricity under Section 135 of the Electricity Act, 2003.

On the other hand, the appellant contended that the Section 135 of Electricity Act, 2003, would not be attracted, as he was using the supply by extending from his agricultural connection and that too through the meter of consumer No. 1889. Hence, only Section 126 (5) & (6) is applicable if at all any Section is attracted in this regard. Further, no tampering of meter or pilferage has occurred in this case and hence there is no theft of electricity and if any assessment is required, it has to be done as per the energy recorded in the meter.

By extending the electric supply given for one purpose to a different purpose i.e. usage of energy for the purposes other than for which the supply of electricity was authorized, is an irregularity under the provisions of Electricity

Act and the said offence is not disputed by the appellant. However, if there is any allegation of dishonest or illegal extraction of energy or tampering of the meter against the appellant, then it will attract the provisions under Section 135 of the Act, 2003. Here in this case, the respondent charged the appellant as per Section 135 and the appellant remitted the penal charges and compounding fee etc. So this Authority does not want to go into the merits of the case as the relevant clause under which the appellant was booked either Section 126 or Section 135, does not come under the purview of this Authority.

It is clearly specified in the ***“The KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, under the sub clause (f) (vii) of the Section -2, that the Complaints and grievances connected with Sections 126, 135 to 139 and 161 of the Electricity Act, 2003 will not be maintainable before the CGRF and Electricity Ombudsman for consideration”***.

The electricity bill raised by the licensee against a consumer for unauthorized use of electricity under Section 126 of the Act is specifically excluded from the scope of “complaint” as defined in the above said Regulations. On the other hand, electricity bill raised on allegation of unauthorized uses, which include use of power for the purposes other than mentioned under the tariff under which connection is given, it is an order specifically appealable under Section 127 of the Act which is excluded from the scope of “complaint” covered by Regulation. Hence this Authority is not going into the merits of that aspect.

But having regard to the fact that the appellant had some grievances against the dismantling of the service connection after remittance of penal charges, compounding fee etc. that too even without giving any notice. On a perusal of documents it is noted that the appellant had remitted the following amounts on 02-05-2015 as directed by the respondent.

| | | |
|--------------------|------------|----------------------|
| Receipt No. 609266 | Rs. 10.00 | Application fee |
| Receipt No. 609265 | Rs. 100.00 | Dismantling fee |
| Receipt No. 609264 | Rs. 457.00 | Work Deposit Charges |

Though the respondent claimed that the service connection was dismantled on the basis of the appellant’s application, the respondent failed to produce a copy of the application before this Authority as evidence. Regulation 145 of the Supply Code, 2014 depicts the provisions for ‘Dismantling on the request of the consumer’ as follows:

145 (1) - In case a consumer desires his service to be dismantled and the service connection agreement to be terminated, he shall apply for the same in the format specified in Annexure-20 to the Code.

(2) The licensee shall give a written acknowledgement of receipt of such request, on the spot.

In this case, records prove that the respondent dismantled the service connection without observing the above procedures and has not stated any reason for dismantling the appellant's service connection without giving any intimation. Hence the action on the part of the respondent shows a clear violation of natural rights of a consumer which cannot be sustained before law. In the above circumstances, the appellant's argument that he was deceived by the respondent can be admitted. The respondent is duty bound to give reconnection to the appellant when he remits the penal bill and compounding fee etc. as demanded by the respondent under relevant Section of Electricity Act. There is no justification on the part of the respondent for dismantling the service connection without observing the procedures stated above and the appellant is eligible for reconnection.

During the hearing it is revealed that the service connection with consumer No. 1889 was registered in favour of appellant's father and now he is no more. In the above circumstances, reconnection in favour of appellant's name will be a great difficulty. However, the respondent has agreed to simplify the process for availing new service connection and to include the appellant under total electrification programme for redressal of his grievance. The appellant also accepted this proposal. So in view of the above discussions, it is decided to settle the issue as detailed above. It is also made clear that the appellant shall submit the documents for availing new service connection and the respondent shall give the same without any delay after including the appellant under total electrification programme.

Decision

The respondent is directed to provide new service connection to the appellant's premises without any delay as and when the appellant submits application for the same. The appeal petition is disposed of as above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/060/2016/_____/Dated:_____

Delivered to:

1. Sri K.P. Binumon, Kalarickal, Sachivothapuram, Kurichi, Kottayam.

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Changanacherry, Kottayam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.