

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/002/2017

(Present: V.V. Sathyarajan)

Dated: 31st January 2017

Appellant : Sri. Jaffer Khan
M/S Perfect Plywood
Karuvellil House,
Arakkappadi Village,
Vengola P.O., Ernakulam

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Velloorkunnam,
Ernakulam.

ORDER**Background of the case:**

The appellant, Sri Jaffer Khan, is conducting a plywood unit in the name and style of M/s Perfect Plywoods. The appellant's unit is provided with an LT three phase service connection with consumer number 18856 under the jurisdiction of Electrical Section, Valayanchirangara. It is alleged that the agent entrusted for arranging service connection after installing a transformer under the 'Minimum Guarantee Scheme' has made arrangements for installation of transformer under OYEC scheme by mistake. Hence the appellant has to pay huge amount of Rs. 6,98,948.00 towards the installation of transformer. Even though the respondent allowed 12 instalments @ Rs. 36,276.00 towards the installation charges of the transformer under OYEC scheme, the appellant could only remit the first instalment as per the above sanction.

Further, the appellant has defaulted remittance of current charges as well as OYEC instalments, a notice was issued to him by the respondent to remit the amount with interest. Instead of remitting the amount, the appellant approached the Hon'ble High Court by filing WP(C) 5050/2015 which was disposed of by directing to remit one-half amount. Against this, the appellant filed a Writ Appeal No. 618/2015 wherein the Division Bench directed not to insist one-half payment but to consider his application and pass appropriate orders. On the application submitted by the appellant, since no favourable order was passed the appellant

again approached the Hon'ble High Court vide WP(C) No. 11593/2016 wherein the Hon'ble High Court was pleased to dispose of the petition granting the appellant to remit the arrears in instalments.

However, the appellant could not remit the dues and the respondent issued demand notice dated 16-06-2016 demanding Rs. 6,63,558.00 towards the OYEC instalments and Rs. 57,803.00 towards the penal interest. Aggrieved against this the appellant approached with a petition before CGRF, Ernakulam. The appellant also filed Writ Petition No. 34558/2016 before the Hon'ble High Court. The appellant alleged that the respondent disconnected the service on 16-06-2016 and later dismantled on 28-10-2016. The CGRF dismissed the petition vide order in No. 77/2016-17 dated 21-12-2016. Aggrieved against the order of Forum, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant stated that a notice dated 16-06-2016 was issued to him demanding principal amount as well as penal interest. Against this, the appellant submitted a complaint before the Consumer Grievances Redressal Forum (Electricity), Ernakulam which was taken into file as complaint No. 77/2016-17. The appellant is also aggrieved by the exorbitant interest charged by the Electricity Board. There is mistake on the part of the Board authorities in including the appellant in the OYEC scheme rather than including him in the Minimum Guarantee Scheme. This has to be verified from the records only.

In fact, the appellant is ready and willing to pay the principal amount but as far as the interest part is considered which is exorbitant, the appellant is not in a position to remit such a huge amount as interest charges. The penal interest of 16% is against the norms laid down by the Reserve Bank of India as well as the law of the land. Moreover, the connection was granted on 13-05-2010. The first demand notice was issued only on 17-04-2015. Hence the demand becomes time-barred. The interest charge of Rs. 2,46,336.00 is totally illegal and arbitrary and is liable to be set aside. These are the reasons which prompted him to file complaint to the CGRF, Ernakulam.

Thereafter the appellant received a notice from the CGRF dated 22-10-2016 informing him that the hearing will be conducted on 26-10-2016. But the appellant received the notice only on 24-10-2016. Though the appellant had already entrusted his counsel to appear before the Forum, the counsel could not attend the hearing as he was out of station. So, the appellant himself attended the hearing and filed a petition for adjournment of the case to a near date citing the above reasons. Though the appellant filed petition for adjournment, it was not accepted and an adverse order was passed against the appellant.

Thereafter, though the appellant immediately approached the Honourable High Court of Kerala by filing WP(C) No. 34558/2016, before any order was passed, the Board authorities dismantled the connection of the appellant on 28-10-2016.

Therefore, the Writ Petition was disposed of granting liberty to the appellant to move appropriate authorities to challenge the order, if any, passed by the CGRF. It is submitted that an order was passed and electricity connection was dismantled without giving an opportunity to advance and argue his case. In fact, the appellant's counsel was also intending to file an argument note. An opportunity of hearing was not afforded to the appellant which is verily contrary to the principles of natural justice. Though the appellant approached the Honourable CGRF for a copy of the order passed against him, it was not served on him. Therefore he is presenting the appeal without the order of the CGRF, which may be called for by this Honourable Authority.

In the circumstances, the appellant has no other remedy except to approach this Authority on the following among other:

- a. Though the appellant had filed petition for adjournment, it was not accepted and the CGRF had proceeded without hearing the counsel of the appellant. In fact, his counsel was also intending to file an argument note. An opportunity of hearing was not afforded to the appellant which is verily contrary to the principles of natural justice.
- b. Dismantling of electricity connection is a drastic step and the 2nd respondent ought not to have acted briskly before allowing the appellant to move this Forum to challenge the order passed against the appellant by the CGRF.
- c. The question of limitation has not been considered by the respondents. The entire liability has become time barred and cannot be recovered under law.
- d. The direction in Writ Appeal 618/2015 of the Division Bench of the Hon'ble High Court has not been considered by the respondents and therefore the demand notice is liable to be set aside.
- e. The connection ought to have been given under Minimum Guarantee Scheme and not under OYEC. This could be checked from the records which were not called for by the CGRF.
- f. The appellant was not afforded an opportunity of hearing which amounts to gross violation of natural justice.
- g. The penal interest charge of Rs.2,46,336.00 is totally illegal and liable to be waived by the Board. The principal amount may be permitted to be remitted in 36 monthly instalments.'

Nature of relief sought for:

For these and other grounds to be urged at the time of hearing, it is respectfully prayed that the Honourable Ombudsman may be pleased to:

- (i) call for the records and set aside the order passed by the CGRF, Ernakulam in Complaint No. 77/2016-17 on its file.
- (ii) remand the matter for fresh adjudication and grant an opportunity of hearing to the appellant.
- (iii) direct the respondents to reconnect the electricity connection to the appellant's premises.
- (iv) allow the appeal and allow the Complaint No.77/2016-17 on the file of CGRF, Ernakulam.

Arguments of the respondent:

During the hearing of petition No. 77/16-17 on 26-10-2016, the CGRF made verbal observation that there are no legal points which prohibits KSEB from complying with the order issued by the Hon'ble High Court.

It was also highlighted by the CGRF that CGRF has not given any stay for dismantling the defaulted consumer.

Later on 21-12-2016, the above observations were put on paper and final order passed by the CGRF. In it, there is clear comment that "it seems that the petitioner is using statutory authorities for delaying payment".

Upon these backgrounds, the act of dismantling the consumer No. 18856 was strictly in compliance with the order of the Hon'ble High Court.

The appeal petition of Mr. Jaffer Khan is meritless and hence it is requested that it may please be denied.

Analysis and findings

Hearing of the appeal petition was conducted on 10-01-2017 in my chamber at Edappally, Kochi. Sri. K Jaffer Khan represented the appellant's side and Sri. Santhosh P. Abraham, Assistant Executive Engineer, Electrical Sub Division, Velloorkunnam represented the respondent's side. On examining the petition, the statement of facts filed by the respondent, considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The facts disclosed before this Authority reveals that though the appellant requested for an adjournment of hearing, the same was not allowed by the CGRF. Hence the appellant argued that the CGRF proceeded with the case even without affording an opportunity of being heard which is verily contrary to the principles of natural justice. According to Clause 10(3) of Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation, 2005, **the Forum shall notify in writing the parties of the date of hearing of the grievance giving sufficient advance notice.** It is an admitted fact that the Forum issued notice dated 22-10-2016 informing the date of hearing of the case is on 26-10-2016 which was received by the appellant only on 24-10-2016. Disallowing the request of the appellant for an adjournment of the hearing cannot be justified. Further, the order issued by the Forum even without affording an opportunity of being heard is contrary to the principles of natural justice and against the provisions of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005.

Another argument raised by the appellant is that the entire liability has become time barred and cannot be recovered by law. Section 56 (2) Electricity Act, 2003 has the relevance, which reads as under; **“56 (2) - Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such became first due unless such sum has been shown continuously as recoverable as arrear of charge for electricity supplied and the licensee shall not cut off the supply of the electricity”.**

It will not be out of place here to refer to the reported decision in Tata Steel Ltd. Vs Jharkhand State Electricity Board (2008 KHC 7794 AIR 2008 Jha 99), which read as; “The period of two years as mentioned in Section 56(2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board raising the bills against consumption of electricity energy”. In a similar case in Brihat Mumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11 (Bom), it was held as; Amount of charges would become due and payable only with the submission of the bill and not earlier. Word “due” in this context must mean due and payable after a valid bill has been sent to consumer”. Hence I feel that the Section 56(2) -Limitation of time bar of 2 years will not be applicable here and hence the appellant’s argument cannot be accepted.

On going through the records it can be seen that the appellant was already accorded installment facilities to remit the arrears of current charges and the OYEC installments. The Hon’ble High Court in WP (C) 11593/2016 also granted an opportunity to remit the arrears in 10 instalments which was also not complied by the appellant. So, the respondent issued notices on 10-02-2015 and 14-09-2015 and thereafter disconnected the service on 16-06-2016. It is also pertinent to note that a notice under Regulation 139 (6) for dismantling the connection was issued on 16-06-2016 by the respondent. On getting that notice, the appellant approached the CGRF by filing a petition. While that petition was pending for decision the respondent dismantled the service on 28-10-2016 for which no reasonable

explanation is forthcoming from the part of respondent. This shows some serious lapses on the part of respondent.

It is pertinent in this case that the appellant also approached the Hon'ble High Court with Writ Petition No. 34558 of 2016, as soon as the respondent denied the request of appellant to postpone the hearing for a near date. The Hon'ble High Court disposed the petition on 31-10-2016 with the following directions that ***"the Writ Petition was dismissed as withdrawn with liberty to take appropriate proceedings in accordance with law"***. Even though the respondent issued dismantling notice on 16-06-2016 as per Regulation 139(6) of Supply Code, 2014, no action is seen taken to dismantle the service till 28-10-2016. However, when the matter is pending before the Forum and the Hon'ble High Court, the respondent dismantled the service even without issuing any sort of intimation which shows serious lapses on the part of the respondent.

As per Regulation 139(1) of Supply Code, 2014, ***"The licensee shall in the case of disconnection proposed on the grounds mentioned in clauses (a) and (b) of sub regulation (1) of Regulation 138 above, issue a disconnection notice in writing, as per Section 56 of the Act, with a notice period of not less than fifteen clear days, intimating the consumer about grounds for disconnection and directing him to pay the dues with penal charges with the notice period"***.

As per Regulation 139(6) of Supply Code, 2014, ***"The licensee shall, after disconnection on the grounds mentioned in sub regulation (1) of Regulation 138, give intimation to the consumer as per format given in Annexure-18 to the Code, to remove the cause of disconnection within forty five days, failing which the supply may be dismantled"***.

Hence the action of the respondent in dismantling the service while the petition is pending before the CGRF and Hon'ble High Court and even without issuing notice as per the above Regulations is found arbitrary and illegal. In this background I am of the opinion that the appellant is eligible for reconnection provided the appellant has to clear the arrears pending. During the hearing the appellant assured that he will remit the arrears but requested for a period of 6 months time for that. The principal amount of Rs. 3,99,036.00 and its interest Rs. 2,46,336.00 are outstanding against the appellant. In fact, the first demand notice was issued by the respondent only on 17-04-2015 i.e. after a lapse of 5 years which is the reason for the issue.

Since the respondent failed to raise the OYEC instalment along with the monthly bill resulted in the accumulation of huge arrears. The respondent had not furnished a reasonable explanation for not raising the OYEC instalment along with the monthly current charges. Hence there is no justification for issuing such a huge amount of Rs. 2,46,336.00 towards the penal interest. The respondent is directed to revise the penal interest after 17-04-2015. In this case, if at all any loss sustained to the licensee it is only because of the careless attitude of responsible

officers of the licensee. Hence it is advisable to conduct an enquiry to find out the reasons and the persons responsible for the issue.

In the above circumstances the respondent is directed to revise the arrear bill as detailed above and issue revised demand within 15 days from the date of receipt of this order. The appellant is directed to remit 50% of the arrear amount as first installment and the balance amount in 5 equal installments. The respondent shall reconnect the service within 15 days when the appellant remits the first instalment.

It is a fact that the appellant had executed an agreement for installation of transformer under OYEC scheme and agreed to remit the OYEC amount in instalments. Hence appellant's argument that the installation of transformer ought to have been considered under Minimum Guarantee Scheme is without any valid grounds and hence cannot be accepted.

Decision

In view of the above discussions the respondent is hereby directed to revise the arrears pending in this case and to allow the appellant to clear the same in 6 installments. The appellant is directed to remit the 50% of the arrears as first installment within 30 days from the date of receipt of intimation from the respondent. The service shall be reconnected within a period of 15 days from the date of payment of first installment.

It is also directed to sanction 5 equal installments for remitting the balance arrears. The respondent is directed to revise the penal interest after 17-04-2015. The interest shall be levied strictly in accordance with the Regulation 131 (2) of Supply Code, 2014. If the appellant fails to remit the amount of arrears with interest on or before due date indicated in the demand notice, the licensee may initiate proceedings for the recovery of arrears in accordance with the relevant legal provisions. The appeal is disposed of accordingly.

ELECTRICITY OMBUDSMAN

P/002/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Jaffer Khan, M/S Perfect Plywood, Karuvelil House, Arakkappadi Village, Vengola P.O., Ernakulam

2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Velloorkunnam, Ernakulam.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.