

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/104/2017  
(Present: A.S. Dasappan)  
Dated: 18<sup>th</sup> December 2017

Appellant : Sri. Pradeepan S.  
Managing Partner,  
Unipower Systems,  
MIE Pambady, Kottayam

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

### **ORDER**

#### **Background of the case:**

The appellant is running an industrial unit, with effect from 13/05/2009 onwards, in shed Nos 1 & 2 of the Mini Industrial Estate, Pampady. These sheds were originally allotted to Sri Sivadasan Nair, the registered consumer, bearing consumer no.6274, under Electrical Section, Aymanam. The electric connection was availed by Sri Sivadasan Nair on 6-12-1990. Later Shed No. 1 & 2 were transferred to the appellant by the previous allottees, Smt. Usha Kurian and Sri. P.J. Joseph, the managing partners of Penta Polymers. The APTS team had conducted an inspection in the premises of the appellant on 20-06-2001 and on the basis of the inspection a penal assessment bill for Rs.2,07,982/- was issued to the then occupant on 25-06-2001, alleging unauthorised additional load of 13 KW over and above the sanctioned load of 72 KW and for non-functioning of energy meter. The assessment was quashed by the Hon'ble CDRF, Kottayam vide order dated 07-06-2004 in OP No.407/2001. The order of Hon'ble CDRF was subsequently set aside by the Hon'ble Kerala State Consumer Dispute Redressal Commission vide judgment dated 07-11-2009 in Appeal No.557/2004 preferred by the KSEB. On 10-11-2016, after the occupation of the appellant in the premises, a notice demanding Rs.856457/- was affixed on the meter box of the premises by the respondent.

Aggrieved by this, the appellant preferred a complaint before the CGRF, Kottarakkara, against the demand notice of the respondent, claiming Rs 856457/- from him, as the arrears of electricity charges with interest were of the previous consumer and was not related to him. The CGRF dismissed the complaint by observing that the case is purely with regard to the bill against the unauthorised load and the case disposed of due to lack of jurisdiction. The Forum also directed the appellant that he is at liberty to prefer appeal before the Appellate Authority constituted under Section 127 of Electricity Act, 2003. As directed, the appellant filed an appeal before the Appellate Authority but dismissed the complaint with a liberty to prefer appeal before the Hon. State Electricity Ombudsman, as per section 42(6) within Electricity act 2003, in the order dated 31<sup>st</sup> Aug 2017. Accordingly, the appellant has submitted the Appeal before this Authority.

**Arguments of the appellant:**

1. The appellant is Sri. S. Pradeepan, Managing Partner, Unipower Systems, Mini Industrial Estate, Pampady, Kottayam is prompt payer of Electricity bills hitherto. There is no default or arrears on his part. Shed No. 1 and 2 of the Mini Industrial Estate was transferred to the appellant on 13-05-2009 by the District Industrial Centre and has been under the use of the appellant ever since. Shed No. 1 & 2 were transferred to the appellant by the previous allottees, Smt. Usha Kurian and Sri. P.J. Joseph, the managing partners of Penta Polymers. The appellant is using electrical connection bearing consumer no. 1146292006274 which is in the name of Sri. Sivadasan Nair, who was using the shed prior to, M/s Penta Polymers. A notice demanding Rs. 856457/- being arrears of Electricity bill and Rs.657535/- with interest was issued to the appellant on 28-06-2017 by the sub engineer in charge, Electrical Section, KSEBL, Aymanam. The appellant was informed that if arrears were not settled within the stipulated time the electric connection to the shed would be disconnected.

2. The arrear amount pertains to the surprise inspection in the premises by Anti Power Theft Squad (APTS) Ernakulam, alleging unauthorized additional load of 13 KW over and above the sanctioned load of 72 KW. It is learned that the assessment was set aside by the Hon. Consumer Dispute Redressal Forum (CDRF), Kottayam. The order of the Hon. CDRF was subsequently set aside by the Hon'ble Kerala State Consumer Dispute Redressal Commission on 07-09-2011. The assessment was kept unnoticed by the KSEBL officials and no action was seen taken by them. Aggrieved by the payment demand the appellant filed a complaint before the Hon. Consumer Grievance Redressal Forum, Kottarakkara. The CGRF, Kottarakkara dismissed the complaint with a liberty to prefer appeal before the Appellate authority constituted under section 127 of Electricity Act, 2003.

3. As directed the appellant, filed an appeal before the Appellate authority. A hearing on the case was conducted on 10-08-2017 at the chamber of the Appellate authority. The Hon. Appellate authority in the order dated 31<sup>st</sup> Aug 2017, dismissed the complaint with a liberty to prefer appeal before the Hon. State Electricity Ombudsman, as per section 42(6) within Electricity act 2003.

While dismissing the case the CGRF was not gone into merits of case, and has dismissed the same only on the ground of lack of jurisdiction. The "question of whether the appellant is liable to pay the arrear who was in possession of the shed, much prior to the appellant is yet to be considered. Since the Electrical Connection was not used by the appellant at the time, the appellant is not in any way liable for the same. A similar matter was put before the consideration of Hon. High court of Kerala in WP(C) No. 231769, of 2009 wherein, Hon. High Court was of the view that the present allottee shall not be liable for any arrears payable by the previous allottee.

The respondents cannot take a stand that Electricity Connection is still in the name of Sri. Sivadasan Nair and all transfers without the consent of the respondents cannot be permitted. The sheds were previously allotted to M/s. Penta Polymers, who have further transferred the same in favour of appellant which was sanctioned by the District Industrial Centre. No demand of payment of arrears or any objection regarding the transfer of the shed was raised prior to this. It may also be noted that the appellant has been using the shed from the year 2009 and till date no objections or demand for the payment is raised.

The huge delay demanding the arrears from the consumer Sri. Sivadasan Nair, due to the lethargic attitude of the KSEB cannot be put on the appellant. It may be noted that the licensee does not have any right to realize any arrears before two years unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of the Electricity supplied. The appellant has to pay for the action of the former allottee is unjust and unreasonable. Hence it is prayed that the demand of the respondent to pay the arrears of the previous allottee may be set aside.

**Arguments of the respondent:**

The service connection to the said premises (Con No.1146292006274) was given to Sri. Sivadasan Nair. M. N, Geetha Bhavan, Aymanam, and was effected on 16.12.1990, under Electrical Section Aymanam, and was given under LT IVA tariff (Registered Connected load at the time of connection - 72KW). Consequent to an APTS surprise inspection, a penal bill for Rs.2,07,922 was issued to the consumer. He challenged the bill in various courts, including CDRC, Thiruvananthapuram. The verdict was in favour of KSEB to recover the amount from the consumer. The figure reflects in the Consumers profile for a long period under the head "Dispute amount". But it is realised that during the

period of Legal procedure, the ownership is unauthorisedly transferred. It may please be noted that, even though, Mr. Sivadasan Nair. M.N, is the registered consumer (even now according to KSEB Service connection records), the complaint is filed by another person Mr. S. Pradeepan.

As per our Service connection records, even now Mr. Sivadasan Nair M.N is the registered consumer. According to Regulation 91 (1) of Supply code 2014, "The consumer shall not, without prior consent in writing of distribution licensee, assign transfer or part with the benefit of the Service connection agreement executed with the distribution licensee, or part with or create any partial (separate interest there under in any manner". That means the transfer of this service connection is done improperly, without informing the licensee (Here KSEB). As per Regulation 91 4(b) of Supply code 2014, "The request for transfer of connection shall not be accepted unless all recoverable dues in respect of the concerned connection are fully paid".

It suspects that such clauses regarding transfer of ownership may lead the registered owner Mr. Sivadasan Nair to shield the transfer procedure from KSEB. Otherwise, the transfer would have been possible only after clearing the arrears.

The consumer has filed an objection vide O.P No. 328/2016, before Hon'ble CGRF Kottarakara, without mentioning the Judgement was made in this case by Kerala State Consumer Disputes Redressal Commission during 11/2009 in favour of KSEB. But Hon'ble CGRF Kottarakara dismissed the case as it is not under their jurisdiction, as it is a case pertaining to unauthorised additional load.

The consumer then approached Kerala State Electricity Appellate Authority, vide Appeal No. 152 / 2017, but Hon'ble Appellate Authority dismissed his petition with clear remark that "The Appeal is not maintainable before this Authority since the dispute regarding the unauthorised use of electricity has already been disposed by another forum. In the order dated 31.8.2017, it was mentioned that the appellant is at liberty to prefer appeal before the Hon'ble State Electricity Ombudsman against the order of Hon'ble CGRF as per section 42(6) of Electricity Act 2003, later amended in 2007.

### **Analysis and Findings: -**

The brief facts and circumstances of the case which led to filing of the Petition before this Authority has been narrated above. 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 Hearing of the Petition was conducted on 30.11.2017, in my chamber at Edappally, and Mr. P.C.Rajan Babu represented the Appellant's side and Sri. Viji Prabhakaran, Assistant Executive Engineer Electrical Sub Division, Gandhinagar represented the Respondent's side.

The property under shed 1 and 2 of Mini Industrial Estate, Pambady was previously possessed by Sri Sivadasan Nair and thereafter Smt. Usha Kurian and Sri. P.J. Joseph, the managing partners of Penta Polymers, before it's take over by the appellant. The electricity arrears due from the consumer was reported to be Rs. 2,07,982/- on 25-06-2001. It is revealed from the records, the respondent had issued another notice to the registered consumer, Sri. Sivadasan Nair on 28-06-2017 for an amount of Rs.8,56,457/- which contains balance principal amount of Rs.197922/- and surcharge amount of Rs.657535/-, by affixing the notice in the meter box of the premises of the consumer. The appellant took possession of the land property only on 13-05-2009. But the electricity arrears were related to a period of six months before 25-06-2001 and pending since 25-06-2001. The KSEB did not take any action against the previous consumer in time i.e. during the default period, and thereafter disposal of the case on 07-11-2009 by the Hon'ble Kerala State Consumer Dispute Redressal Commission, including the disconnection of his electric supply. A further notice was issued only on 28-06-2017 by simply affixing the notice in meter box, after taking over the property by the present consumer in 05/2009.

There was gross negligence on the part of KSEB in not disconnecting the electric supply, in time, for non payment of bill. The electric supply was not disconnected during the period, though the consumer failed to pay the short assessment bill. Though the KSEB has taken action to realize the electricity dues from the present consumer after a period of 8 years, not initiated any R R proceedings against the registered consumer, and no proper follow up was seen taken by them. It was also proper to proceed with RR action against any other assets of the defaulter. From the above, I feel that the KSEB has not taken steps against the previous owner to recover the dues, and did not pursue the case continuously and vigorously.

The appellant has challenged the demand notice issued by the respondent by filing a petition before the CGRF whether appellant is liable to pay the arrear relating to the previous owner. But the CGRF has not gone through the merits of the case and dismissed the case due to lack of jurisdiction stating that the short assessment bill comes under Section 126 of Electricity Act, 2003. The appellant has not questioned the reasonability of the bill issued, but only challenged the liability fixed on him to pay the arrear relates to the previous owner. The CGRF and the respondent have wrongly referred the Regulation 91 (1) and 91 4(b) which deals with transfer of service connection. Since the

present consumer has not applied for transfer of service connection, this regulation has no relevance in this case.

So far as the electricity arrears payable by the previous consumers of defaulted premises are concerned, recently the Division Bench of the Hon: High Court of Kerala in W A No.2114 of 2009, between KSEB Vs KSERC and others, has issued an order directing the Hon: KSERC to incorporate appropriate provisions in the Electricity Supply Code for ensuring recovery of arrears of electricity dues and amounts, due to the Licensee, keeping in mind the Hon: High Court's and Hon: Supreme Court's Judgments delivered on the said matter referred. Till such regulations or rules are framed by the Hon: Commission, it was told to keep pending the arrears of previous consumers and the Licensee may raise the same, at the appropriate time as stated above. After the enactment of the Kerala State Electricity Supply Code, 2014, which deals with "The recovery of arrears relating to the previous consumer" and "transfer of service connection and continuance of supply of electricity to the premises with arrears of electricity charges in clauses 40 and 41." The Regulation 40 of the Supply Code, 2014 is reproduced below for ready reference.

"40. Recovery of arrears relating to the previous consumer- (1) The arrears of electricity charges and other liabilities if any, in the accounts of the previous consumer of any premises shall be recovered from such previous consumer of the premises, with whom the licensee has executed the service connection agreement, and not from the purchaser or lessee or occupier of the premises.(2) The licensee shall, on disconnection of supply and dismantling of the service connection on account of arrears of electricity charges, determine the agreement with such consumer and shall forthwith initiate legal proceedings for recovery of arrears of electricity charges and other liabilities from such consumer and shall obtain necessary interim or final orders from the appropriate legal forum:

Provided that the amount of arrears of electricity charges and other liabilities finally recoverable from the consumer and the modus of recovery shall be in accordance with such interim or final orders of the appropriate legal forum.(3) If a purchaser or lessee or occupier of such premises requires a new connection, as the earlier connection given to the previous consumer in that premises has already been disconnected and dismantled on the ground of outstanding dues of the previous consumer, new connection shall not be denied to such purchaser or lessee or occupier of the premises provided he furnishes a deposit which shall be equal to the arrears of electricity charges and other liabilities if any, excluding interest thereon, till the licensee obtains from the appropriate legal forum an order on the recovery of arrears and other liabilities or till the licensee settles the arrears and liabilities with the previous consumer or till completion of three years whichever is less:

Provided that on obtaining order from the appropriate legal forum on the recovery of such arrears of electricity charges and other liabilities, or on settlement of the arrears and liabilities by the licensee with previous consumer or on completion of three years as aforesaid, the licensee shall release the entire amount of deposit furnished by such owner or lessee or occupier of the premises, along with interest at bank rate as on the date of furnishing such deposit”.

It is clear from the above that the purchaser of the property is under no legal liability to make payment of the unpaid dues of the erstwhile consumer. No inspection was conducted by the licensee in the premises even though different owners occupied in the premises. The connected load detected as per the inspection of APTS is still seen in the bills issued and Sri. Sivadasan Nair is the registered consumer. However during the hearing the appellant has stated that he remitted 50% of the principal amount for approaching the Appellate Authority and he is willing to remit the balance principal amount and requested to exempt from the surcharge. The respondent shall take RR action against the original defaulter and to refund the amount remitted by the present occupier after collecting the amount from the original defaulter. It is a delay on the part of the respondent only for which the consumer should not be penalized unnecessarily. Hence I decide to exempt the surcharge portion from the bill issued to the consumer. The loss to the Board on this account may be recovered from the concerned Board officials responsible for the lapses and negligence on their side, to follow up action in time and initiate actions envisaged as per rules, in the case of non payment of bills by the consumer. The appellant is directed to take immediate steps to transfer the connection in his name.

**DECISION: -**

From the analysis done above and the findings and conclusions arrived at, I take the following decisions.

1. As agreed, the appellant shall remit the balance principal amount, as 50% of the principal amount was remitted earlier. The surcharge amount is quashed.
2. The respondent shall initiate RR action against the defaulted consumer, Sri. Sivadasan Nair, for the realization of the arrears.
3. On realization of arrear amount from the defaulted consumer, the amount remitted by the appellant shall be refunded.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

**Electricity Ombudsman**

Ref No: P/104/ 2017 dated

Forwarded to:

1. Sri Sri. Pradeepan S., Managing Partner, Unipower Systems, MIE Pambady, Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Gandhinagar, Kottayam.

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, Southern Region, Vidyuthi Bhavanam, Kottarakkara.