

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/003/2019
(Present: A.S. Dasappan)
Dated: 27th February 2019

Appellant : M/S Reliance Jio Infocom Ltd.
32/252C, Pukal akkaattu Kriyattu Tower,
NH 47 Road, Mamangalam,
Palarivattom, Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Pulamanthole,
Malappuram

ORDER

Background of the Case:

The appellant is a telecom service provider and an applicant under the jurisdiction of Electrical Section, Pulamanthole, for a new service connection to the mobile tower constructed on the land leased from the owner of the property. The applicant was denied connection since he failed to submit a No Objection Certificate from the Elamkulam Grama Panchayath. Aggrieved by this, the appellant had approached the CGRF (NR) by filing a petition in OP No. 95/2018-19 and the Forum dismissed the petition by upholding the decision of the respondent, vide order dated 30-11-2018. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant has entered into a lease agreement dated 08.08.2017 with the owner of the property comprised in Sy. No.113/7 of Elamkulam Village, Perinthalmanna Taluk for the purpose of erecting and establishing a mobile tower in the said property.

Upon completion of the work, the electrical wiring has been carried on in the said mobile tower through a licensed contractor and thereafter, the appellant had submitted application dated 06.06.2018 before the Assistant

Engineer, Electrical Section, Pulamanthole in the prescribed format, for getting a power connection for the mobile tower constructed by them.

The application was accompanied with all the documents to be produced along with the same and therefore it is complete application in all respects. However, to the utter surprise of the appellant, they are now in receipt of a communication issued by the respondent wherein it has been intimated that the application submitted by the appellant for power connection cannot be considered, on the reason that, the Secretary, Elamkulam Grama Panchayat has conveyed that, as per Resolution No. 31 dated 14.08.2018, the Panchayat has taken a decision not to give NOC to the aforesaid mobile tower. As a matter of fact, the appellant was never intimated by the Elamkulam Grama Panchayat about any such decision and till this date no order rejecting the application for building permit has been issued to the appellant. The appellant had already completed the entire work relating to the mobile tower and by virtue of the provisions contained in Section 235K of the Panchayat Raj Act 1994, the appellant is entitled for the same. It is also to be noted that the completion of the mobile tower was made by fully, adhering to the rules and regulations contained in the Building Rules relating to the specifications and features of the constructions.

The appellant filed OP 95/2018-19, before CGRF, Kozhikode, in the above circumstances. However without properly considering any of the contentions raised, the CGRF vide order dated 30.11.2018 dismissed the complaint and the same was communicated to the appellant on 10.12.2018.

The CGRF ought to have found that, the respondent is not at all justified in rejecting the application submitted by the appellant, on the reason that the Panchayat has taken a decision not to grant NOC to the mobile tower. As mentioned above, the application has been submitted by the appellant for building permit before the Panchayat on 20.09.2017. Since there was no proper response from the Secretary to the Grama Panchayat within the statutory period of 30 days, the appellant had moved before the Panchayat Committee as contemplated under Section 235K. The Aforesaid provision further provides that, if Panchayat Committee is not acting upon the said application within a further period of 30 days, the applicant is deemed to have been accorded with approval or permission and he is entitled to proceed to execute the work. On the basis of the above statutory rights, which accrued to the appellant by virtue of the operation of the above provisions, the appellant had already executed the work and completed the same. By virtue of the said provision, the decision now taken by the Grama Panchayat is completely insignificant as far as the application submitted by the appellant for power is concerned. Therefore no emphasis should have been given by the respondent on the decision taken by the Grama Panchayat as it has nothing to do with the grant of power connection to the structure concerned.

The CGRF committed a grave error in not appreciating the contention of the appellant that, The Assistant Engineer should not have arrived at the conclusion that in the absence of NOC from the Panchayat, the application for power connection cannot be considered. It is pertinent to note in this regard that the relevant provision governing the same is regulation 75 of the Electricity Supply Code, 2014. On going through the sub regulation (5) of the said provision, it can be seen that, in the case of telecom tower, what is required to be accompanied with the application is no objection certificate from the Municipal Corporation or Municipality or Grama Panchayat or land development authority or land owning agency. Thus going by the aforesaid provision, it can be seen that Grama Panchayat is only one among the several agencies which is competent to issue an NOC. It is also to be noted in this regard that among the competent agencies, there is "land owning agency" is also contemplated. In this case, since the appellant is having consent from the owner of the land, as is evident from the lease deed executed with him, the appellant had fulfilled the aforesaid obligation, when the lease deed is produced along with the application. Therefore, under no circumstances the Assistant Engineer could have insisted for any NOC from the Grama Panchayat and rejection of the application submitted by the appellant for lack of NOC from them is not at all justifiable in law.

The reliance placed on the Regulation 39 of the Supply Code, for rejecting the contentions of the appellant is highly misplaced. It is true that, there is a prohibition contemplated in giving connection on the basis of the restraint order from any court, government or any competent agency. However, it is to be noted in this case, the respondents have acted upon the instructions of the Panchayat. The Panchayat is not a court, or Government or a competent authority. As far as the matter of the availing of power connection is concerned, the Panchayat has no statutory power vested upon them to restrain any authorities from providing or availing power. Therefore under no circumstances, the said decision can be a legally sustainable finding.

The finding of the CGRF that the appellant had submitted an incomplete application, is incorrect and unsustainable. According to the Assistant Engineer, the application submitted by the appellant is incomplete and the same has been communicated as per the order. On going through the order, it can be seen that, it does not mention about the incompleteness of the application. On the other hand, in the said communication it is mentioned that in the light of the letter received from the Secretary of Grama Panchayat, wherein it was informed that since the Panchayat has resolved not to give NOC for the said mobile tower, the power connection cannot be granted to the appellant. As stated supra, NOC cannot have any relevance at all, as the 'no objection certificate' is not a mandatory requirement for providing power connection. It is also to be noted that, the provisions contained in the Electricity Act, 2003 or the regulations framed there under, does not provide

any power to the Grama Panchayat to interfere in the processing of application for power connection by the competent officer of the Licensee. Any such decision by the Grama Panchayat is also not binding upon the Licensee and the Licensee cannot take a decision on the application based on the same. Once the licensee is satisfied that the applicant had submitted all the documents as contemplated under the regulations and the various orders issued in this regard, the applicant is entitled to be provided with power. This is especially so because of the fact that, entitlement of power connection is a statutory right of a consumer, which cannot be declined in any manner otherwise than provided by law. In this case, the orders issued by the Board would clearly reveal the documents to be accompanied along with the application for power connection, which does not contain a no objection certificate from the Grama Panchayat as mandatory document. It is true that, an NOC from Grama Panchayat can be taken as a valid document for the purpose of processing the application, but it is not mandatory for the power connection. The purpose behind the insistence of these documents is to ensure that, the applicant is obtaining power on the basis of a legal occupation on the building/structure in question. Once sufficient documents are produced by the applicant to prove such legal occupation over the same, he is legally entitled for a power connection.

The CGRF failed to give due emphasis to the Board orders produced by the appellant. The procedures as contemplated in the said orders were not insisted upon by the CGRF, which is serious error in exercising the powers vested upon the said Forum.

Nature of the relief sought from the Ombudsman

To set aside the orders passed by the CGRF, Northern Region, Kozhikode, in OP No. 95/2018-19 dated 30-11-2018 and grant the reliefs sought for in the said complaint.

Arguments of the respondent:

1. The Appellant has approached the Assistant Engineer, Electrical Section, Pulamanthole for availing a service connection to their newly constructed mobile tower in Elamkulam Grama Panchayath in Malappuram District on 06/06/2018. Since the application was incomplete, due to the absence of NOC from the respective local body, the Assistant Engineer was forced to collect the status of NOC for this particular tower from the Secretary of the Elamkulam Grama Panchayath. A letter for enquiring the NOC was given to the Secretary on 26/07/2018 by the Assistant Engineer.

2. In his reply the Secretary of Elamkulam Grama Panchayath has made clear that the Panchayath committee has passed a resolution (No: 31

dated 14/08/2018) to not to give NOC to the proposed mobile tower at ward 10 near Chemmattapadykulam in Elamkulam Grama Panchayath.

3. Based on the reply of the Secretary, the Assistant Engineer intimated the Appellant on 4/09/2018 that KSEBL is not in a position to give the service connection by violating the existing rules followed by KSEBL.

4. The application for electric connection submitted before the Assistant Engineer on 06/06/2018 consists of only one request submitted to Panchayath President dated 20/01/2018 and all other correspondences are without proper evidence of receipt. As it has not represented before Secretary, it has no legal standing as mentioned in the circular dated 05/09/2014. If such proper evidence and notarized undertaking in stamp paper worth of Rs. 100 as mentioned in the above circulars are submitted, the KSEBL can give the service connection to the appellant. Till now the appellant has not produced any such evidences of acknowledgement of Secretary and undertaking in stamp paper.

5. The application for availing service connection submitted on 06/06/2018 was incomplete and the Assistant Engineer immediately informed the appellant that KSEBL is not in position to give the service connection by violating the existing rules in KSEBL.

6. The action of the Assistant Engineer is purely based on the Regulation 75(5)(iv) of Supply Code 2014 and on Circular dated 05/09/2014 of KSEBL.

7. As per Regulation 39 of Kerala Electricity Supply Code, 2014 the licensee can not give electric connection to any premises which have been objected by the competent authority.

Analysis and findings:

The hearing of the case was conducted on 21-02-2019 in the office of the Electricity Ombudsman, Edappally, Kochi and Sri. Shivaz Bava, Advocate represented for the appellant's side and Sri Anand T.M., Assistant Executive Engineer, Electrical Sub Division, Pulamanthole appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

The first and foremost argument of the appellant in the Petition is that the CGRF has not considered the following facts raised by him before the Forum. The Assistant Engineer should not have arrived at the conclusion that in the absence of NOC from the Panchayat, the application for power connection cannot be considered. According to the appellant, the relevant provision governing the same is regulation 75 of the Electricity Supply Code,

2014 and the sub regulation (5) of the said provision says in the case of telecom tower, what is required to be accompanied with the application is no objection certificate from the Municipal Corporation or Municipality or Grama Panchayat or land development authority or land owning agency. Further the appellant contended that Grama Panchayat is only one among the several agencies which is competent to issue an NOC. It is also to be noted in this regard that among the competent agencies, there is "land owning agency" is also contemplated. In this case, since the appellant is having consent from the owner of the land, as is evident from the lease deed executed with him, the appellant had fulfilled the aforesaid obligation, when the lease deed is produced along with the application. Therefore, under no circumstances the Assistant Engineer could have insisted for any NOC from the Grama Panchayat and rejection of the application submitted by the appellant for lack of NOC from them is not at all justifiable in law.

Refuting the above argument of the appellant, the respondent has stated that the application submitted by the appellant was incomplete, due to the absence of NOC from the respective local body and the Secretary of Elamkulam Grama Panchayath has informed the respondent that the Panchayath committee has passed a resolution not to give NOC to the proposed mobile tower at ward 10 near Chemmattapadykulam in Elamkulam Grama Panchayath.

The appellant's contention that among the competent agencies, there is "land owning agency" and since the appellant is having consent from the owner of the land, the appellant had fulfilled the aforesaid obligation, is also not correct. The land owner cannot be considered as 'land owning agency'. In the Annexure 5 of the Application form prescribed in the Supply Code, 2014, it is clearly specified that license/NOC from statutory authority, if required or a declaration by the applicant that the connection does not fall under the requirement of NOC under any statute shall be attached along with the application form. The land owner is not a statutory authority to issue the NOC under Regulation 75 of the Supply Code 2014.

Regulation 39 restricts supply of electricity to prohibited area or premises. The Regulation reads as follows: "Supply of electricity to an area or colony or building or any premises shall not be granted by the licensee, if any court or the Government or any other competent authority has issued an order restraining or prohibiting such grant of supply of electricity." Local bodies are competent authorities allowed to issue buildings permits etc. Further the rules insist that Telecom service providers have to obtain the necessary permission from the concerned local authorities/municipal corporation before installation of tower. Hence the appellant's argument in this regard has no value at all.

The applications for new Electric connections are dealt with by the KSEB as per the provisions under the Kerala State Electricity Supply Code 2014 and

KSEB Terms and Conditions of Supply 2005, as approved by the Hon: KSERC. The KSEB has also issued an order to ensure uniformity for effecting service connections to Cellular Mobile Towers vide order No. BO (FM) (Genl) No.2678/2010 (Plg.Com.4439/02/10-11 dated 14-10-2010, based on KSERC's order dated 31-08-2010. An extract of the above said order dated 14/10/2010 in so far as relevant to this case is as follows:

“1. The field officers shall provide only permanent service connections under LT-VII A tariff to Land based Cellular Mobile Towers, on production of the following documents.

- i. Documents to prove ownership of land from Revenue Authorities or copy of the registered lease agreement with the land owner in the case of leased land.
- ii. Necessary clearances from Electrical Inspectorate.
- iii. Necessary clearances from local bodies such as the building permit or NOC from local authority or use certificate / building number or proof of deemed permit as per proviso to Rule 143 of Kerala Municipality Building Rules 1999 or proof of deemed use certificate as per proviso to Rule 142(2) of Kerala Municipality Building Rules 1999.

In cases where deemed permit or deemed use certificate as per KMBR is produced by consumers, the field officers shall verify the acknowledgement on the application with the completion certificate in Form E and Form F and certificate of structural safety/stability of tower and building they have submitted to the Secretary issued by the local bodies to ensure the genuineness of the deemed permit status and also on production of the duly attested copies of those documents for office records. Also the field officers shall insist a Notarized undertaking on Kerala stamp paper worth Rs.100/- by the Cellular Mobile Tower operators and indemnifying KSEB from liabilities for paying compensation for any damages caused to any person as a result of the electricity connections extended by KSEB on the basis of deemed permit / deemed use certificate”.

This condition is not fulfilled by the appellant fully. Hence in true spirit of the provisions made for giving new connection to the Mobile Towers, no injustice is seen to be done from the Respondent's side, since the Respondent is not competent to give relaxation in enforcing the Regulations issued by an Authority appointed by Law.

Decision:

From the analysis done above and the conclusions arrived at, the appellant's plea to effect electricity connection is rejected and this Authority upheld the decision taken by the CGRF in OP No.95/2018-19 dated 30-11-2018.

The appeal is found devoid of any merits and hence dismissed. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/003/2019/_____ /Dated:_____

Delivered to:

1. M/S Reliance Jio Infocom Ltd., 32/252C, Pukalakkaattu Kriyattu Tower, NH 47 Road, Mamangalam, Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pulamanthole, Malappuram

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, Gandhi Road, Kozhikode