

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/056/2023
(Present A. Chandrakumaran Nair)
Dated: January-12-2024**

Appellant : The Secretary, TRIDA, Jayamansion,
Vazhuthacaud, Sasthamangalam,
Thiruvananthapuram (Dist.)- 695010.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Kesavadasapuram, Trivandrum(Dist.).

ORDER

Background of the case

The appellant Thiruvananthapuram Development Authority (TRIDA) owns a shopping complex named as Kedaram complex at Kesavadasapuram Junction, Thiruvananthapuram. One of the shop was rented out to Smt. Sharma Satheesan and KSEB has given the service connection with consumer number: 11455166017549 with the consent of TRIDA. Consumer defaulted the payment of current charges and the power supply was disconnected on 07/21 and the dismantling was effected on 14/04/2022. The TRIDA has given letter to the licensee on 22/09/2021 to disconnect the power supply as the occupier has vacated the premises. The appellant have been re-issued the shops to another person but the licensee was not ready to give new connection as the outstanding payment was not cleared. The appellant TRIDA was forced to pay the arrears to the licensee. The main allegation was that the power supply was not dismantled as per the request of the appellant and fixed charges were charged up to 14/04/2022 and the entire charges paid by TRIDA is to be refunded. The appellant filed the petition to CGRF and CGRF issued order dated 23/06/2023 stating that the bills are to be revised by charging fixed charges for 180 days from the date of disconnection. Aggrieved by the decision of the CGRF, this appeal petition is filed to this authority.

Arguments of the Appellant

TRIDA owns a shopping complex in the name of Kedaram Complex at Kesavadasapuram Junction, Thiruvananthapuram. One of the shops was rented out to Smt. Sarma Satheeshan and KSEB allotted a service connection with consumer Number 1145168017549 with the consent of TRIDA. When the tenant vacated the shop, TRIDA intimated Assistant Engineer, for dismantling the connection on 22/09/2021. Since no action was taken by the Assistant Engineer even after repeated requests on person, a new request was given by TRIDA to KSEB Deputy Chief Engineer on 13/04/2022. But no action was taken from that end too. As the existing connection was not dismantled by KSEB, the shop could not be allotted to new tenants resulting in huge rent loss to TRIDA. To avoid further rent loss TRIDA was forced to pay the arrears(Rs 58,658/-) of Smt.Sharma Satheeshan on 24/05/2022 vide cheque. Even after paying the full amount as demanded by KSEB, a further bill of Rs 11,248/- was demanded as arrears of fixed charges and surcharges. This amount was also paid by TRIDA. The connection was finally dismantled only on 18/06/2022.

A complaint with Open Petition No 73/2022 was filed by TRIDA at the Consumer Grievance Redressal Forum, Kottarakkara seeking full refund of the amount paid by TRIDA towards clearing of arrears and surcharges. As per the order of CGRF dated 23/06/2023, the application by TRIDA for the refund of entire charges remitted is disallowed. The order also directs KSEB to refund only the excess charges realised beyond the period of 180 days from the date of disconnection of supply (according to KSEB the connection was disconnected on July 2021. Even the CGRF direction has not been complied by KSEB till date. Request to Assistant Engineer for the dismantling of Service connection with C.No 7549 was submitted on 22/09/2021. Reminder request was sent to Deputy Chief Engineer on 12/04/2022. Arrear bill amounting to Rs 64658/- demanded by KSEB on 19/05/2022. Further arrear bill amounting to rs 11,248/- demanded by KSEB on 28/06/2022.

Service Connection was disconnected on 14/04/2022. Service Connection dismantled on 18/06/2022. Service connection was availed by the consent of TRIDA by Smt.Sharma Satheeshan by executing agreement with KSEB but KSEB imposed all arrears and surcharges to TRIDA which is the violation of Rule 40 Clause(1) of Kerala State Electricity Supply Code 2014 and KSEB has not taken any steps to recover the arrears from the consumer who has executed Agreement. According to Rule No: 40 clause (3) of the Kerala Electricity Supply code 2014, a new connection to the premises can be effected by taking a deposit amount equal to the arrears (excluding interest) till the amount is legally recovered from the previous consumer or till the completion of three years whichever is less TRIDA allotted the above shop to a new tenant Shri. Biju H Nath and he had requested KSEB for a

new connection. But KSEB denied new connection and forced TRIDA to pay the whole arrear amount from own fund to settle the arrears of Smt.Sharma Satheeshan which is the violation of Rule 40 clause (3). Due to the delay in dismantling of the connection the new tenant Shri Biju H Nath could not occupy the shop.

I pray directions may be issued to KSEB to refund the whole amount of Rs. 75,906/-(Rupees Seventy Five Thousand Nine Hundred and Six) remitted by TRIDA towards dismantling of the service connection. KSEB may also be directed to recover all arrears and associated charges from Smt.Sharma Satheeshan herself with whom KSEB had agreement with.KSEB may also be directed to issue new connections to the above shop as and when required as per rule 40 of Kerala Electricity Supply code 2014.

Arguments of the Respondent

Save as otherwise specifically admitted hereunder, this respondent denies the rest of the allegations. The complaint is not maintainable either under law or on facts. That, prior to answer the averments advanced by the complainant, this respondent may be permitted to submit the following facts for the kind consideration of this Forum. The power sector in India, ie. generation, transmission, distribution and trading of electricity is being governed and regulated by the Electricity Act, 2003 and the rules and regulations framed thereunder by the competent authority. Accordingly, in exercise of the powers conferred under Section 50 of the Electricity Act 2003, Kerala State Electricity Regulatory Commission has framed Kerala Electricity Supply Code, 2014.

Consumer No.1145168017549 is registered in the name of Smt.Sarma Sathesan, Ravanakotta,Shop.no:78A2,A3, Kederam, Kesavadasapuram, in LT VII A tariff having connected load of 5150 W, under Electrical section, Kesavadasapuram. This Three Phase electric connection was availed on 07.01.2020 by Smt. Sarma Sathesan, tenant of shop of No.78 of Kedaram Complex, Kesavadasapuram, with the consent of TRIDA, the owner of the building. The consumer defaulted regular current charges in the Covid period and availed installment facility at three times on 01.06.2020, 03.09.2020 and 01.02.2021 and made part payments. But even times, the consumer defaulted regular current charges and installments. Hence this service connection was disconnected in July 2021.

In the same time, the petitioner, being the owner of the building, informed this office on 22.09.2021, that the service connection of Consumer No.1145168017549 may be disconnected, since the tenant vacated the shop and also informed that the electricity arrears would be cleared by the consumer. ***Kerala Electricity Supply Code, 2014. Regulation 146. Supply of electricity not to be disconnected when utilised and paid for***

by a lawful occupier of the premises.- In case the consumer requests for disconnection of supply or for dismantling of service, while the supply is being utilised and paid for by a lawful occupier of the premises, the supply shall not be disconnected and service shall not be dismantled.

Hence dismantling notice was issued to the consumer on 28.04.2022 as per Regulation 144(1)b of the Kerala Electricity Supply Code, 2014 with intimation for remitting an arrear of Rs 62,943/-. But the consumer was not willing to remit the arrear. Regulation 146 of the Kerala Electricity Supply Code, 2014 states that supply of electricity not to be disconnected when utilized and paid for by a lawful occupier. Since the shop could not be let out to other applicants due to the existing current charge arrears, the owner remitted the arrears for Rs.58,658/- on 24.05.2022 and the balance amount was paid on 22.11.2022. Hence, the dismantling of the service connection was effected on 18.06.2022. According to judgement of Hon'ble SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.1815 OF 2020 ***'the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the purchaser. The debate over connection or re connection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.'***

Considering the facts and circumstances of the case as stated above, the CGRF, Kottarakkara ordered to refund to the petitioner, the excess charges realized beyond the period of 180 days from the date of disconnection of supply to the premises. As the bills issued and the remittances made are in order, I humbly request the Hon'ble Forum to dismiss the complaint. Since the petition is filed without any bonafides, it is requested to accept the above mentioned averments and prayed that the Hon'ble Forum may be pleased to dismiss the petition.

Counter arguments of the Appellant

Connection was disconnected on July 2021. This statement is false. As per the bill issued by KSEB on 19/05/2022, disconnection of the supply was done only on 14/04/2022. Respondent has argued that as per rule 146 of supply code dismantling cannot be done when utilized and paid for by a lawful occupier. On 22/09/2021 as the property owner TRIDA had informed KSEB that the consumer had vacated the premises. So, Consumer Smt. Sarma Satheeshan was not a lawful occupier and was not utilizing the supply. So the above rule is not applicable in this case from 21/09/2021.

KSEB has made an invalid argument as Smt. Sarma Satheeshan was no longer a lawful occupier and the connection was not utilized and paid for by her. The Judgement of Hon'ble Supreme Court of India - Appeal No.1815 of 2020 referred to by the respondent is not applicable in this case as TRIDA is not a purchaser of the premises. This judgment is applicable for cases involving land purchases having electricity dues made by the previous owner/seller. TRIDA had informed respondent on 22/09/2021 to collect all arrears from Smt.Sarma Satheeshan as agreement for connection was between respondent and Smt. Sarma Satheeshan. Referring to CGRF order for refund of excess charges, respondent has not taken any action either to implement or appeal against it.

So I pray directions may kindly be issued to KSEB to refund the whole amount of Rs. 75,906/- (Rupees Seventy Five Thousand Nine Hundred and Six) which TRIDA was forced to remit towards dismantling of the service connection. KSEB may also be ordered to recover all arrears and associated charges from Smt. Sarma Satheeshan herself with whom KSEB had agreement with. KSEB may also be ordered to issue new connections to the above shop as and when required as per rule 40 of Kerala Electricity Supply Code 2014.

Analysis and findings

The hearing of the case was conducted on 05/01/2024 at 11:00a.m. in the IB, KSEBL, Paruthippara, Thiruvananthapuram. The hearing was attended by the appellant's representative Sri. Saran Kumar V and Sri. K. Jayadas and the respondent Sri. V. Pramodu., AEE, Electrical Sub Division, Varkala along with Smt. Bindhu B., AE, Electrical Section, Kesavadasapuram.

The Thiruvananthapuram Development Authority (TRIDA) is constituted for the implementation of planned and scientific development for Trivandrum city and adjacent area. Kedaram shopping complex at Kesavadasapuram is one of the project implemented by this authority. One of the shop of this Kedaram complex (no. 78 A₂, A₃) was leased out to Smt. Sarma Satheeshan. The tenant has obtained three phase service connection from the licensee on 07/01/2020 based on the consent of TRIDA who is the owner of the building. The connected load was 5.15 kw under the electrical section, Kesavadasapuram. The connection was under tariff LT. 7A. The security deposit collected from the consumer is seen to be Rs. 6000/- which is very low considering the monthly bill of the consumer. Three months power charges are to be collected as security deposit as per the procedure.

The consumer defaulted regular current charges in the Covid period and availed instalment facility sanctioned by the licensee three times on 01/06/2020, 03/09/2020 and 01/02/2021 and made part payments. Again the regular current charges and instalments were defaulted. The last payment made by the consumer is Rs. 10,000/- on 01/02/2021 against the

regular bill issued on 19/01/2021. Then the next bill have been issued on 18/03/2021 for Rs. 12,263/- which was not remitted by the consumer even after the disconnection date mentioned in the bill. The disconnection date of this payment would have been 12/04/2021.

The consumer was defaulted the payment and not paid even after extended period of fifteen days from the due date specified in the bill as per the Section 131 of the Kerala Electricity Supply Code 2014.

131 (1) “The consumer shall pay to the licensee the full amount of the bill on or before the due date indicated therein, for which the licensee shall issue a receipt.”

131(2) “If the consumer fails to remit the bill amount on or before the due date, the licensee is entitled to recover interest on the amount of the bill at the rates specified in the Schedule of Miscellaneous Charges as per schedule 1 of the Code”

131(3) “The consumer shall be permitted to remit the amount of the bill with interest as specified in the sub regulation (2) above within an extended period of fifteen days from the due date specified in the bill.”

131(4) “If the consumer fails to remit the amount even within such extended period, the licensee may disconnect the supply in accordance with the procedure specified in Chapter V111 of the Code.”

The Section 138 (Chapter VIII) of Kerala Electricity Supply Code- 2014 states about the Grounds of disconnection.

138(1) “The licensee shall not disconnect the supply of electricity to any consumer except” & (a) “if the consumer defaults in payment of the dues payable to the licensee as per the bill or demand notice or any order issued by a competent authority, within the period stipulated therein;”

This Section very clearly describes that if the consumer is defaulted the payment, licensee is empowered to disconnect the power by giving a notice of 15 days. This is always mentioned in the bill.

The Section 139 tells about the procedure of disconnection.

139(1) “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 the grounds for disconnection and directing him to pay the dues with penal charges within the notice period”.

(2) “If the consumer fails to remit the dues within such notice period, the licensee may disconnect the service of the consumer on the expiry of the said

notice period, by cutting off the supply in the manner as the licensee may deem fit:

The Electricity Act 2003, Section 56 also states about the disconnection of supply in default of payment.

The section 56(1) “ Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’ notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer :

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,

(a) An amount equal to the sum claimed from him, or

(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.”

In the Section mentioned above, it is clearly stipulated that the licensee has to give fifteen days extended time from the due date of payment to disconnect the power. Here the due date of payment would have been 28/03/2021 and the date extended period would have been 12/04/2021, which would have been the date of disconnection.

The respondent have mentioned about the applicability of Section 146 of the Supply Code 2014.

Section 146 “In case the consumer requests for disconnection of supply or for dismantling of service, while the supply is being utilised and paid for by a lawful occupier of the premises, the supply shall not be disconnected and service shall not be dismantled”.

This states that the power supply should not be disconnected if the lawful occupier of the premises is utilizing the power and the power charges are paid regularly. Here in this case, the lawful occupier is not utilizing the power and not paying the regular power charges and hence this Section is not applicable here. Then the disconnection date would have been 13/04/2021 and then what could have been the dismantling date.

The Section 141 of the Supply Code 2014 tells about the charges payable during the period of disconnection.

141 “Charges payable during the period of disconnection. – The consumer is liable to pay the charges if any as approved by the Commission, during the period of disconnection also:

Provided that no charge shall be due to the licensee for the period which is in excess of one hundred and eighty days from the date of disconnection if the connection remains continuously disconnected for one hundred and eighty days except on the request of the consumer.”

Here it is very evident that the fixed charges applicable to the consumer during the period of disconnection is maximum 180 days from the date of disconnection. That is 180 days from 13/04/2021. The deemed dismantling date would have been 10/10/2021. Then the licensee could charge the fixed charges during the disconnection only up to 10/10/2021.

The appellant argues that the licensee would have renewed the arrears of the power charges as per Section 40 of the Supply Code.

40(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”.

This Section spells about the modus of recovery of arrears of the previous occupier. Here in this case new tenant has not been occupied the premises and also not applied for the service connection and hence the Section 40(3) of the Supply Code can not be applied. As the new tenant is not occupied, the lawful occupier of the premises is the owner of the premises, which is TRIDA and hence TRIDA is liable to pay the arrears.

Here it is noted that the TRIDA has not collected sufficient amount as Security Deposit from the tenants to cover the charges defaulted by the tenants. TRIDA is only responsible for this.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The owner of the premises is liable to pay the arrears as per revised bill issued by the licensee as per 3. below.
2. The arrear bill raised by the licensee is quashed herewith.
3. The licensee shall revise the arrear bill charging the fixed charges for 180 days from the deemed date of disconnection which 13/04/2021 and hence fixed charge applicable is only up to 10/10/2021.
4. The applicant TRIDA has to collect sufficient amount as security deposit from the tenant to cover such dues of licensee and other statutory payments.
5. Licensee has to collect sufficient amount as Security Deposit and also disconnection would have been done in case of defaulted payments as per the regulations.
6. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/056/2023/ dated: 12/01/2024.

Delivered to:

1. The Secretary, TRIDA, Jayamansion, Vazhuthacaud, Sasthamangalam, Thiruvananthapuram (Dist.)- 695010.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Kesavadasapuram, Thiruvananthapuram (Dist.).

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, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.