

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/044/2017
(Present: A.S. Dasappan)
Dated: 14th August 2017

Appellant : Sri. Rafeeque Parakandy
Redak Cold Storage,
Thalassery,
Kannur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Thalassery,
Kannur

ORDER

Background of the case:

The Appellant is a consumer of electricity with Consumer No. 1166696012242 under Electrical Section, Thalassery North, KSEB Limited. The appellant has a three phase service connection with registered connected load of 42 kW and the assigned tariff is LT IV A. An ice plant named 'Redak' has been functioning in the premises. On 19-11-2016, a surprise inspection was carried out in the premises by the Anti Power Theft Squad, Kannur along with the Section officials and noticed that there was connected and using a total load of 65 kW, without obtaining prior sanction from the licensee and hence there was connected and using an unauthorised load 23 kW in the premises. Accordingly a site mahazar was prepared and based on the site mahazar for the unauthorised load to the tune of 23 kW, a provisional assessment for Rs. 3,15,052/- was issued to the consumer under section 126 of the Act 2003.

Against the same, the appellant had filed an appeal before the Assessing Officer and after conducting a hearing on 20-12-2016 the provisional assessment was revised for Rs. 92,467/- and a final assessment order was

issued along with detailed calculation statement. Though the consumer had been informed in the final order itself that the appeal authority is the Appellate Authority, he approached the Hon'ble CGRF (North) vide OP No.165/2016-17 and the Hon'ble Forum pronounced its order on 12-04-2017 holding that 'the forum has no jurisdiction to entertain the complaint as the case is against the bill issued under 126 of the Electricity Act, 2003 and also directed the petitioner to file appeal before the Appellate Authority. Aggrieved against the order of CGRF, this appeal petition was filed.

Arguments of the appellant:

1. On 19-11-2016, the Kannur Anti Power theft squad of KSEBL along with Sub Engineer by name Rineesh P.K. conducted an inspection in the premises of the appellant and prepared a mahazar. According to the mahazar the sanctioned load in the premises is 42 kW whereas the following equipments were found to be connected to the system.

Water pump – 3 HP x 1	=	746WX3 = 2238 Watts
Water pump – 1 HP x 1	=	746 watts
Water mixing motor 3 HP x 1	=	2238 Watts
Main motor 55 kW x 1	=	55000 Watts
Ice cutting motor 5 HP x 1	=	3730 Watts
Tube lights 36 W x 4	=	144 Watts
Fan 60 W x 1	=	60 Watts
Total	=	64156 Watts

In other words there is an Unauthorised load = $64156 - 42000 = 22156$ Watts. This 22156 Watts was arbitrarily rounded as 23 kW and issued a provisional assessment order dated 24-11-2016 for Rs. 315052/- by the Assistant Engineer. Appellant filed objection dated 31-11-2016 raising the main contention that application for additional load was submitted before the Board on 13-02-2015 along with required fee and no reply was received for the same. Apart from that a hearing was conducted by the Assistant Engineer on 20-12-2016 and the bill was finalised as per order dated 24-12-2016 for Rs. 92,467/-.

2. Complaining against the above bill the consumer approached the CGRF, Kozhikode. The main contention raised by the appellant is as follows. Regulation 99(8) of the Electricity Supply Code, 2014 operates which is quoted as follows "If the licensee does not intimate its decision on the application for the enhancement of load within thirty days from the date of receipt of application, sanction for enhancement of load or contract demand, as the case may be, shall be deemed to have been granted with effect from the thirty first day of the date of submission of the application by the consumer". While the above statutory rule operates, it is crystal clear and it is also an admitted fact that the licensee has not intimated its decision on the application dated 13-02-

2015 for additional load on or before 16-03-2015 (thirty days) to the appellant and it is to be deemed that 27 kW of power is additionally sanctioned to the appellant from 17-03-2015 onwards (31st day). The net result of the above legal fiction is that from 17-03-2015 onwards the sanctioned connected load of the consumer/appellant with consumer No 1166696012242 in LT-IV tariff under the licensee is 69 kW (42 kW + 27 kW). Therefore the finding based on mahazar dated 19-11-2016 that connected load in the consumer premises is only 42 kW is absolutely wrong and illegal, whereas actually the sanctioned load as on that date was 69 kW. The total load detected in the premises as on the date of mahazar is only 64156 Watts which is much below the sanctioned load of 69 kW and therefore the further finding in the provisional order and final demand that there is unauthorized load of 23 kW is absolutely unsustainable and the proceedings initiated under Section 126 of the Electricity Act 2003 alleging unauthorized load is therefore not maintainable and is unsustainable in the eye of law.

3. Therefore the above case is not one which comes under Section 126 of the Electricity Act and the Officers of the Board have purposefully included the case under Section 126 for the illegal gain of the Board and the petition was liable to be interfered by the CGRF as one not coming under the purview of Section 126 of the Electricity Act 2003. However as per order dated 10-04-2017, the CGRF without considering the above valid legal contention raised by the petitioner regarding maintainability of the complaint before the Forum dismissed the complaint stating the reason that the Forum has no jurisdiction to consider the same as per Regulation 2(f)(vii)(l) of the Kerala State Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005. The order issued by the Consumer Grievance Redressal forum (Northern Region, Kozhikode) as per order CGRF-NR/OP 165/2016-17)/2017-18/27/dated 12-04-2017 OP No. 165/2016-17 is liable to be set aside on the following reasons.

- a) The legal question raised by the appellant before the CGRF was not considered by the Forum. The Forum ought to have found that while applying the legal fiction prescribed under Regulation 99(8) of the Electricity Supply Code there was no unauthorized load in the premises of the appellant and the proceedings under Section 126 of the Electricity Act 2003 were illegally initiated by the respondent.
- b) The CGRF went wrong in not considering the complaint raised by the appellant.
- c) The dismissal of the petition by the CGRF was mechanical, conveniently without considering the legal question raised by the appellant.

- d) The CGRF was bound to consider the facts and legal position of the case and decide as to whether the allegation of unauthorized load is maintainable in the case.
- e) For the mere reason that the Board has raised an allegation of unauthorized load under Section 126 of the Act, the CGRF cannot take a decision that the petition is not maintainable without considering the facts and legal position.
- f) The total load detected in the premises as on the date of mahazar is only 64156 Watts which is much below the sanctioned load of 69 kW and therefore the further finding in the provisional order and final demand that there is unauthorized load of 23 kW is absolutely unsustainable and the proceedings initiated under Section 126 of the Electricity Act 2003 alleging unauthorized load is therefore not maintainable and is unsustainable in the eye of law.

Nature of relief sought from the Ombudsman:

The order CGRF-NR/(OP 165/2016-17)/2017-18/27/dated 12-04-2017 issued by the Consumer Grievance Redressal Forum of the Kerala State Electricity Board Limited Northern Region, Kozhikode may be set aside and the prayers in the complaint may be allowed by setting aside the order No. DB24/16-17/100 dated 24-12-2016 and demand dated 22-12-2016 for Rs, 92,467/- issued by the Assistant Engineer, KSEBL Thalassery North, issued to consumer No1166696012242

Arguments of the respondent:

Sri. Rafeeqe Parakandy, Radak Cold Storage, Mercantile Road, Thalassery is a consumer under electrical section Thalassery North as per consumer no 1166696012242 with a connected load of 42000w in three phase and the tariff is LT -IV.

On 19-11-2016 The APTS, Kannur unit of KSEBL made a surprise inspection at the premises of the said consumer along with Sri. Rineesh P. K., Sub Engineer Electrical Section, Thalassery North and found that the total connected load is 64156 W. That is the firm is having an unauthorized additional load of 22156 W (23 kW).

Based on this a provisional invoice for an amount of Rs. 3,15,052/- (Rupees Three Lakh Fifteen Thousand and Fifty Two Only) was issued to the consumer on 24-11-2016 as per Section 126(3) of Indian Electricity Act, 2003 and was given one week notice time to remit the amount or file any objection if they have.

On 31-11-2016 the appellant had filed an objection stating that replacement of motor was done in 8/2016, Also stated that he had already requested for power allocation for the additional load on 12-02-2015 at Electrical section Thalassery North and remitted advance amount of Rs. 2,000/- which was found to be correct on verification. The power requirement for an additional load of 27 kW (total 69 kW) was sanctioned on 31-3-2015 and the matter was informed to the appellant. But the appellant didn't submit the test reports and other connected documents for the regularization of additional load after completion of the work.

Based on the objection of the consumer a hearing was conducted on 20-12-2016 at Electrical Section office Thalassery North in which the consumer repeated his arguments as per the objection letter filed and produced a bill for the installation of 55 kW refurbished motor replacing 30 kW existing one. Consumption pattern was scrutinized and it was understood that there is hike in consumption from 8/2016. Based on this consumption pattern and supporting documents the provisional bill was revised and final order was issued on 22-12-2016. The final bill amount was Rs. 92,467/- (Rupees Ninety Two Thousand Four Hundred Sixty Seven only). The Final bill was served to Sri. Raffequ Parakandi, owner of the ice plant. If the appellant is aggrieved by over the final order issued by the assessing officer under section 126 of Electricity act he was directed to file an appeal petition before the appellate authority under Section 127 of the Electricity Act within 30 days after the receipt of the bill and after depositing 50% of the bill amount. The appellant neither remitted the bill amount nor filed petition before Appellate authority.

In the representation filed by the appellant before the Hon'ble State Electricity Ombudsman there are some arguments misguiding the facts. Power allocation sanction for availing an additional load of 27 kW was sanctioned on 31-03-2015 and the same was informed to the consumer. But the consumer neither submitted any papers for the enhancement of his connected load from the existing 42 kW to 69 kW nor remitted any amount towards the estimate cost for the enhancement approved by the State Regulatory commission. The appellant applied for power feasibility sanction and the same was awarded in proper time. The consumer failed to move any further steps to regularize the enhancement of connected load in his premises.

The Hon. CGRF order stated clearly that this case comes under Section 126 of India Electricity act and hence the consumer should file his appeal before the Appellate Authority and was awarded further time of 30 days for the same. But the consumer did not utilise the time extension granted and did not move his petition before the Appellate Authority. Instead he has filed his appeal before the Hon Ombudsman. Direction may be granted to maintain this appeal before appropriate forum.

Analysis and findings:

Hearing of the case was conducted on 08-082017 in the Court Hall of CGRF, Kottarakkara. Sri Rafeeque Parakandy, the appellant appeared and A.N. Sreela Kumari, Assistant Executive Engineer, Electrical Sub Division, Thalassery and Smt. Padmaja K.M., Senior Superintendent, Electrical Section, Thalassery North appeared for the respondent. In view of the arguments made by both parties, it appears that the foremost question to be decided in the matter is whether the appeal petition is maintainable or not. It is needless to enter into the merits of the case, if this Authority has no jurisdiction to entertain the same.

Though the appellant has been given proper instructions by the Assessing Officer and also by the Hon'ble CGRF (South) to approach the proper authority for filing appeal, if any, against the assessment made under section 126 of the Electricity Act, 2003, he has been filing petitions and appeals at other fora which have no jurisdiction. Deliberate intention from the part of the appellant is seen to get maximum delay in remitting the amount of the penal assessment and also to escape from the burden of paying interest.

According to the respondent, the matter of the complaint is an assessment under Section 126 of the Act and the CGRF and Ombudsman is barred from entertaining such complaints in view of Regulation 2 (1) (f) (vii) (1) of the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005.

The appellant's main contention is that his case did not come under the purview of unauthorized use and penalization under Section 126 of Electricity Act 2003. It is found that the respondent has taken action against the appellant under Section 126 and issued proceedings accordingly. The appellant has the right to file against this before the appropriate authority, i.e., the Appellate Authority who is delegated to deal with any proceedings under Section 126.

It is admitted that the appellant did not file any appeal before the appellate authority under Section 127 of the Electricity Act. Since the bill raised under Section 126 based on allegation of unauthorised use of electricity falls under the exception clause 2 (f) (vii) of the Regulations, the CGRF / this Authority does not have any authority to entertain this complaint. The appellant's remedy was only to file an appeal before the Statutory Authority under Section 127 of the Act. Section 127 (I) of the Electricity Act, 2003 reads as follows:-

“127. Appeal to appellate authority:- (1) Any person aggrieved by a final order made under Section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee

as may be specified by the State Commission, to an appellate authority as may be prescribed.”

Instead of filing appeal before the aforesaid statutory authority, the appellant herein approached first the CGRF and thereafter this Authority. It seems that the modus operandi of the appellant was to protract the dispute for a further period without paying any portion of the billed amount.

Decision:

The CGRF / Electricity Ombudsman has no jurisdiction to entertain complaints relating to unauthorised use of electricity as provided under Section 126 of the Act, in view of the bar under Sub Clause (vii) (I) of Clause 2 (f) of the Regulations. It is therefore held that the remedy available to the appellant is only an appeal before the Statutory Authority under Section 127 and that this appeal petition is not maintainable. The order of the CGRF is upheld. The appeal petition is rejected as not maintainable. The appellant is directed to approach the Appellate Authority. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/044/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Rafeeqe Parakandy, Redak Cold Storage, Thalassery, Kannur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Thalassery, Kannur

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