

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 125/10

Appellant : The Commercial Manager ,
Leela Scottish Lace Pvt Ltd,
Kinfra International Apparel Parks,
St Xaviers College (Po),
Thumba, Thiruvananthapuram 695586

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division, Kazhakkuttam Thiruvananthapuram

ORDER

M/s Leela Scottish Lace Pvt Ltd, Kinfra International Apparel Parks, Thiruvananthapuram submitted a representation on 16.2.2010 seeking the following relief :

- 1. To hold that the action taken by the APTS squad and the Special Officer Revenue are wrong , unlawful and null and void.*
- 2. To declare that the consumer has not engaged in unauthorized use of electricity*
- 3. To set aside the impugned order no: 11/3894/991/07 dated 23.11.2007 and the accompanied invoice no:11/3894/Addl/dated 23.11.2007 issued by the Special Officer Revenue*
- 4. To set aside all the subsequent penal bills /invoices issued to the consumer by the Special Officer Revenue and order to return all the amounts collected on that account with an interest at the rate of 12%*
- 5. To issue directions to refund Rs 532866/- (50% of penal amount) which was collected under duress with an interest at the rate of 12%*
- 6. To issue directions to refund Rs 8197/- which was collected under coercion with an interest at the rate of 12%*
- 7. To order costs to the Petitioner as fixed by the Ombudsman.*

Counter statements of the Respondent was obtained and hearing conducted on 15.6.2010 and 30.6.2010. The Appellant and Respondent submitted some additional documents also during the hearing.

The Appellant Company is engaged in garment manufacturing at KINFRA International Park Thiruvananthapuram with an HT connection Consumer Code 11/3894 under Electrical Section Kazhakkuttam . Additional space for expansion was allotted to them with effect from 1.9.2007 and scheme approval for electrification was issued by the Electrical Inspector on 26.9.2007. They started the electrical installation work on 30.9.2007. The APTS squad inspected the premises on 20.11.2007 and found that the Appellant had connected up additional load in the premises.

A penal bill amounting to Rs 10,65,732/- was issued to the Appellant by the Special Officer Revenue for unauthorized additional load and non-segregation of lighting load under Section 126 of the Electricity Act 2003 on 23.11.2007. The Appellant filed objection to the demand on 6.12.2007 to the Special Officer (Revenue). The Member Finance considered the objection and the Accounts Officer of the office of the Special Officer (Revenue) directed the Appellant on 31.01.2008 to file an appeal before the Deputy Chief Engineer after remitting 50% of the demand. The Appellant objected to this by pointing out that their objection had not been heard and decided by the appropriate authority. The Deputy Chief Engineer also advised him to remit 50% of the demand and to submit appeal and hence the Appellant was forced to remit Rs 5,32,866/ under protest on 10.4.2008 to escape from disconnection. The KSEB continued to penalize the consumer for the unauthorized additional load until it was regularized.

The Assistant Engineer Kazhakkuttam conducted a hearing on 29.5.2008 based upon a directive dated 30.04.2008 from the Dy Chief Engineer and issued orders on 30.8.2008 allowing certain reliefs to the consumer. The Appellant filed an appeal against the demand on account of additional load to the Deputy Chief Engineer on 25.11.2008 under section 127 of the Electricity Act 2003. The Deputy Chief Engineer issued orders on 27.5.2010 on the appeal.

The penal bill cited had two parts: One for alleged unauthorized additional load and the other for alleged non-segregation of lighting load .The Appellant had filed a complaint before the CGRF Kottarakkara on 8.5.2008 against the demand for the penal charges on account of non-segregation of lighting load. He submitted a reminder to CGRF on 22.6.2009 and then CGRF advised him to submit an addendum showing all complaints against the orders of Special Officer (Revenue). This was filed on 14.8.2009. After hearing the concerned parties CGRF decided that they have no jurisdiction to interfere into the impugned penal bills. The CGRF also advised the Appellant to file a fresh complaint confining to the issues related to non-segregation of lighting loads.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The Appellant had raised a large number of objections against the manner in which they were put to pay the penal charges. They dispute on the authority of the APTS to inspect the premises , they question the propriety of the Sub Engineer in preparing the site mahazar , and they contend that the scene mahazar is marked by lack of details at the spot

and so on. They have questioned the authority for the Special Officer (Revenue) to raise demands under Section 126 of the Electricity Act 2003 .They argue that there is no provision in the statutes for issuing the invoice for penal charges without initially issuing provisional assessment , hearing and deciding upon the objections. They have pointed out that even though the Special Officer (Revenue) had raised the demand for penal charges it was the Assistant Engineer who had heard the objections. Even though the objections were filed on 6.12.2007, formal hearing on the matter was not done until 29.5.2008. They were compelled to pay 50% of the penal bill, ie, Rs 5,32,866/- on 10.4.2008 under threat of disconnection , even before their objections were heard on 29.5.2008. They allege that senior officials like the Deputy Chief Engineer and the Special Officer had flouted the provisions of the statutes by compelling the consumer to pay 50% of the demand, under coercion, without hearing the consumer on the assessment.

The contentions/arguments/points raised by the Appellant in the representation, during the hearing and in the argument notes are examined below:

1. The Appellant has contended that since the disputes are related to the actions of the Special Officer (Revenue) , APTS squad etc the statement of facts signed by the Assistant Executive Engineer of the Kazhakuttam Subdivision is not acceptable and he can not be considered as a Respondent. The Electricity Act 2003 and regulations there under envisage that the Ombudsman shall settle the grievances/complaints by mediation or awards *between the complainant and the Licensee*. The Assistant Executive Engineer has been called as representatives of the Licensee. The contention of the Appellant that all the officials involved in the matter should be arrayed as respondents is not logical and hence not acceptable.
2. Another contention of the Appellant was that the Engineers of the APTS wing of the Licensee has no authority to inspect the premises ‘since the distribution profit centre and corporate wings of KSEB are separate entities’ . This argument is erroneous on the face of it, since the KSE Board is the single entity holding the Distribution License. The regulations authorize ‘the Licensee or any person duly authorized by the Licensee’ to conduct inspections in the premises of the consumers. The APTS wing of the KSEB can not be seen as an ‘extraneous agency’ and hence this argument of the Appellant is not admissible.
3. Another allegation of the Appellant is that the Sub Engineer has signed the mahazar as witness only. This is not factually true, the Sub Engineer is one of the signatories of the mahazar produced before me. The Appellant also argues that the Assessing Officer has to be the Assistant Engineer of the concerned distribution section and the assessment done on the basis of the inspection by Sub Engineer is not legal. He argues that the inspection should be done by the *Assistant Engineer* himself . I feel that such an interpretation of the regulations is totally against the spirit of the Act and rules. If the Sub Engineer holds charge of the Assistant Engineer he shall be empowered to discharge all the functions of the Assistant Engineer. That is the general practice of public administration system. There is no reason for taking a different view on the matter here.
4. The Appellant argues that the action of the Special Officer (Revenue) in issuing the invoice on 23.11.2007 for penal charges ‘towards unauthorized load as per

- section 126 of the Electricity Act 2003' is against the provisions of the Act and regulations. According to the Appellant the Special Officer (Revenue) has no authority to make provisional assessment and issue penal bill under Section 126 of the Electricity Act 2003 since he is not the statutory Assessing Authority. The Appellant also argues that the Special Officer (Revenue) can not issue assessment under Section 126 based upon the mahazar and reports of APTS wing of the Board. Against this the Respondent argues that the Special Officer (Revenue) is the designated officer for billing of HT consumers and the clarification on the question of the assessing officer was obtained only later. The Respondent also stated that this should be seen only as 'procedural error'. On an overview of the connected statutes/Notifications it is clear that the Special Officer (Revenue) , even though he might be the designated authority to issue bills to HT and EHT consumers , can not act as Assessing Officer as per statutes.
5. On a verification of records it is seen that the Invoice no: 11/3894/Additional/ dated 23.11.2007 for Rs 10,65,732/- has been issued as '*penalization towards unauthorized load as per section 126 of the Electricity Act 2003*'. As per the Electricity Act 2003 :
- 126 (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*
- (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
- (3) The person, on whom an order has been served under subsection (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date service of such order of provisional assessment of the electricity charges payable by such person.*

The above section clearly envisages that the assessment has to be done by the Assessing Officer based upon his judgment , provisional assessment only can be made initially , objections should be accepted and heard , and there after a final order of assessment shall be issued. The 'additional' bill as well as the covering letter dated 23.11.2007 issued by the Special Officer(Revenue) blatantly violates all the provisions of the Electricity Act 2003 even as it is claimed to be '*penalization towards unauthorized load as per section 126 of the Electricity Act 2003*'. The Special Officer had no authority to make assessment under Section 126. The consumer was not given an opportunity of hearing his objections. Instead the consumer was informed on 31.01.2008 by the office of the Special Officer (Revenue) that his objections had '*been considered by the Member (Finance)*' and advised him to remit 50% of the assessed amount and file appeal before the Deputy Chief Engineer. All these actions are against the provisions of Section 126 of the Electricity Act 2003.

6. The Appellant was heard by the Assistant Engineer on 29.5.2008 only, after around 6 months from filing objections. The objection petition was disposed off by him on 30.8.2008 only, again with deplorable delay. The Deputy Chief Engineer disposed off the appeal petition on 27.5.2010 after around 20 months. The Appellant has alleged that the Deputy Chief Engineer had never completed the hearing procedure, counter statements of the KSEB officials were not made available to him etc thus vitiating the principles of natural Justice. This had not been contradicted by the Respondent. The Appellant has alleged that instead of issuing provisional assessment and hearing the consumer on the objections raised, the Special Officer (Revenue) and Deputy Chief Engineer had been continuously threatening with disconnection if the amounts are not remitted. The covering letter dated 23.11.2007 of the Special Officer (Revenue) it self is a *Disconnection Notice* contrary and against the provisions of the Section 126 of the Act 2003. On verification of records it is seen that while the Deputy Chief Engineer advised the consumer on 14.3.2008 on the appeal procedure including payment of 50% demand, the Special Officer (Revenue) issued disconnection notice on 25.3.2008 demanding, among others, the payment of the same bill in full! The allegation of the Appellant on *procedural impropriety* has been substantiated beyond doubt.
7. The Appellant has argued that the additional load was connected to the Generator available in the premises for testing purpose. He has alleged that the presence of the Generator was not recorded by the inspection party. The Appellant also stated that he had never connected any additional load with KSEB system . Countering this, the Respondent stated that during the inspections the additional loads were actually connected to the KSEB supply. The Respondent also pointed out that if the loads were connected to the Generator , the representative of the company could have shown the same to the inspection party. The Respondent had also produced a letter dated 6.12.2007 sent by the consumer Company to the Deputy Chief Engineer wherein they have stated that ‘the completed wiring installation was *connected to the supply mains* for testing purposes’. The company has also stated in the letter that ‘the newly completed electrical installation was *integrated temporarily with the existing one* for testing purposes’. Under the above circumstances the argument of the Appellant that the additional load was not connected to the KSEB system is not acceptable. The Respondent shall be entitled to recover penal charges as per statutes for the unauthorized additional load.
8. The Kerala State Electricity Regulatory Commission has clarified on 15.6.2010 that the Commission views that ‘*the Unauthorized Additional Load is coming under Section 126*’ of the Electricity Act 2003 .Hence I do not intend to enter into the details of the loads , methodology of assessment, periods of assessment or contentions of the parties on the related issues or to pass awards on such matters, since the Ombudsman is not expected to entertain the grievances related to Section 126 of the Electricity Act 2003. .
9. I am inclined to concur with the views expressed by the CGRF Kottarakkara in their order dated 21.12.2009 on OP 398/2009 on the relation between the procedural irregularities and the subject matter of the grievance . It is true that the

procedural irregularities do not confer jurisdiction to entertain a barred subject matter. But the procedures and formalities specified in the Act and other statutes are designed and structured to ensure natural justice to the consumers. The authorities are expected to follow the prescribed procedures. Undoubtedly, flouting of procedures and formalities by authorities may end up in arbitrariness and consumers may suffer genuine grievances under such situations. I feel that forums such as CGRF and Ombudsman have to step in there, not necessarily entering into the barred subject matter. In the instant case it can be seen that the various authorities like the Special Officer (Revenue) , Deputy Chief Engineer etc have repeatedly violated the provisions in the statutes. The consumer was forced to pay the penal bill , partly, under threat of disconnection, without caring to follow the basic procedures prescribed in the Electricity Act 2003 and the Regulations. It is shocking to observe that even though the consumer filed an objection on 6.12.2007 against the assessment, no formal hearing as specified in the statutes, was conducted by any authority until 29.5.2008 . Meanwhile the consumer was forced to remit 50% of the demand under threat of disconnection. This is a typical case where the procedures and formalities specified in the statutes were flouted by the authorities. These actions are marred with arbitrariness. In this case the consumer has suffered grievances due to arbitrary actions of the authorities. The invoice dated 23.11.2007 as well as the subsequent demands for penal charges shall be quashed to uphold the right of the consumer for natural justice.

10. The Respondent Licensee shall be free to initiate fresh provisional assessment for penalization of additional load for the periods identified, under appropriate Sections of the Electricity Act 2003 and the regulations made there under, providing reasonable opportunity for the consumer to defend his case .

11. The invoice had two parts: One relating to the additional load and second part relating to non-segregation of the lighting load. Clubbing of the two issues into one invoice as well as issuing it under Section 126 of the Electricity Act 2003 it self was not proper. The Appellant points out that the lighting loads were never shown as segregated even in the agreement dated 13.12.2002 and the service connection was effected by the Licensee without separate meter for lighting circuit. The Respondent pointed out that at the time of giving connection , 1272 nos of 40W fluorescent lamps were ‘considered as the integral part of the machines’ and hence they were not included for calculating light load. They have computed some AC loads and Ceiling fans as loads in the ‘lighting circuit’ now and found out that the total ‘light load’ had exceeded the permissible limit. The proper course of action on the part of the licensee would have been to issue notice to the consumer to segregate the light load and provide sub metering and to penalize if the same was not done within reasonable time .Instead, the KSEB had chosen to penalize the consumer with one-year back-effect. This is quite arbitrary and needs correction. It has been reported during the hearing that the consumer had segregated the light loads subsequently. Hence for ensuring fairness, the penalization on account of non-segregation ,shall be limited to the date from which the additional loads are to be penalized to the date of regularization of the

segregation. Separate demand shall be prepared and issued for the penalization on this account.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The Invoice Number 11/3894/Additional/dated 23.11.2007 for Rs 10,65,732/- issued by the Special Officer(Revenue) and the penal charges demanded in continuation to the above invoice are quashed.*
2. *The amounts collected towards the above demands including the interest, surcharge etc shall be treated as advance payments/deposits carrying interest as per statutes from the date of remittance, within Two months from the date of this order.*
3. *The Respondent KSEB shall be free to issue fresh provisional assessment towards penal charges on the additional loads under the appropriate statutes following the procedures specified there in strictly.*
4. *The Respondent KSEB shall be free to issue separate fresh assessment towards penal charges for the non segregation of lighting loads as per the provisions in the Agreement and Tariff orders applicable.*
5. *No order on costs.*

Compliance:

If the Licensee do not comply with the above orders the Appellant may report the matter to the Compliance Examiner, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010 with copy to the undersigned

Dated this the 17th day of August 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 125 /2010/ 646 / dated 17.8.2010

Forwarded to: 1.The Commercial Manager ,
Leela Scottish Lace Pvt Ltd,
Kinfra International Apparel Parks,
St Xaviers College (Po),
Thumba, Thiruvananthapuram 695586

2. The Assistant Executive Engineer
Electrical Sub Division, Kazhakkuttam Thiruvananthapuram

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
Vaidyuthi Bhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF, KSE Board , Kottarakkara

Copy communicated to: The Special Officer (Revenue) KSEB Vaidyuthibhavanam
Pattom Thiruvananthapuram (Ref: HTB11/3894)

Copy communicated to : The Chairman , CGRF, KSE Board , Gandhi Road , Kozhikode
The Chairman , CGRF, KSE Board , Power House , Ernakulam

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