

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P /189 /2011.

(Present: T P Vivekanandan)

APPELLANT : Sri V.S.Jeevakumar, M/s Agro Tech,
Industrial Development Plot, Angamaly south P O, Ernakulum Dt.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB, Angamaly.

ORDER.

Background of the case:

The Appellant is running a Food processing industrial unit with consumer No 20546, under Electrical section, Angamaly, with effect from January, 2009, in the building No. XXII/257A (Now XXV/562), at Industrial Development Plot, Angamaly. While being so, on 28th May 2010, the Assistant Engineer, Electrical Section, Angamaly, inspected the site and detected an unauthorized extension to the nearby building and hence prepared a site Mahazar noting the anomalies and got it witnessed. A provisional bill for Rs 11,31,500/-, under LT VIII- tariff (Temporary Extension) was issued as per the above mahazar report. Aggrieved by this, the consumer preferred a complaint before the CGRF, Ernakulum, requesting to cancel the said mahazar and to declare the provisional bill as null and void. The CGRF disposed of the same vide Order No. CGRF- CR/Comp. 23/ 2010-11 dated 1/12/2010. It is ordered by the CGRF to clear the previous owner's arrears outstanding on the same premises, and then to approach the concerned Deputy Chief Engineer who is designated by the Law as the Authority to hear the Appeals pertaining to the unauthorized use of electricity. Aggrieved by the decision of the CGRF, the consumer has filed the Appeal Petition before this Forum.

Inter alia it may be noted that the previous consumer of the same Plot in the Industrial Development Area, Kalamassery, has vacated the premises without clearing the Electricity dues and the plot was purchased by the Appellant through Public Auction. The KSEB tried to collect the electricity arrears through Revenue Recovery Action, but was not successful.

Arguments of the Appellant:

The main contentions of the Appellant in the Petition are the following;

The Appellant is running a food processing unit in Building No XXII/257A at Industrial Development Plot, Kalamassery, from 01/2009 onwards. On 28.5.2010, The Asst Engineer, Angamaly, inspected the site and prepared a mahazar. The mahazar is totally wrong and arbitrary. In the mahazar two buildings are seen mentioned. But there is only one Building which is numbered as XXII/257A in the plot. There exists a partition in the factory for two sections, one for rice powdering and the other for chilly powdering work. The application filed for the power connection shows only one building which is numbered as stated above. The factory is a composite unit of different activities in different buildings including its precinct. In the mahazar also total load has not exceeded the sanctioned load of 81 KW.

There are two rooms in the building and one room is a Godown. After starting the Unit only the consumer came to know that the Rice powdering and chilly powdering should not be done in the same room. So he shifted one No 30 KW Motor to the 2nd room and installed it there. The AE has not proceeded against the consumer under Section 126 or 135 of the IE Act. The AE has arbitrarily imposed LT-8 tariff and simply issued a bill imposing penalty. The CGRF did not consider their pleading that during the time of inspection the alleged motor and the light fittings were not connected to the electrical system. In fact even cabling was not there. The consumption pattern reveals this fact and it was clearly explained in the petition. Though it is true that the machinery has been shifted from one room to the other, to facilitate the existing machinery, it was not electrically connected.

The Appellant agrees that the Appellate authority to consider the case of unauthorized extension is the Dy. Chief Engineer having territorial jurisdiction. The petition before CGRF was mainly against application of LT 8 tariff for permanent extension for the same purpose, i.e. industry. The jurisdiction of fixing tariff is vested with Regulatory Commission. Once the industrial tariff is fixed, KSEB cannot arbitrarily go for any other tariff. Hence in this case the industrial tariff has to be applied.

Another argument of the Appellant is that the calculation procedure adopted in the impugned invoice is not consistent with procedure and proceedings. The calculation is for arbitrary period of one year and it is not at all matching with energy consumption recorded by the meter. The electricity bills from January 2009 revealed that the consumer had not started production from January 2009 onwards. He further argues that before directing the consumer for appearing before Dy CE, the CGRF should have fixed tariff as LT-4 and directed KSEB to issue the bill accordingly and in consistent with the rules which CGRF have not done. The Appellant is willing to accept the direction of the CGRF that the Dy.CE shall favorably hear the appeal of the petitioner to dispose the case once the old arrears are settled as per the request of the petitioner. The Appellant asks to consider this and requests direction to make available the details of CD remitted by the previous owner.

Lastly, the Appellant submits that the CGRF does not have the authority to direct KSEB to disconnect. The only provision is to proceed against the consumer as per the particular clause, so that the consumer will get sufficient time for remitting money or further action and appealing.

The following reliefs are sought, namely;

- 1). To declare the provisional bill as null and void.
- 2). to direct that the industrial tariff can be applicable in this particular case for calculation of penal charges or any other charges.
- 3). to direct KSEB to produce details of arrears of the previous consumer with details of CD.

Arguments of the Respondent: -

(1). It is true that the petitioner has availed an industrial connection on 12.11.2008, bearing con.No20546 under Electrical Section, Angamaly, with a sanctioned connected load of 82kw. This connection was effected for industrial purpose in the building no.XXV/562, of Angamaly Municipality. The consumer is bound to pay a minimum guarantee (MG) sum of RS.50, 078/- per annum for 10 years from the date of connection as per the MG Agreement, executed by him on 25.04.2007. A surprise inspection was conducted in the petitioner's industrial Unit on 28.05.2010 by the Assistant Engineer. On noting grave irregularities being done there which was exposed during the inspection, a detailed mahazar was prepared by the Sub Engineer, in the presence of the Assistant Engineer, and got it witnessed by the staff of the Unit. The site mahazar is clear and true to the point in all respects.

(2). The disputed electric connection was effected to the Appellant under the following special circumstances. The premises, presently under the ownership of the Appellant, was previously having an industrial H.T connection with consumer code 13/1728 for running an industry by name, M/S Kerbo Meta Plast. Following the failure on the part of the owner to repay the Loan availed by him from the Kerala Financial Cooperation, the entire property with land and building therein, was taken over by the Corporation and later sold in Public auction. The Appellant happened to be the auction purchaser of the land. Subsequently the application submitted by the Appellant for getting a new service connection in the above premises was rejected by the KSEB, on the ground of electricity arrears pending against the old service connection. As per rules in force, new service connection could not be effected to any premises without clearing electricity arrears due to the Board. In the above circumstances, the petitioner approached the Green Channel Clearance Committee of the District with a prayer for direction to the KSEB to effect service connection to his industry, named AgroTech. The committee heard both the Appellant and the Assistant Engineer of KSEB on 13.11.06 and recommended to the KSEB that service connection to the petitioner shall be effected initially on temporary basis and subsequently as a permanent one, provided the applicant constructs a new factory building for running his industry, wherein the connection needed has to be effected. Accordingly, the Appellant had constructed an asbestos roofed building for the purpose of running his industrial unit, adjacent to the disputed existing old building having arrears. Subsequently the service connection was effected in compliance of the conditions laid down in KSEB and in the proceedings of the Green channel committee. KSEB submits that there exist two buildings with different building numbers, XXV/561 and XXV/562 under Angamaly Municipality, in the said plot. The new service connection was effected to the newly constructed asbestos roofed building with building no.XXV/562. The other building no.XXV/561 happens to be the old building, where the previous industry stood and owned electricity arrears to the Board. The petitioner was authorized to use the electrical energy from No.20546 for operating the electrical equipments in the building No: XXV/562 only. But the inspection conducted on 28.05.2010 revealed that the petitioner has opened a passage between the two buildings, facilitating easy movement of machinery and men to the adjacent building XXV/561. Site inspection also revealed the operation of a chilly powder machine in the building no.XXV/561 with a connected load of 40 H.P and light load of 1120 watts, totaling to 30-960 K.W rounded at 31KW by extending supply from consumer No.20546, which was a blatant violation of the Conditions of supply. The fact of misuse of energy by extending supply from Con No.20546 is clearly mentioned in the site mahazar and witnessed by, Sri.Suresh, a staff of the Appellant.

3. The Respondent has denied the argument of the Appellant that he has only one building in the plot which is totally untrue as is revealed from the certificate issued by the local body.

4. Another contention of the Respondent is that the fact of running the Appellant's industry in another premise by unauthorizedly extending supply to a totally different industrial site is amply proved on inspection.

The above acts on the part of the consumer are highly irregular and against the directive of the Electricity Supply Code. Hence the averment that extension is not unlawful cannot be admitted on any account. The fact of existence of two buildings in the plot is evident from the certificate issued by the local body, while the unauthorized use of energy to another premises by utilizing energy supplied to No.20546 is proved beyond doubt on inspection by Board staff and the mahazar prepared thereof. Accordingly the Appellant is liable to be

penalized for his un-lawful act, as per relevant provisions in the Electricity Act, 2003, which only has been done in the instant case.

As per section 126 sub section (6) clause (b) (v) of Electricity Act 2003, unauthorized use of electricity among other things means usage of electricity for the premises or areas, other than those for which, the supply of electricity was authorized. In this case supply of electricity was authorized to be used in building No.XXV/562 by the KSEB. But the consumer has used energy for another premise, in building No.XXV/561, thereby making liable for penal assessment under section 126 of Electricity Act, 2003, which shall be made at a rate, equal to twice the tariff, applicable to the relevant category of service. Sub section (5) of section 126 authorizes the assessing officer to assess the consumer for the entire period, during which such unauthorized use of electricity has taken place and if the period of unauthorized use cannot be ascertained such period shall be limited to a period of 12 months, immediately preceding the date of inspection. In this case, as per schedule of Tariff and Terms and Conditions for Supply by KSEB, the applicable tariff for assessment is LT- VIII, meant for Temporary Extension of supply, the rate for which is Rs.50 per K.W per day as the charges. Since the period of unauthorized use of electricity could not be ascertained the penalization under section 126 was limited to 12 months with retrospective effect and as follows.

Penal charge = 31 K.W (C/L of unauthorized extension) * Rs.50-(rate) * 365 days (period) * 2 times = Rs.11, 31,500/=

The consumer is accordingly bound to honor the liability in this regard.

The Respondent points out that the constitutional avenues for redressal of complaints, available to a consumer under the Electricity Act, have not been explored by the Appellant as is evident from the fact that he had directly filed petition before the Consumer Grievance Forum instead of filing objections before the assessing officer as contained under subsection (3) of section 126 of Electricity Act 2003. He had accordingly surpassed the constitutional authorities in his eagerness to meet his undue plea by hiding facts on record and material evidences. The Hon: CGRF after analyzing the issue found that the ground for penalization is sound and genuine. In its order dated 01.12.10 disposing the complaint from the Petitioner, the Forum has directed the Appellant to submit a request to the Board expressing his willingness to clear the outstanding liabilities, of the previous consumer. The bill under challenge was prepared, perfectly upholding the relevant rules and regulations in force and is found correct by the CGRF. The averments of the Appellant are weak, vague and unsustainable. The Respondent prays to declare the impugned invoice as valid, legitimate and binding on the Appellant and to dismiss the complaint, allowing costs to the Respondent as an act of fairplay and justice.

Analysis and Findings: -

The Hearing of the case was conducted on 26/7/2011 and 20.12.2011, in my chamber at Edappally, and Mr. V.S. Jeevakumar and Mr. Shaji Sebastin, represented the Appellant's side and Mr. N.S. Indrasenan, Assistant Executive Engineer, Electrical Sub Division, Angamaly, represented the Respondent's side. On perusing the Petition, the counter statement of the Respondent and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The main points for decision are: -

1). Whether there was any unauthorized use of electricity by means of extension of electric supply from the Appellant's connection No: 20546, to another premises or area other than for which the supply of electricity was authorized?

2). If so what is the applicable tariff under which the consumer can be penalized as per section 126 (6) of Indian Electricity Act, 2003, and whether tariff LTVIII is applicable?

The dispute is regarding the unauthorized use of energy by the Appellant by extending his electric supply from consumer number 20546 belonging to building No XXV/562 to the nearby building No XXV/561. The Appellant argues that during the time of inspection by KSEB in the premises, the alleged Motor and the Light fittings were not connected to the electrical system and even cabling was not done. He states that the energy consumption pattern will reveal this fact. Only the machinery has been shifted from one room to another to facilitate the existing machinery i.e. separated the Rice powdering and Chilly Powdering machines to different rooms, he argues. But this averment is not correct as the monthly bill shows a consumption of more than 6000 units in May of 2010 when the inspection was conducted. Moreover in the site mahazar, it is revealed that, in building No. XXV/561 (old building), a chilly powder machine with connected load of 40 H.P. and light load of 1120 W, totaling 30.960 KW rounded to 31 KW was in operation by extending supply from consumer No. 20546. The mahazar was seen witnessed by Mr. Suresh, an employee of the Firm and is not seriously disputed by the Appellant. Hence the stand of the Respondent that the Appellant had extended electric supply to nearby premises appears to me as true.

The building No XXV/561 was a closed industrial unit where the Electric Connection was disconnected due to pending electricity arrears of the previous consumer. The Respondent has produced a certificate issued by the Secretary, Angamaly Municipality which shows the existence of two separate buildings with different building numbers in the same premise. The Electric service connection to the Appellant was given to a new asbestos roofed building (No: XXV/562) constructed very near to the old building (No XXV/561), as per the direction of District Green Channel Forum and is evident from the Wiring papers submitted to KSEB for new electric service connection. For the sake of argument the Appellant holds the view that extension of supply is not unlawful. The Appellant's argument is that he extended the supply to next room only which is found as not to next room but to the next building.

It is a fact that the consumer was denied connection to the old building due to arrears and the District Green Channel directed the Appellant to construct a new building and recommended the KSEB to give connection to this new building. There is nothing to counter the version of the Respondent that the Appellant had unauthorisely used the energy and the site mahazar establishes this fact. Here the unauthorized use of electricity means the usage of electricity for the premise or areas other than those for which the supply of electricity was authorized. Though the Appellant challenges this allegation, he has not produced any substantial evidence, to prove his argument. Hence from the above facts and the site mahazar, I am convinced that there was unauthorized extension of electric supply to the old building, which tantamount to unauthorized use of electricity.

The other point of dispute is regarding the fixing of tariff when there was an unauthorized extension of electric supply. The Respondent has treated it under tariff LT VIII- temporary extension. The Appellant argues that no Licensee can arbitrarily change the tariff from one to another. The AE has decided that the penalty for the above irregularity to be collected at two times under LT VIII tariff only. The Respondent's contention is that, for the offence of unauthorized extension of electric supply to other premises, the tariff applicable is LTVIII (Temporary Extension), as per rules. As per section 126 sub section (6) (b) (v) of Electricity Act 2003, unauthorized use of electricity among other things means usage of electricity for the premises or areas, other than those for which, the supply of electricity was authorized.

In this case, supply of electricity was authorized to be used in building No.XXV/562 only by the KSEB. But the consumer has used energy for building No.XXV/561, thereby making him liable for penal assessment under section 126 of Electricity Act, 2003, which shall be made at a rate equal to twice the tariff applicable to the relevant category of service. Sub section (5) of section 126 authorizes the assessing officer to assesses the consumer for the entire period, during which such unauthorized use of electricity has taken place and if the period of unauthorized use cannot be ascertained, such period shall be limited to a period of 12 months, immediately preceding the date of inspection. Here, as the period of unauthorized use of electricity could not be ascertained definitely, the penalty under section 126 was limited to 12 months with retrospective effect from the date of inspection.

According to the Appellant the Board overlooked the relevant clause of The Kerala Electricity Supply code, 2005 which reads as under; "27 A. Method of assessment of electricity charges payable in case of unauthorized use of electricity and theft of electricity: - The assessment under this clause shall be made at a rate equal to twice the tariff applicable for the relevant category of service specified in sub clause (5)". Here a detailed examination of the wordings 'tariff applicable for the relevant category of services' is required. The Respondent interpreted that the applicable tariff for assessment is LT VIII, meant for Temporary extension of supply, the rate for which is Rs.50 per K.W per day as the charges. But the KSEB itself has clarified and issued detailed guidelines on this matter in a circular Ltr. No.77/IGP camp/2010/135 dated 31/3/2010 which is as follows;

Assessment – Assessment in terms of section 126 of the Electricity Act 2003 is the means available to the Kerala State Electricity Board for recovery of civil liabilities from a consumer who has indulged in unauthorized use of electricity including power theft. *Assessment should be done at two times the rate applicable for the tariff envisaged for the purpose, for which electricity was being used unauthorizedly, with retrospective effect for the entire period for which the unauthorized use was taking place, if it is reliably known. If the period of such unauthorized use is not known, the period of assessment may be limited to one year.* In this case, the unauthorized use of electricity by the Appellant was made for running his machinery shifted to a nearby premise i.e. for industrial purpose only. So I am inclined to believe that he is liable to be penalized under LT IV – industrial tariff only.

Another complaint of the Appellant is that the calculation procedure adopted in the impugned invoice is not consistent with procedure and proceedings. The provisional assessment is to be issued by the concerned Assistant Engineer, who is the Assessing Officer. If the consumer prefers an objection against the provisional assessment, the Assessing Officer is bound to admit it. The procedure is to conduct a personal hearing to verify the claims of the consumer and the Assessing Officer should take a decision on the objection, if any, within 30 days from the date of issue of provisional assessment and a final order be issued. If the consumer's grievances regarding the assessment persist, he is entitled to file an appeal before the appellate authority in terms of Section 127 of EA 2003. The Dy. Chief Engineers of the concerned Electrical Circles are the designated appellate authorities as per this section. The consumer had failed to avail such an opportunity to redress his grievance. He straightly approached the CGRF thereby overlooked the other chances to present his case before the appropriate authorities. The issues raised are to be dealt by the Appellate Authority, Deputy Chief Engineer, Electrical Circle only.

DECISION: -

The jurisdiction of disputes and cases under Section 126 of I E Act, 2003, do not come under the purview of CGRF and Ombudsman. In this particular case, the penal bill has been

raised under section 126, and so this authority does not intend to go into the merits of the case, but confined to look into the grievance of the consumer regarding 'the applicable tariff relevant for penalization' in case there is an extension of Electric supply from one premise to another, which tantamount to unauthorized use of electricity coming under Section 126, stated above.

From the foregoing discussions, analysis and its findings as detailed above, I reasonably come to the conclusion that the allegation of unauthorized use of electricity is proved beyond doubt and hence the Appellant is liable for penalization under section 126(6) of IE Act, 2003. The Appellant has used energy for industrial purpose only which is not disputed by the KSEB. Hence the party is liable for penal assessment under the industrial tariff for the irregularity committed by him and not under LT- VIII Tariff, envisaged for Temporary Extension. The Licensee's circular dated 31.3.2010, also stipulate to impose penalty for the purpose for which the energy was misused. Hence it is decided that the applicable tariff for penalizing the consumer in this case shall be under LT-IV industrial tariff. The assessment shall be made at two times the rate of industrial tariff and the bill dated 29.5.2010 for Rs11,31,500/-, shall be revised as decided above, all other things remaining the same. Please also note that the Appellate Authority against the assessment under Section 126 of IE Act, 2003, is the Deputy Chief Engineer of the concerned Electrical Circle only.

It is also noted that the consumer has expressed his willingness in the Hearings to remit the penalty if assessed under LT-IV industrial tariff.

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

Dated the 30th of March, 2012.

Electricity Ombudsman

No: P/ 189/ 2011/ 1178/ Dated 02.04.2012

Forwarded to : 1). Sri V.S.Jeevakumar, M/s Agro Tech,
Industrial Development Plot, Angamaly south, Ernakulum District.

2).The Assistant Executive Engineer,
Electrical Sub Division, KSEB, Angamaly.

Copy to 1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthi bhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, KSEB,
Power House Building, Cemetery mukku, Ernakulam-682018.