

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/192/2011.

(Present: T.P. Vivekanandan)

APPELLANT : Sri.Divakaran,  
Techpace, Cherootty Road, Court Complex,  
Kozhokode (DT). Pin: 673032.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division,KSE Board, Nadakkavu,  
Kozhikode Dt.

ORDER.

BACKGROUND OF THE CASE: -

The appellant is running a DTP center at Court complex, Kozhikode, from 6/2006 onwards. He is a tenant having consumer No.14159 under LT VIIA–commercial tariff of Electrical Section, Beach, Kozhikode. While so, on 4.10.2006, an inspection was conducted by the Section officials and found an unauthorized additional load of 3 KW in the premise of the appellant. Provisional bill for Rs.1350, being the penal charges on the additional load availed, was served on the consumer and provision for personal hearing was also given on 27.9.2006. The penalization was limited to the fixed charges alone and the appellant did not turn up for the personal hearing but preferred to remit the penal amount fixed. The additional load has been normalized to 1925 watts on 30.3.2010 after submitting the test report and remitting the required fees by the consumer. It is revealed from the report of the Audit team of KSEB that the proportionate current charges were not billed for the unauthorized additional load (UAL) since the UAL remained unregularized till 30.3.2010. Based on the audit report a short assessment bill of Rs. 21776/- was served on the appellant. The consumer approached the CGRF against the short assessment bill and the Forum rejected his petition vide order dated 02.12.2010. Aggrieved by the said order of the CGRF, the appellant has submitted this Appeal Petition before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition. Firstly he advanced the argument that the bill dated 18.03.2010 for Rs.21,776/- is unsustainable and without authority and no law permits the respondent to issue such a way and to raise demand through the same.

On 04.10.2006, the respondent issued a provisional assessment bill for Rs.1350/- on the basis of allegation of unauthorized additional load and there by directed the appellant to make payment of the same. The appellant in strict conformity with the law paid the amount and obtained receipt for the same with a request to regularize the additional load detected on 04.10.2006 itself. The sum has been accepted by the respondent and so the matter had come to an end and the entire liability on the appellant as per the said act is over by the payment of the same as per clause 4 of section 126 of Electricity Act. So it is submitted that no further demand on the same issue can be made by section 126 of Electricity Act. Sohe submits that no further demand can be made by the respondent against the appellant. The appellant further points out that absolutely no further inspection or assessment has been made by the respondent since then. According to the appellant, it is unheard the serving of a bill like the one in question and the demand contained in the disputed bill dated 18.03.2010 and the same is without any basis which is liable to be cancelled.

The appellant is consuming electricity for the last several years and the respondent is issuing bills for the same and appellant is making payment for the same without any default. Hence the contention of the appellant is that the bill dated 18.03.2010 for Rs.21, 776/- is without any basis and hence liable to be cancelled. Therefore he prays to set aside the bill dated 18.3.2010 issued to him.

**Arguments of the Respondent: -**

In the statement of facts furnished by the respondent he has put forward the following contentions. Sri.P.PHassan Koya, A.P Complex, 11/291 A, convent Road, Kozhikode had taken a single phase Electric connection with consumer No: 14159, under LT VIIA-commercial tariff with a connected load of 240 W from Electrical Section, Beach, Kozhikode. While Being so, an inspection was done and an unauthorized additional load (UAL) of 3 KW was detected and a penal bill was raised as per section 126 of Indian Electricity Act, 2003. As per section 126(1) "If on an inspection of any place or premises or after inspection of the equipment, Gadget, machine or device found used or connected 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 this judgment the electricity charges payable by such person or by any other person benefited by such use". Based on the same a provisional penal bill for Rs.1350/- ( $3 \times 50 \times 1,5 \times 6 = 1350$ ) for fixed charges was served upon the consumer vide bill dated 04.10.2006 and a call for personal hearing was given to the consumer on 27.09.2006. Upon this notice, the consumer gave a reply, to allow him 15 days time to pay the fine and did not turn up for the personal hearing. He paid the provisional penal bill Rs.1350/= on 26.10.2006. As per the Board Order (FM) No.368/2008(DPCI/C-GI/182/2007) dated 07.02.2008, of Board Secretary; "The Board hereby orders that the officer shall strictly follow the provisions of the Electricity Act 2003, sub section (5) and (6) of section 126 of Electricity (amendment) act 2007, i.e. two times of respective tariff for the entire period and in case the said period cannot be ascertained for a period of 12 months for assessing penalty in the case of misuse of energy including unauthorized additional load, unauthorized extension and meter tampering cases detected. Penalty rate shall be applicable to both fixed and energy charges for the unauthorized use. Penalty charges for current charges shall

be levied for proportionate energy charges and normal current charges collected shall be deducted. This order shall be effective from 15.06.2007”.

Further the respondent quoted another order of the Member (Distribution).As per order No: DPC1/C-GI/ 182/2007339 dated 14.05.2008 of Member Distribution, it says;-“Penalty rate in the case of misuse of energy and unauthorized use of energy including unauthorized additional load, unauthorized extension and meter tampering cases shall be applicable to both fixed and energy charges for the unauthorized case. Penalty charges for current charges and normal current charges collected shall be deducted. This order comes in to force from 15.06.2007”.

The consumer has not normalized the load by submitting the test report till 30.03.2010. On that day the consumer submitted the test report by paying AF Rs.10/-, TF Rs.25/- and the load was regularized to 1925 watts w.e.f. 30.03.2010.As per section 51(2) of Terms and Condition of Electric supply 2005 “ The penalty for unauthorized additional load shall be levied till the said unauthorized additional load (UAL) is removed or regularized as per rules “.

During January 2010, Regional Audit officer Kozhikode, audited the accounts of Electrical Section from 6/07 to 4/08 and found that the proportionate current charges were not billed for the UAL, since the UAL was not regularized. As per the report of RAO, Kozhikode dated 10.03.2010, a short assessment bill for Rs.21776/- dated 18.03.2010, was served on the consumer. This amount includes the period not covered by the audit team and is to be received by the KSEB from the consumer, since UAL has not been normalized during this period.

The consumer approached the consumer Grievances Redressal Forum, Kozhikode vide OP No:3 of 2010-11 against the bill and vide its order dated 02.12.2010, the Forum was of the view that the petitioner’s argument, that he was unaware of the rules and procedure followed by KSEB, cannot be accepted and hence ordered the case as dismissed.

The respondent submits that the consumer has not attended the personal hearing. The bill issued to the consumer is legal and requests to lift the stay order for not disconnecting the supply and give order to the consumer to pay the said amount.

#### ANALYSIS AND FINDINGS: -

The Hearing of the case was done at Calicut on 30.3.2011 and on 24.2.2012 and the appellant and his Counsel appeared for the Petitioner and the opposite side was represented by the Assistant Exe. Engineer. They argued the case on the lines stated above. On a perusal of the Appeal Petition, the counter statement of the respondent, the averments raised in the hearing and the facts and circumstances of the case, I come to the following conclusions leading to the decisions thereof. The respondent has stated that an unauthorized additional load of 3 KW was detected in the premises of the consumer on 4.10.2006, as per the provisions of Section 126 of Electricity Act 2003. But the respondent has not produced the site mahazer of the inspection conducted in the premises of the consumer. Nevertheless, the appellant does not dispute the detection of the UAL of 3 KW at his premises. Hence the action of the respondent in raising the penal bill for availing the UAL is found to be in order.

Another important aspect of this case is whether 'unauthorized load' or 'overdrawal of maximum demand' come under the definition/meaning of 'unauthorized use of electricity as per Clause (b) to Explanation appended to Section 126 of Electricity Act. In a judgment pronounced in Civil Appeal No. 8859 of 2011, (Executive Engineer & Another Vs M/s Sri Seetaram Rice Mill), the Hon:Supreme Court held that "the expression 'unauthorized use of electricity means' as appearing in Section 126 of the 2003 Act, is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b) (IV) to Section 126 of the 2003 Act, besides it being in violation of Regulation and terms of the Agreement. Hence dealing the matter of availing UAL under the provision of Section 126 of the Act by the respondent is not irregular and out of jurisdiction. The CGRF has dismissed the petition since it lacks jurisdiction to hear cases falling under section 126 of the IE Act, 2003.

The procedure to be followed in cases of connecting unauthorized additional load is detailed under Regulation 50 (1) to (6) of KSEB Terms and Conditions of Supply, 2005. The executive orders issued by the Board contain only the details of method of penalization when unauthorized use of electricity including unauthorized load has taken place.

The inspection was conducted on 4.10.2006. During that time the rule for the penal assessment under section 126 was for a period of six months at 1.5 times for unauthorized use of electricity. The consumer was issued a penal bill of Rs 1350/- for the same irregularity committed by him and he remitted the same even though he was not satisfied with the action of the respondent in the issue of a penal bill and hence lodged complaint at the KSEB offices. After 3 years, the respondent issued a subsequent bill for Rs 21176/- dated 18.3.2010, stating to be the balance amount payable towards the proportionate energy charges, based on an audit report finding error in the billing.

The clause 126(4) also says that once the assessed amount is paid by the consumer, he will be absolved from any further liabilities. In this particular case, the penal bill was issued penalizing for 6 months in 10/2006 and thereafter no bill was raised for more than 3 years. If additional load was found continuously enjoyed by the consumer, the respondent should give notice for either removal or regularization. If not obliged by the consumer, the penalization must be resorted to immediately and not after 3 years.

If the respondent want to raise penal billing, after settling the issue as per section 126(4), as stated in the last para, the respondent is required to inspect the premise of the consumer again and prepare a site mahazar detailing the anomalies and irregularities noticed at the site and thereafter only can raise fresh or subsequent penal bills on the same.

#### DECISION: -

This Authority intends to look into the question of sanctity of raising a penal bill against a consumer, based on an inspection conducted more than 3 years ago by the KSEB (in 10/2006) and alleging that the detected Unauthorized additional Load (UAL) was still continuing in service, till its regularization in 3/2010, with out conducting any inspection and ascertaining the presence of UAL, while issuing the subsequent bill. This Forum does not intend to enter into the merits of the bill,

since the appellate authority for the disputes under section 126 is the concerned Deputy Chief Engineer only.

The KSEB order dated 7.2.2008 and the order of the Member (Distribution) dated 14.5.2008 clearly states that the penalization for unauthorized use of electricity and availing unauthorized additional Load (UAL), based on the energy charges, will be effective from 15.6.2007 only. That is to say, the levy of penal charges for availing UAL will be imposed both on fixed charges and energy charges from that date (15.6.2007) onwards only. Till the issue of that order dated 7.2.2008 by the Secretary to KSEB, the existing orders specified the penalty for UAL limiting to the fixed charges portion alone. That may be the reason, by the respondent, for issuing a penal bill incorporating the fixed charge portion only to the consumer after the inspection done on 4.10.2006. Both the orders of Secretary dated 7.2.2008 and the Member (Distribution) 14.5.2008, clearly specify the date of effect of the order imposing penal charges on the energy portion to be effective from 15.6.2007 only. Hence there is no logic in raising the penal bill based on the proportionate energy charges prior to 15.6.2007, as per the audit report.

Further, the section 126 (4) of I E Act, 2003, (before its amendment by Act 26 of 2007, and which came into effect from 15.6.2007), states that "Provided that in case the person deposits the assessed amount , he shall not be subjected to any further liability or any action by any authority whatsoever." Here in this particular case, the cause of action, the raising of penal bill and the remittance of assessed amount by the consumer, all have taken place before the amendment of IE Act done w.e.f.15.6.2007 and hence there is no doubt that once the consumer has deposited the sum demanded by KSEB (assessed amount), it is the final liability and any further assessment or action based on the same inspection is debarred by the Law. The clause 51(2) of KSEB Terms & Conditions of Supply is a subordinate law and cannot prevail over Section 126(4) of the I E Act, 2003.

From the analysis done and the findings and conclusions arrived at, I am of the view that the raising of penal bill to the consumer is not in order and has to be set aside. The Appeal Petition filed by the appellant, Sri. M K Divakaran, Calicut stands allowed as it is found having merit and is ordered accordingly. No order on costs.

Dated the 19<sup>th</sup> of June, 2012.

Electricity Ombudsman.

Ref No P/ 192/ 2011/ \_\_\_\_\_ dated

Forwarded to : - 1).Sri. M K Divakaran,

Techpace,Cherootty Road, Court Complex,  
KOZHOKODE (DT) 673032.

2). The Assistant Executive Engineer,

Electrical Sub Division,KSE Board, Nadakkavu, KOZHIKODE.

Copy to:

- (1). The Secretary,  
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Vellayambalam, Thiruvananthapuram-10
- (2). The Secretary,  
KSEBoard, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4
- (3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEB, Vydyuthibhavanam, Gandhi Road, Kozhikode- 32.