STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO: P/99/2010.

(Present: T P Vivekanandan)

APPELLANT : M/s Gasha Steels Pvt. Ltd.,
NIDA, Kanjikode, Palakkad

RESPONDENTS : 1).The Deputy Chief Engineer,
Electrical Circle, KSEB,
Palakkad.
2).The Special Officer (Revenue),
KSE Board,Vydyuthibhavanam, Pattom,
Thiruvanathapuram.
3).The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Kanjikode, Palakkad.

ORDER.

Background of the Case: -

The appellant is having a HT Electric connection No HTB 12/3800 under Electrical Section, KSEB, Kanjikode. It is an industrial company having 1900 KVA as contract demand with a connected load of 1915 KW (approved), as per agreement No.14/2001-02 dated 13/12/2001 and is engaged in the manufacture of MS rods and TMT bars. While so, an inspection was conducted by the Anti-Power Theft Squad of KSEB at the appellant's premises on 18.12.2007and detected UAL (unauthorized additional load) being connected and used by the consumer. A site Mahazar was prepared about the irregularity and detailing the connected load in service at that time. As per the Mahazar, the total load connected was found as (3238.5 HP + 850.2 KW + 36 KVA) in the appellant's premises. In pursuance to the detection of UAL a penal bill for Rs.99, 66,240/- was issued by KSEB and being aggrieved by the bill, the appellant preferred a WP (C) No.5977/2008 before the Hon: High Court of Kerala and the court disposed of the writ petition on 7-3-2008 with a direction to the appellant to approach the CGRF. Then the appellant approached the CGRF with a Petition dated 19.3.2008. Meanwhile the bill dated 6.2.2008, issued for the penal charges was withdrawn due to reason of procedural impropriety and the Assistant Engineer then issued a new provisional assessment bill amounting to Rs 1,90,60,735/- on 10.9.2008, with direction to file objections, if any, under Section 126 of the Electricity Act 2003. The appellant filed objection against this provisional bill and it was intimated to the appellant by the 1st respondent that as the subject matter was pending with the

CGRF, Kozhikode, any further proceedings under Section 126 was to be continued after decision taken by the CGRF. The CGRF passed order on 30-4-2009 (in Petition No OP 210/2007) and it was held that since the penal bill issued by the respondents comes under Section 126 of the Act 2003, the Case will not come under the purview of CGRF. After the issue of this order, the 1st respondent issued a notice for a personal hearing on the provisional assessment on 16.9.2009. The appellant requested for adjournment for three weeks. In the meantime, the appellant filed an appeal before the Ombudsman which was disposed of as it will not come under his purview, vide order No.P/99/ 10 dated 28-7-2010. Aggrieved by the same, appellant preferred W.P.(C) No.31002/2010, before the Hon High Court of Kerala and the court disposed of the same on 17-02-2012 with a direction to the appellant to approach the Ombudsman for rehearing in accordance with law and directed to dispose of the proceedings after giving an opportunity to the appellant being heard.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his Petition filed before this Forum.

1). The main argument of the appellant is that the CGRF has failed to consider the issue regarding deficiency of service on the part of KSEB, since the appellant has raised the contention that he has filed application to enhance his connected load in 2001 and the same has not been considered by the Board till date and hence there is no unauthorized load as alleged. By the impugned order dtd 30.4.2009, the CGRF has failed to consider the appellant's contentions in its true perspective. The Forum failed to appreciate the documentary evidences produced by the complainant to augment his contentions. The findings arrived at by the CGR Forum were without any proper reasons. The appellant has specifically challenged the entry of connected load as 1915 KW in the HT agreement and the Forum without any proper reasoning, found the said entry as correct and is binding on the consumer. The Forum on presumptions and surmises has found that KSEB would have responded on the applications for regularization of additional load, if they had received the same and KSEB has no need to conceal any applications received. The findings rendered by the Forum in the impugned order are highly erroneous, arbitrary and is against the documentary evidences produced by the appellant.

2).As per the inspection conducted by APTS on 18.12.2007, unauthorized additional load (UAL) is seen connected to the petitioner's unit. The petitioners vide letter dated 08.11.2001 and letter dated 04.012002 (Exhibits marked 3 &4) has informed the Deputy Chief Engineer (DCE) as well as the Assistant Executive Engineer (AEE), regarding additional load installed to the system. Vide the letter dated 04.05.2002 (Exhibits marked 5), the Chief Electrical Inspector has accorded approval for the energisation of the installation in the appellant's premises. The KSEB neither considered the request for additional load nor refused to grant additional load. Without considering the said aspects, now a penal bill dated 06.02.2008 of Special Officer (Revenue), which is modified by the revised bill dated 10.09.2008, for a sum of Rs.1,90,60,735/= was issued by the Asst. Engineer, for the UAL connected. The penal bill is issued in gross violation of the provision contemplated under section 126 of the Electricity Act 2003. No provisional assessment notice was issued calling for objections of the petitioner prior to the issuance of the penal bill. The appellant was not given an opportunity of being heard before the issuance of the penal bill as contemplated under section 126 of the Electricity Act. An objection was filed by the petitioner before the SOR under Section 126 (3) of the Act 2003. Aggrieved by the Bill, W.P. (C) No. 5977 of 2008 was preferred before the

Hon: High Court of Kerala and the Court vide judgment dated 07.03.2008 has disposed of the Petition, after granting stay to the disconnection proceedings and further directing the petitioner to approach the Consumer Grievance Redressal Forum (CGRF). Accordingly, he has preferred O.P.No.210/2008, before the CGRF.

3). The complainant has preferred a representation dated 03.01.2008, before the AEE, Electrical Section, Kanjikode which is marked as Exhibit- 6 in O.P.No.210/2008. In this document, it has been categorically stated by the complainant that letters dated 08.11.2001 and 04.01.2002 (Exhibits-3 and 4 -applications) have already been submitted in the year 2001 and 2002 and copy of the said letters were also annexed with Exhibit-6. The Board has not denied the receipt of Exhibit-6 in its counter affidavit as well as in the arguments. It is pertinent to note that till date there is no reply whatsoever to Exhibit-6.

4).The appellant submits that Exhibit-11 in the O.P. is a true copy of allocation of power dated 25.08.2001of Chief Engineer. In it under item No.5, there is an entry regarding the connected load, where it specifically states that the connected load allotted is 2835KVA. The HT agreement between the appellant and KSEB is produced by the Board in the counter affidavit as Exhibit B1. In the schedule to the said agreement, there is no specific entry for the connected load and the item No.5 is an entry for the 'contract demand' only. In the said schedule, the Board has endorsed as follows: "CL: 1915 KW". Pointing out the above entry, the Board now contents that the authorized connected load of the complainant is only 1915 KW and any additional load over and above the said 1915 KW, is unauthorized and liable to be penalized.

In this context it is pertinent to note that Exhibit-11 is a power allocation order and in Ext.B1-HT agreement, clause 23 specifically says that order of power allocation shall be submitted along with the agreement. Further, sub clause 23(b) states; 'All the conditions stated in the power allocation order will be applicable to the HT service connection as per this agreement. Power supply is liable to be restricted or cut off during power shortage period'. The conditions in power allocation order has specifically states that the approved connected load of the appellant is 2835 KVA and he has never stated or applied before the Board that the allotted connected load of 2835 KVA may be restricted to 1915 KW. Assuming but not conceding that there is an authorized additional load, it can only be over and above 2835 KVA.

5). The Exhibit-14 is a letter addressed to the DCE by the Chief Engineer, dated 20.08.2001, in which it has been specifically stated by the Chief Engineer that the approved connected load of the appellant is 2835 KVA. The Board has approved the same vide fax message dated 17.08.2001, of the Secretary (No.TC1/SS/966/2001). So it can be seen that the contention raised by the Board that the approved connected load of the appellant is 1915 KW is totally false and incorrect.

6). As per the order of the CGRF, the Board has produced the "Electrical Installation Completion report" with copy of the Schematic Diagram submitted at the time of availing electric supply. The consumer has submitted the said report along with a covering letter stating that the report is in part and final report will be submitted as and when the whole machineries were installed. It is pertinent to note that the Board has not produced the said covering letter issued by the electrical contractor, M/S. Telsa Engineers. The complainant has produced office copy of the said covering letter dated 26.11.2001 as Exhibit-16 in the present complaint. The complainant in pursuance to Exhibit- 16 has submitted a second completion report on 27.12.2001. All these aspects have been

willfully concealed by the Board and the Board is now taking the stand that only the 'completion report' has been submitted by the complainant.

7). Please note that Exhibit-16 dated 04.05.2002 is a report from the Electrical Inspector regarding sanction for installing the additional load. From Exhibit-16, it can be seen that the copy of sanction order has also been dispatched to the authorities of KSEB. In pursuant to the sanction report from the Electrical Inspectorate, the appellant has submitted further completion report regarding the additional installations. Surprisingly, KSEB is now pretending to be ignorant about the installation and contending that the complainant has taken all measures including getting sanction from the Electrical Inspectorate by remitting requisite fees but failed to complete the said process, like submission of completion report, getting sanction from the Board etc.

8). It is submitted that the Board is now sticking on to clause 14 (b) of the agreement executed between the complainant and Board which state as follows:

Clause 14(b): "the consumer shall not make any alterations in the machinery/equipment either way of addition or substitution of transfer which is liable to increase the obligation of the Board to supply electrical energy in excess of the agreed contract demand and/or which may affect the supply system of the Board to its detriment. In any event, the consumer shall notify the Board of the intended alterations, additions, substitutions or transfers and obtained the prior approval of the Board in writing before execution of any such actions".

Here a mere reading of the above clause, will see that the main object of the said clause is to check alterations, additions, substitutions or transfers of the machinery/equipment effected by the consumer which will directly increase the obligation to the Board to supply electrical energy in excess of the agreed contract demand or which may affect the supply system of the Board. In other words the consumer is prevented from making any alterations etc. that will cause great hardship and system constrains to the Board. So to attract the violation of the above said clause, the main parameter to be looked into is to verify whether the obligation of the Board to supply electrical energy is increased from the agreed contract demand and such action has affected the supply of the Board or not. In the case on hand, in the counter affidavit filed by the Board, it is stated therein that the complainant has exceeded the contract demand for several times for the reason that additional load has been connected. It is stated therein that in the month of April and May 2004, September 2005, May, June, July and September 2007, the contract demand of the appellant has exceeded. During the above periods, though the contract demand has exceeded, the same has been exceeded only at a nominal rate. Moreover, the period of such increase in CD is only for 7 months during the period from 2004-07. The CD can exceed not only for the reason that additional load is connected but for other factors also, for example, a change in power factor. During the periods, where the Board has pointed out that the appellant's CD has exceeded, the reason for such increase was due to change in power factor of the appellant. The said reason has been reflected in the monthly bills issued by the Board for the said periods. The Board is trying to highly mislead this Hon: Authority by saying that the additional load installed by the appellant has led to continuous system constrains i.e. an increase in the CD would attract the penal liability of clause 14 (b) of the agreement. The Board has not pointed out any other factor other than that the additional load connected has affected the system constrains of KSEB.

9). In this context, attention is invited to a KSEB circular dated 28.09.2002, regarding allocation of power to HT/EHT consumers. By the said circular, considering the hardship caused to the HT/EHT consumers, the Board has decided to issue power allocation to said consumers for the CD. This is done so because, if the power allocation is given for the connected load, the HT/EHT consumers will face problems since the connected load in such units cannot go above what is sanctioned in the power allocation order. By the said circular, the Board is giving power irrespective of what is the load connected but ensure only the CD given to such unit does not exceed. The reason for the circular is that, as long as the CD is not exceeded, there will be not be system constrains or any prejudice to the Board even if additional loads are connected to the system.

10).The appellant submits that he is penalized and additional penal demand is issued invoking Section 126 of the Electricity Act, 2003. For an HT consumer, the norms for assessing the UAL and penalizing should be on the basis of Regulations 50 and 51 of the Conditions of Supply 2005 and the relevant provisions of Supply Code. As per Regulation 50 (5) of Conditions of Supply 2005, if the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place it shall be presumed that such unauthorized use of electricity was continuing for a period of 12 months immediately preceding the date of inspection unless the onus is rebutted by the person/ occupier of such premises or place. But here, the UAL [excess demand over and above the CD of 1900KVA] used to be monitored monthly and even though the said incidents were quite rare i.e. only 7 times from the period from 2004 to 2007, penal charge has been levied for the increase at 150% of the demand charges fixed by the existing HT (1) tariff and hence there is no provision for additional penalty. Moreover, the procedure adopted by the Board i.e. invoking Section 126 is illegal and not in consonance with the relevant provisions of the Electricity Act and the Rules.

11).Finally, the appellant argues that there is clear evidence for unfair trade practice and service deficiency on the part of the Board. From the facts and circumstances stated, it is clear that the Board has not acted fairly and the entry in HT agreement is not based on any material or data. Moreover, the entry in the HT agreement with regard to the connected load is also suspicious since there is no specific entry with regard to the connected load in the same HT agreement. The Forum has simply rendered 4 numbers of findings without any adequate reasons and passed an order to the effect that there is no deficiency of service on the part of the Board.

Reliefs sought: -

1. To set aside the order No. 308091/CGRF-KKD/2009-10/93 dated12-08-2009 of the CGRF, Kozhikode in OP No. 210/2007
2. To declare that the complainant is entitled for additional connected load as requested in Exhibit- 3 application with effect from the date of application and also to declare that non-consideration of Exhibit 3 application by KSEB amounts to deficiency of service.
3. To direct the KSEB to regularize the additional connected load in the complainant's system as requested in Exhibits 3, 4,5A and 6.
4. To set aside the decision of the KSEB to penalize the complainant for the alleged UAL.

Arguments of the Respondents: -

The respondent denies all the averments and allegations contained in the petition except to the extent they have specifically admitted. It is as follows;

1).The appellant is supplied with power on the basis of the HT Agreement No.14/2001-02/dated 13.12.2001, executed between the Appellant and KSEBoard. A copy of the same is marked as Exht -B1. The consumer No. is HT B 12/3800 under H.T.I tariff and the date of connection is 14.12.2001. The contract demand of the Unit is 1900 KVA and the approved connected load of the appellant as per this agreement is 1915 KW.

2). The Anti-Power Theft Squad (APTS) of KSEB conducted a surprise Inspection on the premises of the Appellant on 18.12.2007 and detected a total connected load of 3238.25 HP plus 850.2KWplus 36 KVA in use. Hence an unauthorized additional load (UAL) of 1383.33 KW was seen added. A site mahazar was prepared and a copy was given to the manager who was present through out the inspection and acknowledged the same. A copy of the same is marked as Ext- B-3.

3).Due to the detection of UAL, a penal bill dated 06.02.2008 for Rs.99, 66,240/- was issued by the Special Officer Revenue (SOR), KSEB. After the disposal of the Writ Petition by the Hon High Court, the matter of a procedural irregularity came to light. For any irregularity detected under Section 126 of the Electricity Act, 2003, the consumer has to be assessed by the Assessing Officer (notified by the Govt) and it is the concerned Assistant Engineer only. In the instant case, since the earlier provisional demand was made by the SOR of KSEB, who is a billing authority and not an assessing authority. Thus the Assist. Engineer, Electrical Section, Kanjikode, made a provisional assessment of the UAL found at the premises and a provisional bill amounting to Rs.1,90,60,735/- was issued to the appellant. The appellant filed objections and it was intimated that as the subject matter was pending before the CGRF, Kozhikode, any further proceedings under section 126 of the Act was to continue after a decision is taken by the CGRF only. After the CGRF has passed its order in O.P.No.210/2007, a letter was issued to the Appellant directing him to be present for a personal hearing under section 126 to be conducted on 16.09.2009 at 3.00 p.m. The appellant therein expressed his inconvenience on that date and requested for an adjournment for three weeks. In the meantime, they filed this Appeal Petition before the Hon: Ombudsman.

4). The Appellant has exceeded the sanctioned CD on a number of times as could be seen hereunder:

Month and Year	Contract Demand	Recorded Maximum Demand
4/2004	1990 KVA	2005.0 KVA
5/2004	1900 ”	2053.2 ”
9/2005	1900 ”	1921.6 ”
5/2007	1900 ”	2047.6 ”
6/2007	1900 ”	1929.6 ”
7/2007	1900 ”	1908.4 ”
9/2007	1900 ”	1921.2 ”

Also, in April 2004, the respondents had issued a warning letter to the Appellant against repetition of violation of exceeding CD. A copy of that letter dated 22.05.2004 is marked as Ext.B-4.

5). The averments that the appellant has sent letters as mentioned in Exhibits 3, 4 and 5A to the respondents is not correct and hence denied. The respondents have never received any such letters as alleged. Such letters are knowingly cooked up false documents with malafide intentions to foist false evidence. The Appellant has not produced any proof of delivery for these letters. The falsity of these alleged letters would be evident on examining the very contents. The alleged letter

Exhibit P-3 is seen dated 08.11.2001. The appellant is requesting for 736 KVA of additional CD and ends the letter by stating that the existing contract demand of 1990 KVA remains unchanged. The question of existing CD comes only on 13.12.2001, when the HT agreement was executed with the Consumer. In Exhibit P-4, the appellant states that he had filed an application for 'additional connected load of 900 KVA to the existing load of 2835 KVA'. This is incorrect because, the existing connected load is 1915 KW and not 2835 KVA as alleged by them.

6). The sanction of the Electrical Inspector as per rule 63 (3) of the Indian Electricity rules 1956 is a basic prerequisite for energizing any new HT equipment, which is required for ensuring safety. The Inspector oversees the safety aspect of the HT installation from an electrical accident prevention point of view. No other Power system constraints are considered by such authority. The Licensee who provides the electricity on the other hand has to consider the supply system constraints. The mere fact that the appellant had obtained sanction from the Electrical Inspector to energize the load cannot and does not nullify clause 14 (b) of HT agreement and hence does not automatically entitle the appellant to connect load or additional load to the system. As per clause 14 (b) of the agreement, the appellant cannot connect any new machines to the KSEB system without prior written consent from the Agreement Authority, the Deputy Chief Engineer. The consumer is also required to submit application and remit necessary fees. The agreement authority has to consider the technical feasibility of the Lines and Network before sanctioning Power. The respondents have to safe-guard the KSEB system. As the energy situation is so critical, no consumer can connect any additional load or equipment without getting written consent from the KSEB. Here, the appellant has totally violated the contractual terms of the HT agreement and the stakes of other consumers. It is certain from the complaint that the appellant has not received any written approval from the respondents. Thus the action of the appellant in connecting the additional load is violation of the Terms of the agreement and hence an illegal act, causing damage and loss to the Board.

7).The appellant has admitted that they have connected UAL-unauthorized additional load in the petition. This proves beyond doubt that the UAL were continuing for use for the past few years. The penal assessment now made and served to the appellant for UAL is only for one year. KSEB reserves the right to raise an additional bill in future for the whole period mentioned above. The letter mentioned as Ext. 5 A is a total misconceived one which would be proved by the contents therein. Even the address of the official mentioned is non-existent and an official with such an address never existed before.

8). The request mentioned in Exhibit 6 letter dated 03.01.2008 is also misconceived for the reason that it is made after the detection of the UAL on 18.12.2007. An application for additional load in the form with fees paid should be submitted to the DCE, who is the agreement authority. Now, additional CD (contract demand) cannot be sanctioned to the appellant due to constraints in the System, as no surplus power is available at the 220 KV Substation, Kanjikode, which feeds the Power supply to the appellant. As per HT agreement clause 14 (a), any additional power demand can be considered only if there is surplus power available.

9) The interpretation of Supply code and Conditions of supply given in the Petition are not correct. The statement that "as per provisions of supply code, for HT consumers, contract demand shall be treated as connected load" is not fully correct. The connected load is defined in the Supply Code and the terms and conditions of supply 2005 as "the sum of rated capacities in terms of KW/ KVA

of all connected energy consuming devices in the consumer's installations". The definition ends there. What follows is an explanation regarding how billing is to be done for connected load for the three categories of consumers, i.e. LT consumers, HT consumers and EHT consumers and how connected load is to be calculated etc. It is only for tariff purpose, that "contract demand shall be treated as connected load", mentioned in the case of HT and EHT consumers. This means that the monthly fixed charge of HT and EHT consumers shall be based on contract demand/recorded MD.
10). The Regulation 51(5) of the KSEB terms and conditions of supply 2005 clearly elaborates the aspect of UAL. The Regulation 26 of the Conditions of supply stipulates that "should the consumer at any time after the supply of energy has commenced desire to increase the number or wattage of the lights, fans, motors etc in his premise on a permanent or temporary basis or any way alter the position of the wiring therein, request thereof must be made by the consumer to the Board whose representative will call on and inspect the alteration and, if necessary, change meters and fuses and alter the service lines. For this purpose if a single phase service line is to be converted to 3-phase or change of size of conductor to meet the increased maximum demand is necessitated. The work shall be done at the cost of the consumer on deposit work basis. A test report signed by a licensed wiring contractor should also be produced by the consumer along with the application for extension or alteration. The consumer should remit the test fee. Failure to give such intimation can disrupt the supply system and render the supply liable to be summarily discontinued. During such time as, alterations, additions or repairs are being executed, the supply to the circuit, which is being altered, added or repaired, must be entirely disconnected and shall remain disconnected until the alterations, additions or repairs have been tested and passed by the Board. In the event of any unauthorized extension, alterations or repairs resulting in any damage to the system of the Board, the consumer will have to pay the Board all expenses on account of such damages also.
11). Further, in the agreement executed by the appellant with the Board, it has been stipulated in clause 14 (B) which is as follows: 'the consumer shall not make any alteration in the machinery/ equipment either by way of addition or substitution or transfer, which is liable to increase the obligation of the Board to supply electrical energy in excess of agreed contract demand and/or which may affect the supply system of the Board to its detriment. In any event the consumer shall notify the Board of the intended alterations, additions, substitutions or transfer and obtain prior approval of the Board in writing before execution of any such action". It is submitted that the Appellant has totally violated this most important contractual obligation undertaken by him. It can also be noted that such injurious, detrimental happenings occurred to the supply system of the respondents as documentarily conceded by the appellants themselves. The 22 KV Supply line to the complainant's premises started tripping frequently and fluctuation of supply voltage occurred during November 2003 and April 2004. The letters sent by the appellants to this effect proves the same which are produced as Exts.B-5 and B-6 before the Forum.
12). The most specific clause in the HT Agreement, i.e. clause 15 is as follows: "The consumer also agrees that when the actual MD of any month exceeds the contract demand as specified in the agreement, entered into between the consumer and the Board, and if the consumer and the Board have not signed any new agreement as envisaged in clause 14 (a) above, the service shall be liable to be disconnected without notice. Also, the consumer is liable to pay for excess demand

drawn at 150% of the demand charge notified by the Board or at any raised percentage fixed by the Board from time to time, in which case, the revised rate shall be binding on the consumer".
13). It is submitted that the appellant is twisting words when he says that additional load is not liable to be treated as unauthorized under the provisions of the electricity supply code. This is not correct. It is also incorrect the statement that the appellant has requested for enhancement of contract demand. The petitioner had applied for Power for a separate unit B for melting of scarp for making steel ingots. When the respondents proposed a separate feeder for allocating this quantum of power the appellant changed their request as additional contract demand of 2975 KVA to the existing 1900 KVA. Copy of this request of the appellant was produced before the CGRF and is marked as Ext.B-8. The load details listed therein lists a 1500 KW induction furnace as the main load. The site mahazar dated 18.12.2007 does not list any such induction furnace as load. Thus it is sure that the appellant has violated the provision of Supply Code, Terms and Conditions of Supply 2005 and the HT Agreement and has connected UAL, thereby causing heavy loss to Board and injures to the supply system.
14). It is submitted that even now there is no application, from the appellant seeking additional connected load. It is not technically feasible to accommodate the UAL found connected to the appellant's premises. The enhancement of CD cannot be granted now for the reason that the 220 KV Sub Station, Kanjikode, which feeds the appellant's installation, does not have sufficient surplus power at the point of Supply.
15). The respondents strongly refute the interpretation of the appellant that "equipment ratings is irrelevant". If it is so there is no necessity to rate equipment. If the theory of the appellant is applied, the BIS Institution of the Government of India will have to be scraped. It is incorrect to state that Board is now giving power irrespective of load connected.
16). The CGRF went into detail every aspect of the matter and gave ample adjournments to the appellant to produce fresh documents. The appellant came up with newer and newer theories every time. The Forum asked these respondents to produce all files related to the matter and we did so. The question of the entry of connected load in the agreement was not challenged for the past eight years. The appellant produced some letters allegedly written by him, but without any proof of delivery. It is elementary that the burden of proof rests squarely with the claimant. The appellant miserably failed to produce any such proof. The appellant concealed the existence of additional loads from the respondents as they knew very well that it is too big to be regularized with the technical non feasibility of the Kanjikode Substation. Facts being so, the appellant is only trying to escape from the statutory penalization.

Analysis and Findings:-

The Hearings of the case has been done earlier i.e. during the first half of 2010 and dismissed the Petition as it is not maintainable before this Forum as per the existing rules (Section 126 of IE Act 2003 is exempted from the purview of CGRF and Ombudsman as there exists a specific and separate Appellate Authority for dealing the cases under this Section) and accordingly issued the verdict vide order No. P/ 99/ 10 dated 28-7-2010. Aggrieved by the same, the appellant preferred W.P. (C) No. 31002/ 2010 before the Hon: High Court and the Court disposed of the petition on 17-02-2012, remanding it to the Ombudsman with a direction for rehearing and disposing the Petition, as per law, but after giving an opportunity of the appellant being heard.

Since the Hon: High Court has specifically directed this Forum to hear this Petition, the hearing of the Appeal Petition No P/99/10, filed against the penal bill raised under Section 126, Electricity Act. 2003, was again scheduled for hearing. Accordingly, the Hearing of the Case was done on 23rd May and 27th June of 2012, in my Chamber at Edappally. The appellant's side was represented by Mr. MA Mohammed Yusuf Sha, GM, M/s Gasha Steels Ltd and his Counsel Sri.K ManojChandran and the opposite side by Sri. L Namasivayam, Standing counsel for KSEB, the AEE and AE, Electrical Sub division, Kanjikode and Sri N Thankappan, AO, O/o the SOR, KSEB. They have argued the Case on the lines as narrated above.

On examining the Appeal Petition, the statement of facts of the Respondent, the arguments of either side, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof. The main issue is that on 18.12.2007 the APTS had conducted a surprise inspection and detected unauthorized additional load (UAL) at the premises of the appellant. The inspection of the APTS and the Site mahazar dated 18.12.2007, prepared detailing the list of Electrical Load found at the consumer's premises, are not disputed by the appellant. The UAL connected by the consumer was also not disputed except its quantum with respect to the sanctioned connected load and this irregularity falls squarely within the ambit of Section 126 of Electricity Act 2003.

In the Case '*Executive Engineer Vs Sri Seetaram Rice Mill'* (942SC), the decision rendered by a Full bench of the Hon: Supreme Court was that 'the expression "unauthorized use of electricity" under Section 126 of the 2003 Act deals with cases of unauthorized use, even in absence of intention. ……. A clear example would be where a consumer has used excessive load against the installed load simpliciter and there is violation of the Terms and Conditions of Supply, then the case would fall under section 126 of 2003 Act (Para 17 of Judgment).Under Section 126(1) of the Electricity Act 2003, an order of provisional assessment prepared by the Assessing officer, to be served upon the consumer in the manner prescribed, giving him an opportunity to file objections, if any, against the provisional assessment'. Here in this case, as the SOR is not an Assessing officer as notified by the Govt., the Assistant Engineer, Electrical Section, Kanjikode, being the legitimate Assessing officer, issued a provisional assessment bill for Rs.1,90,60,735/- to the appellant under Section 126 of the Act, on 10.9.2008.

Both the appellant and the respondent are liable to abide the Terms and Conditions of the Agreement executed between them. The clauses in the agreement prohibit use of excessive Load, than sanctioned, by a consumer. In *Executive Engineer Vs Sri Seetaram Rice Mill* (942 SC), the Hon Supreme Court held that "On the cumulative reading of the terms and conditions of supply, the contract executed between the parties and the provisions of 2003 Act, we have no hesitation in holding that consumption of electricity in excess of the sanctioned connected load shall be an 'unauthorized use' of electricity in terms of Section 126 of the 2003 Act". Thus the overdraw of electricity than sanctioned load is likely to cause disruption or Breakdowns of the Licensee's Supply System, if not checked properly, as the Electricity belongs to a controlled commodity.

The electricity supply to a consumer is restricted and controlled by the Terms and Conditions of Supply, the Electricity Supply Code and the provisions of Electricity Act 2003.The agreement executed between the appellant and the Licensee, shows the electric connection was given to the

appellant for a contract demand of 1900 KVA with an approved connected load of 1915KW, which is disputed. Firstly, we will look into the point, what is the actual connected load of the consumer?

The argument of the appellant is that he had applied for additional load in 2001 and 2002 itself. To support his argument, he has produced two letters which were marked as Exhibits P-3 and P-4. The respondent denies the receipt of such letters in his office and further alleges that the letters were cooked up false documents with malafide intentions. The appellant was not able to produce any postal records or any acknowledgement of receipt from the respondent, to prove his claim of submitting the applications. As per rules, during 2001-02 period, applications should be submitted to KSEB and also remit the Application fee. The absence of any documents and the non payment of fees fail to prove the claim of the appellant in this regard. Further, the one alleged letter is seen dated 8.11.2001 whereas the date of HT agreement and availing HT connection are 13.12.2001 and 14.12.2001 respectively. The contention of the appellant does not justify since the Electrical Inspectorate Scheme approval dated 30.11. 2001 contain a Load of 1915 KW only, even when the consumer has in hand, the Power Allocation (PA) sanction of 2835 KVA from KSEB. That means the consumer has installed equipments worth capacity totaling to 1915 KW only by 30.11.2001. Then what is the need for applying for more power on 8.11.2001, with out utilizing even the sanctioned power limit, is not seen explained by the appellant.

Secondly, the letter dated 3rd January 2008 of M/s Gasha steels Ltd, states that the approved connected load on the Agreement date was 1915 KW only.

Thirdly the letter dated 11.12.2001 of the DCE, Palaghat addressed to the consumer asks for the remittance of Rs 8, 61,750/- as Service connection Charges towards the HT connection applied for. This amount is seen calculated based for a connected load of 1915 KW only (i.e. 1915 X Rs 450/-).

Lastly, the report of verification of the Asst. Executive Engineer, Kanjikode, on the consumer's installation dated 6.12.2001, forwarded to the Exe. Engineer, recommending for energisation of the Unit, also shows a connected load of 2465.5 HP + 75 KW, which equal to1915 KW at the consumer's premises, just before availing the HT service connection.

All the above facts clearly show that the consumer has availed a connected load of 1915 KW only on the date of Agreement and the Contract Demand was 1900 KVA. Hence the entries made in the HT Agreement as on the date of execution were seen as correct.

Another contention in the Case is based on the proceedings of the Chief Engineer, Kozhikode, regarding the Power Allocation issued to the consumer. As per the Chief Engineer's proceedings dated 25.8. 2001, under column 5-connected load- the PA is shown as 2835 KVA and Contract Demand noted as 1900 KVA. The contention of the respondent that once the HT agreement is executed with specific CD and specific connected load, the Power allocation granted by the Chief Engineer there after cease to exist, is not convincing and acceptable, as the PA will remain in force for the period it was given i.e. for six months and only after that date it will expire. During the PA sanction validity period the consumer has to be allowed to connect upto his sanctioned load limit, of course with intimation to KSEB and remittance of required fees. The Electric Scheme approval of Electrical inspector is also essential in the case of HT connections.

It is noted from the documents submitted by the parties that the Board was willing to provide a Connected Load to the tune of 2835 KVA within a Contract Demand of 1900 KVA and accordingly the Chief Engineer (Ele. Distn), Kozhikode, has issued the same quantum of Power Allocation vide

his order dated 25.08.2001.The Electrical Scheme approval Order dated 30.11. 2011 of the Chief Electrical Inspector issued to the appellant, M/s Gasha Steels (P) Ltd, contains an annexure with details of the load connected which shows (2100+ 365.50) HP plus 75 KW, totaling to 1914.26 KW. The HT service of the appellant was energized initially with this much load. Later the consumer got the Electric Scheme approval of the Chief Electrical Inspector for an additional connected load of 720 KW (order No. B4-29089/2001/CEI dated 4.5.2002), with back effect given from 29.12.2001, (Condition 6 of the order) and with direction to intimate the date of energisation. But there is no document or fees paid by the appellant to KSEB, to suggest that, this much Load or part load was added or regularized/ energized with the KSEB system at that time or subsequently.

The argument of the consumer that, once he paid the penalty @ 150 % for the excess Contract Demand availed by him, then he will not come under the purview of Section 126 of IE Act, 2003, does not seem to be as correct. The Section 126 deals with unauthorized use of electricity which include the connecting and using the unauthorized additional load (UAL). This has been vindicated by the Hon Supreme Court order referred above. But the penalty paid @150% of Tariff rate is for exceeding the agreed Contract Demand of the consumer and is based on the tariff rules stipulated by the Hon: KSERC. On the other hand, Section 126 deals with unauthorized use of electricity, like;
(a) By a means not authorized by the concerned person or authority or licensee,
(b) For the purpose other than for which the usage of electricity was authorized etc.

In this case, item (b) is applicable which includes connecting new electrical equipments (excess load) like the Unauthorized Additional Loads. If there is no restriction or control over the Electrical Load, connected to the Network of a Licensee by the consumers, it will lead to a non reliable and unmanageable Electrical System that is not envisaged by any civilized society.

DECISION: -

From the analysis done above and the findings and conclusions arrived at, I take the following decisions.

While availing the HT connection in 12/2001, it is seen that initially, the Consumer preferred for a connected load of 1915 KW only which is evident from the sanction order dated 30.11.2001 of the Chief Electrical Inspector as well as the installation verification report of the Asst. Executive Engineer, dated 6.12.2001, recommending the energization of the HT service connection to the consumer. Hence the entries of Contract Demand as 1900 KVA and Connected Load as 1915 KW, made in the HT Agreement executed between the consumer and the respondent (KSEB) is found to be in order and correct.

Hence the reliefs sought by the appellant (vide item 1 to 4) are answered as follows;

Item No.1).The order No. 308091/CGRF-KKD/2009-10/93 dated12-08-2009 of the CGRF, Kozhikode in OP No. 210/2007, stands quashed.

Item No.2&3). As detailed in the analysis done above, the contention of the appellant with respect to his documents, Exhibit -3 and 4 (letters dated 8.11.2001 and 4.1.2002) is not proved. Normally, when a request is filed for further additional Power Allocation, an application fee is collected and the consumer has not produced or stated any such details. Further, though the appellant has got power allocation of 2835 KVA with validity up to 2/2002, he has availed a connected load of 1915 KW only within the specified period. For the above reasons, the reliefs sought under item 2 &3 above are not maintainable.

Item No.4). It is a fact that the consumer had obtained Power Allocation for 2835 KVA (2552 KW at 0.9 PF) issued by CE/Kozhikode on 25.8 2001, with PA validity period for six months i.e. up to 24.02.2002. But while executing the HT agreement on 13.12.2001, the consumer had availed only 1915 KW as connected load. The appellant subsequently got an Electrical Scheme approval dated 4.5.2002, for connecting further 720 KW load, from the Chief Electrical Inspector, but having back effect from 29.12.2001, the date of inspection by the CEI of the new electric installation's work done at the consumer's premises. This load of 720 KW was in addition to the connected load of 1915 KW already availed by the consumer. Since the Power Allocation sanctioned by KSEB was only 2835 KVA (2552 KW), he can add a connected load of (2552–1915) = 637 KW only, that is admissible as it falls with in the PA limit.

But the consumer failed, to pay the required fees for regularization of this load (additional load of 637 KW) to KSEB system and also to intimate the energisation of the additional load at the Electrical Inspectorate, as directed by them (condition No. 3) in the CEI's order dated 4.5.2002. But as long as there is no change in the consumer's Contract Demand (CD of 1900 KVA) and the consumer had completed all other formalities like the CEI's approval etc. in time, to connect the additional load of 637 KW within the PA validity period (except the payment of fees to the Board), I am inclined to give the benefit to the consumer and treat his Connected Load, notionally, at 2835 KVA (2552KW), for determining the unauthorized load, used by the consumer. Therefore the Unauthorized Additional Load (UAL) as on the APTS inspection date of 18.12.2007 is determined as (3299 KW – 2552 KW) = 747 KW only instead of 1384 KW (1538 KVA) used in the disputed bill.

In the Case '*Executive Engineer Vs Sri Seetaram Rice Mill*' (942 SC), the Hon: Supreme Court has made clear that the 'excessive load' connected by the consumer will come under the purview of 'unauthorised use of electricity' as defined under Section 126 of the IE Act, 2003. Further, as per Section 126 (5) & (6) of the same Act, the consumer is liable to pay the penal charges for the UAL availed without sanction. The UAL has been found as 747 KW only. The penal bill issued to the consumer needs revision on this account. Further, there is no scope for charging Duty @ 10% and surcharge @ 2.5% for the penal portion in the bill. The consumer's disputed bill (bill dated 10.09.2008, for Rs.1, 90, 60,735/=) shall be revised for a UAL of 747KW and also the due date of the revised bill shall have 30 days time given, for making the payment.

It is made clear that, the total connected load of the industrial unit shall remain at 1915 KW and the Contract Demand as 1900 KVA itself, till more Power load is sanctioned by KSEB for increasing his CD. For more power loads over this limit of 1900 KVA, the consumer may file application with concerned KSEB authorities and the respondent KSEB shall process the requests as expeditiously as possible and release the required power, as per KSEB Supply Code and the Electricity Supply Rules and Regulations notified by the Hon KSERC.

However, the respondent is seen to have denied the appellant's request for Power for a second Unit and also for additional power to the Unit under dispute, for want of sufficient spare Power capacity available at Kanjikode Sub station at a later date. This Authority feels that there exist no provisions in Electricity Supply Code to deny the request of consumers for power or more power, if party pays the estimated cost of the Line and equipments needed for providing the additional Power demanded. Hence, if there is delay beyond three months from the date of this order, to provide additional load (CD) to the appellant for this Unit, the respondent shall allow to add a load

of 637 KW as connected load only (without change in Contract Demand of 1900KVA), provided the consumer clears all the pending arrears of this HT connection and produces the Electric Scheme approval of the Electrical Inspectorate for this much Power load, and pays the required fees.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is allowed to the extent ordered and stands disposed of as such. No order on costs. Dated 15th October, 2012,

Electricity Ombudsman.

Ref No. P/ 99/ 2010/ 1423/ Dated 15.10.2012

Forwarded to: 1). M/s Gasha Steels Pvt. Ltd.,
NIDA, Kanjikode,Palakkad.
2).The Deputy Chief Engineer,
Electrical Circle, KSEB, Palakkad.
3).The Special Officer (Revenue), KSE Board,
Vydyuthibhavanam, Pattom,Thiruvanathapuram.
4).The Assistant Executive Engineer,
Electrical Sub Division,KSEB,Kanjikode, Palakkad.

Copy to: - 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam,Vellayambalam, Thiruvananthapuram-10
2). The Secretary, KSEBoard,
VydyuthiBhavanam, Pattom, Thiruvananthapuram-4.
3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, VydyutiBhavanam, Gandhi Road, Kozhikode-32.
4). The Special Officer (revenue), KSE Board,
VydyuthiBhavanam, Pattom, Thiruvananthapuram-4.