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APPEAL PETITION NO: P/291/2012.

(Present: T P Vivekanandan)

APPELLANT : M/s.Pyarelal Foam Pvt. Ltd,
&
M/S.Aditya Fabrics.
Koyyamarakkad, Kanjikode, Palakkad.

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

ORDER.

Background of the case:-

The Appellants, M/s Pyarelal Foams (P) Ltd and M/s Aditya Fabrics are HT Industrial consumers, under Kanjikode Section, Palakkad, having consumers Nos. 26/4422 and 8/4798 respectively. The Electric connection of M/s Pyarelal obtained in 7/2006, is having a connected load of 310 KW and a Contract Demand of 400 KVA. While so, a surprise inspection was conducted by APTS of KSEB on 15.6.2012, at the premise of M/s Pyarelal Foams (P) Ltd and found that Con. 26/4422 was secretly supplying power of 384.56 KW to the nearby HT Con. 8/4798, M/s Aditya Fabrics, by extending LT supply unauthorisely. A mahazar was prepared by the Assistant Engineer, Kanjikode and a copy of the same was issued to the officials of M/s Pyarelal and M/s Aditya, who were present at the time of inspection, under due acknowledgement. Based on the findings of the inspection, a provisional bill for Rs. 1, 40, 52, 500/- was issued to M/s Pyarelal Foams, on 30-6-2012. Aggrieved by the bill, the consumer filed objection before the Assessing Officer on 7.7.2012, which was dismissed after a hearing on 27.7.2012, vide order dated 28.7.2012. Still aaggrieved against the impugned bill, the petitioner filed a Complaint before the CGRF, Kozhikode on 4.7.2012 and the CGRF disposed the same vide Order OP No. 29/2012-13 dated 11.7.2012. Not satisfied by the decision of CGRF, the appellant has submitted an Appeal Petition dated 31.7.2012 before this Authority.

Argument of the Appellants: -

The appellant has adduced the following arguments in his Appeal Petition dated31.7.2012.

1).The order passed by CGRF is erroneous, illegal, and without considering the evidence and facts submitted by the Appellant. The CGRF failed to consider the fact that the complaint is not against unauthorized use of electricity but about; (a) the Tariff applicable to it, (b) delay in giving service connection requested, (c) non-compliance of Act, Rules and Regulation by the Employees of KSEB and (d) for compensation against the damages occurred.

2).The hearing at CGRF was conducted only because the petitioner insisted for the same. This shows that CGRF is acting as an extended arm of KSEB because the petition was for allowing proper Tariff of the Bill, punishment for dereliction of duties and compensation for damages which comes under the purview of CGRF.

3).The argument of the respondent that there is 'separate compound' for the two connections is wrong because even in site Mahazar it is written that there is only one compound.

4).The Electricity Act, 2003, does not permit the usage of the energy for different Tariff and sale of electricity. Even if the supply is extended as per the site mahazar, it is extended in the same compound with standard Cable, Changeover etc. and has been used for industrial purpose only.

5).In the Mahazar nowhere is written that the supply is given to Aditya Fabrics for 384.5 KW. It is written that the supply is given to a change over switch which is taking care of Plant: 2 and corroborating the same it is written that when KSEB supply is switched off, Plant: 2 was working, hence the connection of 384.5 KW is wrong and cannot be accepted. It is also stated that the work was done in a permanent manner and approval obtained from Electrical Inspectorate for using the entire load i.e. 384.5 KW (plant 1 and 2) out of which the disputed load is only the load in plant 2.

6). It is admitted that the consumer have applied for additional 100 KVA load on 19.05.2011. The argument of the AE that the industry is classified as power intensive is wrong because till the date the bill is given is for non-power intensive. Moreover, the consumer was always requesting for 100 KVA additional load and complaining with higher authorities for its refusal. This is evident from the letter to Assistant Executive Engineer (Ext.-14), decision of Board (Ext-13) and letter from Assistant Engineer (Ext-12). The AE have intimated the matter relating to power intensive industry only by letter (Ext-12) along with decision of Board and stated that it is possible for enhancement of load only when the power situation improves. Tariff for power Intensive Industry is separate and 'why and how' the Aditya will become a power intensive unit is not known.

7). After giving application for Power and paying Rs.5000/- as advance and having regular follow up, when compensation is demanded, the allegation of 'power intensive' is only a pressure tactics of KSEB. The decision of Board as per the letter given by AE (Ext-12 and 13) is totally in violation of the Act 2003, Sec. 43, Supply Code clauses 5 (5) and (8) and Terms and conditions clauses 3(5) and 5. More than that the Board is crossing their jurisdiction and stepping into the shoes of KSERC.

8).The observation of the Forum that the petitioner has no complaint on the inspection and site mahazar is wrong because the petitioner is not at all accepting the inspection and site mahazar as a legal procedure and document.

9).As alleged by KSEB, there is no diversion of power from one service connection to another and the new allegation of evasion of penal charges is not true and correct because even if there is any extension, it is only from one factory to a new production plant exclusively run by a 250 KVA Generator, properly connected through change over, situated in one compound.

10). KSEBoard already admitted that the Inspectorate has approved the load, but CGRF states that it is not approved. The usage of allotted power is the right of a consumer because he is paying for it. The usage is only for productive purpose and not commercial. The Act or Rule does not prevent the usage of energy in the compound/premises for the purpose for which it is given.

11).The decision of the tariff is totally vested with CGRF and Ombudsman. Similar cases have been earlier considered by CGRF and Ombudsman. Taking into consideration the noncompliance of the

Board Orders, the Hon Ombudsman has directed to apply only the tariff based on purpose, in case of unauthorized use. The order was accepted by KSEBoard and the penal charge was collected accordingly without any objection.

12).The petitioner has approached higher offices for allocation of power and Exts-12, 13 and 14 confirms the same. The Forum cannot arbitrarily decide that mere payment of advance of Rs.5000 is not sufficient for getting 100 KVA load. In fact KSEBoard have admitted that they have received application along with advance even though advance payment is not required.

13).The petitioner was not simply tapping power from the nearby service connection and enjoying the same. The entire power used by the petitioner was metered and payment made. There is no loss for KSEBoard.

14).Here the fault is only with KSEBoard and their employees. They have denied justice and now to cover up the dereliction of duty by Engineers, they are coming out with the argument that 100 KVA is not additionally required by the consumer. The requirement of the consumer is decided by him only and not by KSEBoard. The KSEBoard is bound to comply with Act, Rules, and Regulation and provide the supply accordingly.

15).The CGRF have gone wrong in declaring 384.5 KW as unauthorized additional load and misuse, when KSEB is admitting that the load is approved by Inspectorate and usage is only for industrial purpose.

16).The KSERC Regulation is not allowing the complaint pertaining to Section 126 but it is limited to 126 and not with tariff. The KSERC never prevented the CGRF or Ombudsman from entering into the merits of tariff.

17).The CGRF would not have directed the consumer to approach the Assistant Engineer for deciding mode of tariff because it is not coming under the purview of Assistant Engineer. The Assistant Engineer is not even considering the Board directions, which is not seen by CGRF. The CGRF does not have the authority to declare and direct the consumer that he has done grave irregularly and also direct respondent to proceed against the consumer as per section 126 of the Act. The CGRF has ordered without considering that there is an appeal provision in the Act. The CGRF has not considered that 30 days time is to be given for filing complaint with Ombudsman. These are only civil proceeding and an affected party should get sufficient opportunity for presenting their case and concerned Forums should give patient hearing.

The copy of the statements of Facts submitted by the respondents before the CGRF, in OP No. 29/2012-13 is not given to the appellants. The statement filed by the respondents is totally wrong, false and misleading. There is no unauthorized load or prejudicial use of electricity in the premise. The site mahazar submitted by the respondent admits that it was energized as per clause 43 (4) of CEA Safety Regulation with 'approval/order' of the Electrical Inspector vide No. 2011/9/EIP dated 6.5.2009. As per clause 31 of CEA Safety Regulation, the inspection by supplier is not must for load energizing. The Indian Electricity Rule 1956 (repealed) clause 47 only mandates the inspection by supplier. This was done by the legislation to avoid duplication of same work and to give more time to the supplier to concentrate in their job of developing and maintaining an efficient coordination and economical distribution system complying with Section 42 0f the Act.

Exhibit B-3 along with B-5 submitted by the respondent is a clear admittance of the fact that all three companies are under same management although they are having separate entity. It is very

clear and admitted that they enjoy same premises enclosed by one compound wall. The purpose of energy used is Industrial, and since the Management is same there is no re-sale of energy. The B-3 document confirms the stand taken by the Appellant. One compound wall and single entity with a common gate etc. are sufficient to prove that all Factory Buildings, Structures, Land, Area etc. in one compound, is a single premise. Since different connections can be given in single premise, it is not a requirement that each connection should have separate premises.

The respondent themselves admits that there is only one compound surrounded by forest on three sides and river with a bridge constructed by the common management. Hence all electric connections given inside can be considered only as different connection in the same premises. The 'B-3' document especially the drawing produced along with 'completion report/application is clearly marked as per Supply Code. There is only one premise as per the drawing including Land, Building, structure or part of it, situated in an immovable property, details of which have been specified in the application or agreement prescribed for the grant of Electric Connection.

The clause 2(1) (f) (iii) of the KSERC (CGRF and Ombudsman) Regulation 2005, authorize CGRF to have jurisdiction over 'charging of price in excess' i.e. matters related with Tariff. The Clause 2(1) (f)(vii) again generalize the authority of CGRF by extending to 'any other grievances' with which CGRF can check the complaint, whether it related to Sec.126, 135 and 161 of the Act. It is quite normal and natural for CGRF to have authority to check whether a complaint is related to Sec.126, 135 and 161, because only in this particular Rule this restriction is stated. The Assessing Officer is not the authority for sorting the complaints and if it is so it will be a severe injustice because it will give him an opportunity to manipulate and to have unlimited control over a poor consumer.

As in the present case, if Assessing Officer is designated as a person with full authority to define 'premises, extension, tariff etc' and to decide up on its sanctity, a lot of consumers will become 'scapegoat' of the concerned officer as what has happened in 'Aditya' case. In most cases the authorized officer will be a person of lowest rank either a new inexperienced person or promoted person without integrity. Hence appeal should lie within the jurisdiction of Hon Ombudsman, to confirm the applicability of unauthorized use.

The Assessing Officer who assessed the unauthorized usage is an incompetent person because for preparing a simple provisional invoice (that too incorrect) he has taken more than 15 days. He could not even follow the fact that he himself have written that the Tariff applicable is HT1 in the notice i.e. ' Provisional Bill ' attached as B-6 documents by the Respondent, complying with the 'service of Provisional Assessment Order Rules 2005'. He has thoroughly mistaken to understand the Sec. 126(6)(Tariff applicable for the relevant category of service), clause 27 A (6) of Supply Code, Clause 51 (6) of KSEB Terms and Conditions of Supply 2005. The Tariff applicable for levying the penalty shall be the HT/EHT Tariff that would have been applicable for the unauthorized usage depending upon the purpose, as per Board Circular No.77/IGP comp/2010/135 dated 31.03.2010. Clause 3- Assessment-as per Tariff envisaged for the purpose, Annexure 5 clause 7 of the circular is more specific and permits only 'fixed charge portion' for 'unauthorized extension' to be applied. If calculated accordingly, as if there is unauthorized extension, the maximum penal charge that can come is only 150 KVA x Rs.270 x 12= Rs.4, 80, 000/- (taking diversity as 4).

There was no 'noncooperation and adamant attitude' from the Appellant side. In fact ignorance and lack of awareness of the officers about 'Electricity Act, Supply Code, Terms Conditions, CEA

Safety Regulation, Board Orders, Board Circular etc constituted to the delay and wrong conclusion and findings by the Assessing Officer. The Act, Rules, Regulation and Orders of KSEB are specific and clear and hence easy to implement. Hence the case of 'misleading the authority with malafide intention' does not arise.

The appellant took only one stand that the two Firms have separate entity in the same premises under the same management and purposes of all are Industrial. As per 2003 IE Act, more than one connection can be given in a premise and even crossover and overlapping is a common feature, in all large installations. With a 'Single Entrance' as stated by the respondent there can never be different premises or four premises. All shopping Malls, Multipurpose Housing Complexes, Educational Institutions, Court Complexes, Collect orates, Secretariats (with BSNL tower), Railway Station, Bus station etc. have electric connection with different combinations, overlapping and crossover. When we say premises we will only say High Court and its premises and we will never say 'Bank or Post Office' inside the High Court and its premises. Hence we can conclude that an area with a restricted entry or single entry as a premise and there cannot be further 'sub-premises 'inside a premise. Since the different connections for different applications and single point connection for different application are possible in one premise, hard and fast restriction over 'crossover and overlapping' is not practically possible.

The 'B- 10' document clearly shows that the land is allotted to one management with a single compound. It is common to have different Buildings Nos. in the same premises. The Tax collected by the local body is based on plinth area, type of construction, purpose etc. for which they put different numbers. As per Board Order (PM) No. 1611/2011 (KSEBoard TRAC, COMP (RY 16/10) TVM dated 27.06.2011 even building number or permission from local body is not a requirement for getting electric connection. There is no restriction for different owners occupying different building Nos. and areas in the same building premises.

The Electrical Inspectorate Approval is the only mandate required for energizing additional load in HT premises (CEA Safety Regulation Clause 31 and 43 (4). Sanction given by inspectorates is sufficient for energizing the same.

Complying with Supply Code, Clause 5, the consumer has given application for additional load with all relevant documents on 19.05.2011. Since the application was totally in order and does not have any deficiencies, KSEB ought to have granted it. But they have not responded and the KSEB employees requested Aditya to draw up to 90.84KVA from Pyarelal till allotment of load to Aditya.

After collecting application and completion report, the KSEB has to do its verification and allow the consumer to use the power without any over drawl, loss of revenue or any other damages to KSEB. But due to other reasons, KSEB conducted an inspection and projected the consumer as if he has done grave mistake which surmounts to cheating. There is no clear procedure for power allocation and KSEB generally, will not conduct an inspection, if the KVA consumption is below the contract demand. There are four connections in the same premises. The Meter reader and the AE regularly visit the site and have not pointed out any abnormality or irregularity in the premises.

KSEB came out with a fabricated story of Power Intensive Industry and requirement of Board decision only after APTS inspection and filing of petition with CGRF. The AE in the letter dated 16. 07.2011 stated that he has 'processed the application in time and transmitted to higher office for approval, is a clear admission that the application was in order and the consumer is eligible for

power enhancement or else the AE would have replied in writing, pointing out the deficiencies as per clause 5(5) of Supply Code or clause 3 (5) of T & C, 2005. It is a well known fact that denial of power connection to a consumer is a service lapse and violation of Sec. 42, 142, 143, 144, 146 and 147 of the Act. The appellant cites that denial of service connection is breach of the constitutional right under Article 21 of Constitution and cites Court cases giving punishment for it.

Wrong 'assessment and fixation' of Tariff by Assessing Officer can be considered only as an act of incompetence or vengeance of the officer. Erroneous assessment and proceedings penalizing a consumer to a tune of Rs. 1.4 crore (which is not practically possible to remit) wrongly should be treated as deficiency of service and intended to harass the poor consumer. The various exhibits produced by respondent as B-15, B-16, B-17, B-18, B-19,B-20, B-21 and B-22 clearly shows that the appellant have cooperated with the respondent to full extent but the respondent was always approaching the 'appeals' of the appellant with a closed mind. The final bill and order dated 30.7. 2012 was released by the respondent without applying mind and without considering the argument of appellant. This is evident from the exhibit B-22 produced by respondent.

Challenging the Tariff part, the appellant also challenges the harassment done by the assessing officer in the pretext of unauthorized load. The IE Act and subsequent Regulations empowers the CGRF and Ombudsman a lot of extended powers. The Clause 2 (1),(vii), of CGRF and Ombudsman Regulation permits interference of Ombudsman in all grievances connected with electricity except those with Sec.126, '135 to 139' and 161. The Act or Regulations does not give any Authority or power to the Assessing Officer to arbitrarily decide the applicability of sec.126. In fact it is giving all general powers to CGRF and Ombudsman than preventing Ombudsman from entering into the matters related to sec.126. This clearly shows that the Ombudsman can examine the applicability and genuineness of sec. 126 in a particular case. At present CGRF is the 'punching Arm' of KSEB. Hence the appellant never expect a reasonable solution for the grievances of a consumer.

<u>Further the appellant stresses the points on:</u>

a) The case referred 'EE Vs Seetharam Rice Mill' is not applicable here because there the usage of Electricity above a particular value was attracting a different Tariff. The appellants argue that since in this case there is no usage of electricity for a Tariff, which is different from the authorized Tariff other than that allotted, they cannot rely up on the above referred case.
b) With the definition of premise being given, different connection even with different Tariff in a premise is possible. The statutory requirement for energizing an additional load in a HT premise is only the approval of Electrical Inspector. KSEB will not be at a loss because if the usage exceeds a particular limit it is being charged @1.5 times the normal charge. Regarding safety, protection and other damages, the permission of usage above 30% of the contract value is sufficient to prove that entire connection to the consumer is designed with a tolerance of minimum 30% and hence the problem of 'system safety', protection and any other damages' will not arise. The appellants' contention is that for energizing a plant or Machinery in the same 'premises/compound 'approval of Electrical Inspector is sufficient. The area covered under single lock and key can be considered only as one premise even if there are different service connections.
c) The story of power intensive is a cooked up one to divert the attention of CGRF and Ombudsman. This 'story' was not there when the application with fee of Rs.5000/- for additional load of 100 KVA was given by Aditya or during its verification within 7 days of application by Assessing Officer.

After one year, the story of Board decision, its internal communications and the history of power Intensive Industry etc. is ridiculous. More than that, providing power supply to power Intensive Industry, is not based or restricted by KSERC. The action of the respondent is totally illegal which attracts even the punishment of 3 year imprisonment and heavy penalties. The Board does not have any Authority to take a decision restricting the power supply (whether new or additional).

d) The appellant never have unauthorized usage of energy or justified any usage. As stated earlier only KSEBoard have violated the Act, Rule and Regulation including Article 21 of constitution.

e) There is only one compound, one premise and one management then how can there be a re-sale of energy. In order to divert the Hon Ombudsman from ordering severe action against KSEB, the respondent is coming out with new cooked up stories of re-sale of energy. This is an afterthought and non-fruitful effort to escape from heavy penalty for noncompliance of the directives. There is no violation of Sec.12 or clause 49 by the consumer but KSEBoard have committed grave offence by denying power by way of not allowing the consumer the permissible use of 90 KVA above the contracted load for which the consumer Pyarelal was making payment. All extensions are done in the same premises which are under the same management. There is no sale of energy as alleged and there is no violation of safety rules. The respondent in order to conceal and hide the mistake is coming out with different stories of resale and unauthorized use of electricity.

f) The penal provision in the Act 2003 Section 126 is only for unauthorized usage (i.e. unauthorized additional load/unauthorized extension) and usage of energy for the purpose other than that for which the usage of electricity was authorized. Other than theft, all other misuse including resale is not covered under section 126. Here there is no resale or unauthorized usage. If unauthorized use or extension is proved, the maximum possible penalization is only two times the fixed charge for a period of twelve months. As admitted by the respondent even if any mistake of unauthorized use/ extension is committed, it is of less nature, comparing the case of V.S. Jeeva Kumar Vs Asst. Exe. Engineer where the alleged case was of UAL causing heavier revenue loss to KSEB.

g) All electricity penal bills have clear cut proceedings for working out the quantum of energy used and the tariff applicable for the same. The authority for deciding the tariff in case of theft and unauthorized use is KSERC and hence the CGRF and Ombudsman have all the jurisdiction over the tariff and no bar is extended by any court upon the tariff portion. Hence the appellant's requests to direct the authorized officers to reassess the impugned bill complying the applicable tariff.

<u>Arguments of the Respondents: -</u>

The contentions of the respondent opposing the averments of the respondent are the following. According to the respondents all that are stated by the appellants in its representation are denied as incorrect and false except the facts expressively admitted hereunder.

1). This Appeal is not maintainable either on law or on facts. The subject matter of this appeal is an assessment made on the appellant No.1 under section 126 of the Electricity Act, subsequent to detection of unauthorized and prejudicial use of Electricity, in their premises. Unauthorized resale of energy was detected, being carried out by Appellant No.1, to the Appellant No.2 premises. The KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, bar the CGRF from entertaining any matters pertaining to assessment U/s. 126. This authority having jurisdiction to entertain appeals only, on orders of the CGRF, the aforesaid bar on CGRF applies to this authority also as there is no

provision to the contra in the Regulations. Hence it is submitted that this appeal is beyond the powers of this authority and hence may be dismissed.

2). It is submitted that the declaration furnished by the appellant before this authority to the effect that the subject matter of the present complaint has not been pending/decided by any forum/court/arbitrator/any other authority is utter falsehood. The same subject matter was pending before the Assessing officer, who is the empowered authority U/s. 126 of the I E Act 2003, at the time of filing appeal and the Assessing officer was unable to complete its proceeding only on account of non-cooperation and adamant attitude of the appellant. The Assessing Officer has passed its final order on the provisional bill on 28.07.2012 and the same was issued to the appellant No.1 on 30.07.2012. The proceedings of the Authority under section 127 of the Act have started immediately thereupon, unless the appellant No.1 accepts the final bill and pays the entire amount. Hence, the above declaration amounts to deliberately stating falsehood under oath and misleading this authority with malafide intention.

3).It is incorrect to say that the premises of the appellant No1 and appellant No.2 are one and the same. The Ext B-3 letters, issued by the appellants, conclusively prove that the two premises are entirely different. It could be seen that the appellants took the above stand that the two premises are entirely different and separate in all respects in the year 2008, because it suited their interests then. Now they have made somersault and is saying that the two premises are one and the same because such a stand suits their interest now. This double speak is barred by Section 115 of the Evidence Act 1872 and is impermissible in law. The documents submitted by the appellants to KSEB (exhibit B-3), prove conclusively, that the two premises are entirely different from each other. The appellants are stopped from contending that the two premises are one and the same.

4).It is submitted that the terms “premises” and “compound” have entirely different meanings. The Supply code, 2008, defines premises as ‘premises include any land, building, structure or part of it, situated in an immovable property, details of which have been specified in the applications or agreements prescribed for grant of Electric connection’. Thus there could be any number of premises inside one compound. From exhibit B-2, it could be seen that there are four separate premises, in the plot of 8.417 acres of DIC land, on which the appellant No.1 is bounded by public road on the east, north and south, and the appellant No.2 premises is bound by the road on the east, north and south. Since the entire area of 8.147 acres is bounded by forest on three sides and by the river on the other side, with only a single entrance, through a bridge constructed over the river, the entire area (8.147 acres) appears as one compound and hence described as one compound in the site mahazar.

5).The copy of land allocation orders of the DIC in respect of these four separate premises is produced herewith as exhibit B-10. Also, it is undisputable that the appellant No.2 factory shed has separate building number assigned by the Pudussery Panchayath, based on which separate HT service connection bearing consumer No.8/4798 was issued, with a contract demand of 300 KVA to the appellant No.2. A copy of the ownership certificate is attached. The documents of Ext B-10 & B-11, along with exhibit B-3 prove that the premises of the appellant No.1 is entirely different and separate from that of appellant No.2.

6).It is incorrect to state that the Electrical Inspector has approved, the appellant No1 and No.2, to connect and use the load of 384.5 KW installed inside the premises of the 2nd appellant using the

power Supply drawn from the 1st appellant's premises. There is no such approval. The Electrical Inspector has verified whether the plant No.2 load totaling to 384.5KW installed in the premise of Appellant No.2, could be energized and issued sanction for energizing the same. It is implied in the sanction itself that the Electricity for driving this machinery shall be drawn only from the service connection of the 2nd appellant, for the reason that the load is installed inside the premises of the 2nd appellant. The appellants are trying to drag the Electrical Inspector in this case unnecessarily.
7).The Assessing officer has issued the provisional bill to the 1st appellant on 30.06.2012, (Ext B-6). The delay of 15 days, from the date of inspection to the issue of the provisional bill, it is submitted that Law does not bar the Assessing officer from taking reasonable time for verification of facts, circumstances, previous records and evidence available on record. There is nothing illegal in the Assessing officer for taking reasonable time for issuing the provisional assessment. No prejudice is caused to the appellant due to this delay so as to file objections to the provisional bill if any and due time and opportunity as per law has been granted to the appellant.
8).The appellant filed a letter dated 06.07.2012, stating that it has filed a complaint in the CGRF, and hence requesting to keep the proceedings pending till orders of CGRF and filed an objection to the provisional bill on 07.07.2012. The appellant was directed to appear for a personal hearing on 13.07.2012. There was no representative of the appellant on the hearing on 20.07.2012. Since the Assessing Officer is statutorily bound to pass a final order of assessment with in 30days of the service of provisional bill and since the pendency of an appeal before CGRF is not a statutory bar on Sec.126 proceedings, a letter was issued on 20.7.2012 itself, directing to attend for a hearing on 27.7.2012, failing which the matter will be decided exparte. The appellant No.1 attended the hearing on 27.7.2012 and the next day the Assessing Officer passed its final order of assessment. The final bill was issued to the Appellant on 30.7.2012. It is made clear in the letter accompanying the final bill that the appellant No.1 has the option of either accepting the bill or may prefer an appeal before the Appellate Authority within 30 days after remitting the statutory amounts.
9).The contention of the appellant that it is only challenging the tariff part of the provisional bill before this authority is not maintainable in law. The very basis on which any bill on electricity is raised is the tariff. Therefore, the bill and the tariff cannot be considered as two different and separate matters. Any authority reviewing the tariff is actually reviewing the bill. Therefore any authority not empowered to examine the bill has no authority to examine the tariff on which the bill is built, or any other aspect regarding the bill. It is a settled position that parallel proceedings in law are not permissible. The Electricity Act 2003 has vested the assessing officer with exclusive right to examine the provisional bill and pass final orders on it, after providing the appellant with an opportunity of being heard, within the time limit prescribed. It is for the appellant to decide whether they avail the opportunity of hearing so provided to present its objections. Here, the appellant has been provided with ample opportunity of being heard. The proceedings of the assessing officer started the day the provisional bill is issued to the appellant and will conclude only with the passing of final order. Immediately thereafter, proceedings under section 127 take over, whereupon the proceedings of the appellate authority start, unless the appellant accepts such final order of the assessment and files an appeal. This is a statutory procedure, which starts upon serving the provisional bill and finishes upon the disposal of the appeal by the appellate authority. In this particular case, the proceeding of the assessing officer has already concluded

and the proceeding of the appellate authority under section 127 has started and is in progress. Since the bill issued is based on tariff, the authority vested with the right to hear the appeal is automatically empowered to examine whether the tariff applied for computing the bill is correct or not and pass its orders accordingly. The appellant is trying to drag another authority, which is barred from and hence not empowered to entertain matters pertaining to section 126 and 127 into the exclusive domain of the Assessing officer and the Appellate authority. This is barred by law. The stand of the appellant is unlawful, but this authority can only act lawfully. The appellant may be directed to comply with statutory requirements and provisions that IE Act 2003 stipulates, which is binding on the appellant.

10).The statement of the appellant that the Electricity Act does not permit the usage of Electricity outside the premises is correct. The intention of the Parliament, to provision on unauthorized use of Electricity and theft of Electricity in the Electricity Act 2003 has been interpreted by the Hon Supreme Court in the Executive Engineer and Another V/s. Sree Seetharam Rice Mill [(2011) STPL 942 SC)] and the appellant cannot skew that interpretation. Moreover, the statements of the appellant amounts to plain admission of the fact that the premises of the Appellant No.1 is entirely different from the premises of the Appellant No.2, and that it extended the power supply from the premises of No.1 to No.2 unauthorisely. The stand of the appellant before the CGRF was that the two premises are one and the same and hence there is no illegality in extending the power supply from one premise to another. This respondent demolished that defense of the appellants before the CGRF by producing documents written by the appellant themselves. Hence the appellants are now taking the stand that “the two premises are separate, and the Electricity Act 2003 does not bar such an extension of power from one premise to another and it is extended in the compound with standard cable, changeover etc and have been used for industrial purpose only” . This position of the appellant is illegal. The Electricity Act 2003 has not given any such exemption to anyone.

11).It is incorrect to say that the appellant does not know why appellant No.2 is classified as power intensive. It has been explained in the statement of facts submitted by these respondents. Exhibit B-7 Tariff order is applicable for both the appellants and respondents alike. It is specified in the tariff order that when the connected load of the heater loads of the appellant is more than 20% of the total connected load, it has to be classified as power intensive. In the instant case since the sanction of the Board is required for providing any power to power intensive units, the application of the appellant No.2 was forwarded to the Board and the Board took a decision that the request can be considered when the power position improves, which was communicated to the appellant. Hence, there is no illegality involved.

12).The averment that appellant had submitted application for additional power in May 2011, which is not granted yet as a justification for unauthorisely extending power supply from the premises of the appellant No.1 to No.2, cannot be admitted in law. The Hon Supreme Court has struck down such a position taken by Viswa Caliber Builders in the Punjab State Electricity Board Vs. Vishwa Caliber Builder Private Limited [(2010) 4 SCC 239]. The grievance now presented is malafide for the reason that it is belated and only the result of an afterthought for the reason that no such grievance is raised before 15.06.2012. The appellant No.2 has not been penalized in the

instant case, but only the appellant No.1 is penalized for unauthorized use of Electricity as per section 126 (6) (b) (ii) and 126 (6) (b) (v).

13). The present case is one of unauthorized resale of Electricity by appellant No.1 to appellant No.2 which is blatant violation of sec.12 of the IE Act 2003 and Regulation 49 of KSEB terms and conditions of supply 2005. The Section 12 of the Act 2003 reads-'Authorized person to transmit, supply etc. Electricity-No person shall (a) transmit Electricity or (b) Distribute Electricity or (c) undertake trading in unless he is an authorized to do so by a license issued U/s. 14 or is exempt U/s.13. Here, the act of the appellant No.1 is a contravention of sec.12. Further, Regulation 49 of the KSEBoard terms and conditions of supply 2005 reads- The consumer shall not resell energy purchased from the Board to a Third party except as follows: (1) if he holds a sanction or license of distribution and sale of energy (2) or under a special contract permitting him to resale of energy regulated in accordance with provisions of contract. The appellant No.1 is not a licensee. It does not hold a sanction from any authority for resale of energy. There is no contract between the appellant and respondents permitting the appellant to resell energy. Therefore the action of the appellant is unauthorized resale of energy and is patently illegal.

14).It is settled position in law that the decision of an earlier case has to be applied on the present case on hand, the facts and circumstances of both the cases have to be identical. The appellant is contending that the decision of this authority in V.S. Jeeva Kumar vs. Assistant Executive Engineer, KSEBoard, Angamaly on 30.03.2012 has to be applied on the case on hand. This is incorrect and is not allowable for the reason that the facts and circumstances of that case is entirely different from this case on hand. This case cannot be treated as a simple case of unauthorized additional load, but it is a case of deliberate and malafide unauthorized extension of supply for which the appropriate tariff is LT VIII only.

15).The Supreme Court of India in the Executive Engineer & Another Vs M/s Seetharam Rice Mill [(2011) STPL (web) 942] has held unambiguously that the provisions of Section 126 read with 127 of the 2003 Act, in fact, becomes a code in itself. Section 126 of the Act would be applicable in cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorized use of electricity". If a person unauthorisely consume electricity, then he can certainly be dealt with in accordance with law and penalty may be imposed upon him as contemplated under the contractual, regulatory and statutory regime. (Para 43). The reference of category in section 126 (6) fully substantiate the view that we have taken that change of category by consumption of excess load will automatically bring the defaulter within the mischief of Explanation to Section 126 (6) (Para 51).

16).From the position of Law and the consistent stand taken by the apex court, it is clear that the appellants are only entitled for statutory remedies under section 126 and 127 of the Electricity Act 2003 and have no other alternate remedy. This appeal is therefore frivolous, vexatious and has no bonafide. This appeal is not maintainable in law for the reason that the subject matter is beyond the jurisdiction of this Authority. The prayer of the appellant to cull out of the tariff part from the bill and hear it separately is not permissible because, tariff is the bedrock of the bill, and hence the tariff and the bill cannot be considered as two separate entities. Law has vested the exclusive right to examine the bill on the Assessing Officer U/s.126 and the Appellate Authority U/s 127 that

has ample powers to examine whether the tariff applied in the bill is appropriate or not. No other authority can transgress into their exclusive domain as held by the Apex Court (Supra).

17). It is clearly stated in the letter accompanying the final order of Assessment (Exhibit B-22) that the appellant No.1 has the option of either accepting the final order of assessment and remit full amount or prefer an appeal before the Appellate Authority, after remitting the amount stipulated by statues. Further action will be taken only as per the orders of Appellate Authority in this case. It could therefore be seen that the interim application before this Forum is totally unwarranted.

In this interim application, the appellant No.1 is seeking this Authority to stay the final order of Assessment issued under section 126. It is humbly submitted that this Authority cannot exercise any jurisdiction whatsoever on section 126 and section 127 proceedings. This view of the Apex Court cannot be ignored by this Authority.

18). The Hon High Court of Kerala has taken a stand in the Catholic Reformation Literature Society vs. KSEBoard [2011 (1) KHC 457]. The court, concerned with the question on classification for tariff and bill raised on unauthorized use of power could be disputed and settled before the CGRF, was good in law. Answering the question resoundingly in the negative the division bench held - *after hearing both sides and ongoing through the above provisions, we are of the view that the remedy available to the appellant against the disputed bill is only an appeal before the Statutory Authority under section 127 and no complaint is maintainable before the CGRF, particularly by virtue of the prohibition contained a clause 2(f) (vii) (i) of the regulations (para5).*

Analysis and Findings: -

The hearing of the case was done on 27.09.2012 and 12.10.2012 in my chamber at Ernakulum, and the appellant's side was represented by Sri. MB. Chandrasekharan and Sri.Shaji Sebastian and the respondent's side by Sri. P V Kumaran, Deputy Chief Engineer, Electrical Circle, Palakkad and Sri. P V. Sreeram, the Asst. Executive Engineer, Electrical Sub division, KanjiKode and they have argued the case, on the lines stated above.

On examining the Petition and argument notes filed by the appellant, the Counter statement of the Respondent, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the final decisions thereof.

This appeal petition has been filed with the main prayers of;

(a).To keep the impugned provisional bill in abeyance, (b).To declare the proceedings of the APTS, site mahazar, the impugned bill null and void, (c).To consider the application for enhancement of power for 100 KVA submitted by M/s Aditya on 19.5.2011 and sanction the same with effect from 30 days from the payment of Rs. 5000/- and declare all proceedings against the consumer illegal. (d).To direct the KSEB to reconsider and reassess the unauthorised extension, if it is there, as per industrial HT tariff and (e).Since additional load was not sanctioned in time by KSEB, the officials should be directed to pay a compensation of Rs.1.5 crore for the loss, pain and the damages.

After hearing both parties, the Petition decreed by the CGRF in brief, was as follows;

'The KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, Section 2 sub clause (vii) prevents CGRF and Electricity Ombudsman from considering grievances connected with Sections 126, 135 to 139 and 161 of the Act. Since the grievance has arisen out of the detection of UAL and its penal assessment under Section 126 of the Act, this Petition is not maintainable before CGRF.

Point (1). Whether the present dispute is maintainable before the CGRF and Ombudsman?

The contention raised by the appellants in the petition is, regarding the powers of CGRF and Ombudsman, in dealing with matters under Section 126 of Act. They argue that Clause 2(1) (f)(iii) of the KSERC (CGRF and Ombudsman) Regulation 2005, authorizes CGRF to have jurisdiction over 'charging of price in excess of the price fixed by the Commission for supply of electricity and allied services' i.e. matters related with Tariff. Clause 2(1) (f) (vii) generalize the authority of CGRF by extending the jurisdiction to 'any other grievances' with which CGRF can check the complaint whether it is related to Sec.126, 135 and 161 of the Act.

I have considered the rival contentions in detail. It is not seriously disputed the fact that the 1st appellant, M/s Pyarelal Foam (P) Ltd, has extended electrical supply unauthorisely to the premise of the 2nd appellant, M/s Aditya Fabrics. The mahazar prepared by KSEB after inspection depicts an unauthorized underground connection from one premise to another premise. Based on the same, the 1st appellant was served with a penal bill for Rs. 1, 40, 52,500/-, assessed under Sec. 126 (5) of the Electricity Act 2003, on 30.6.2012. The 2nd appellant by letter dated 16.6.2012 has also stated that they have disconnected the Cable connected from the premises of the 1st appellant.

The unauthorized use of electricity is defined in sub clauses (i) to (v) under Sec. 126 (6) of IE Act, 'Explanation – (b) "unauthorized use of electricity" means the usage of electricity ---

(iv) For the purpose other than for which the usage of electricity was authorized; or

(v) For the premises or areas other than those for which the supply of electricity was authorized.'

The appellant is charged with the irregularity of tapping power from one service connection to another service connection, to the extent of 384.5 KW. By extending the electric supply given to one consumer to another consumer's usage i.e. for the premises or areas other than those for which the supply of electricity was authorized, it is a sure case of unauthorized use of electricity. The Clause 2(1) (f)(vii)(1) (exempting Section 126-unauthorised use of electricity from the purview of CGRF & EO), is a 'specific clause' on the matter and when there is a conflict with other clauses, it has been decided by the Upper Courts of Law that, the 'specific clause' will prevail. Hence I am of the view that the Petition is not maintainable before the CGRF or the Ombudsman as per the KSERC Regulations cited above.

Point (2). Whether it is justifiable to consider the part issue of eligible Tariff alone, at this Forum? If so, what is the applicable tariff under which the consumer can be penalized and whether tariff LT VIII (temporary Extension) is applicable?

From the Case history, I find that the Tariff used by the Assessing officer is the highest and accordingly the Penal bill was huge. For making an appeal to the Appellate Authority under Sec. 127 of the Act, the consumer has to deposit half of the assessed amount, which is also high. The penal amount depends on the tariff used for billing and there is possibility that, the amount to be deposited (half of the penal sum) for filing an Appeal before the Appellate authority is more than the actual penalty, if the tariff used was not correct but a different one. This factor may prevent the consumer from approaching the designated Appellate Authority, if the sum to be deposited for filing Appeal is exorbitant. Hence I have decided to look into the tariff issue, as at least the Ombudsman should air his considered view when such a situation exist and there is the allegation that the consumer was penalized heavily than admissible as per Law, by employing higher tariff.

Here the case is that, electric supply was extended from one HT industrial consumer premises to another HT industrial consumer premises. Surely it is case of 'unauthorised use of electricity under

Sec. 126 (6) of IE Act, 2003' that warrants penalization and the consumer is liable to pay it for the anomaly committed. The activity for which the electrical supply was extended and utilized or misused was for industrial purpose only. Then the tariff used for raising the penal Bill must also be industrial (HT) and there is no scope for penalizing under LT VIII- tariff.

Secondly, an Electrical load of 384 KW was seen unauthorisely connected at the 2nd premise, by extending supply through Cable, from the 1st premise. Even for a case of 'sanctioned Temporary Extension', this much load (384 KW) is not supposed to be fed to consumer through LT supply and for Loads more than 100 KVA, HT supply is envisaged as per rules and as such KSEB has to levy HT tariff. Therefore, in an identical case but having an unauthorised extension (instead of sanctioned) of 384 KW additional load also, it has to be HT tariff and not LT based Tariff.

Thirdly, there is an argument that, LT supply was extended using LT cable for the misuse, which necessitates the levy of LT VIII-tariff. Normally in the HT consumer premises, the incoming supply up to the Transformer point only, will be at HT level and almost all the 'connected loads' are fed from the LT supply derived from the same Transformer. Even in case of unauthorised additional load (UAL) availed in a HT premise, it is billed under the respective HT tariff only and not under LT tariff, though UAL is connected by extending LT supply within the HT premise. That is, normally LT supply is extended or used for meeting the power demand, even if it is an HT premises. But the applicable tariff for penalisation, in such premises, is HT only and not LT based tariff.

Finally, here the 2nd appellant has wired his premises for receiving supply under HT industrial tariff. Had the KSEB sanctioned the additional load requested by the consumer in time, the KSEB could charge the consumer under HT Tariff only. The Sec. 126 (6) reads; "The assessment under the section shall be made at a rate equal to twice the *Tariff applicable for the relevant category of service* specified in subsection (5). This also suggests that the applicable tariff is HT industrial and not under LT based tariff.

The Appellant has misused energy, for industrial purpose only and this fact is not disputed by KSEB. The Licensee's circular dated 31.3.2010, also stipulate to impose penalty for the purpose for which the energy was misused. All the above facts suggest that the applicable tariff for penalization must be the purpose for which energy was misused. Hence, I am of the opinion that the applicable tariff for penalization under Section 126 (5) & (6), in this particular case, is HT industrial and not LT VIII- tariff for Temporary Extension.

Point (3). When the Appeal Petition itself is not maintainable before this Forum, as it comes under section 126 of IE Act, whether the Petition has to be dismissed or remanded?

The contention of the appellants is that the tariff applied for raising the penal bill is wrong, for which the respondent has submitted that the Hon High Court of Kerala has taken a position that – *'when the regulations specifically exclude the jurisdiction of the CGRF on all disputes pertaining to bills raised under Sec.126 of the Act on allegation of unauthorized use the only remedy available to the appellant against such bill is to file an appeal under Sec. 127 before the statutory authority'.* The said ruling make it clear that CGRF and Ombudsman are barred from entertaining the tariff part of the bill raised under section 126 and accept the same. But I feel that the Assessing officer needs to review the case to do natural justice and hence remanding the case. Also it is made clear that, I am not imposing my findings and conclusions on the tariff issue, on the Assessing officer or

the Appellate Authority, as the case may be, but they have to pay attention to the same Findings stated above and may decide the Petition independently.

Other points:- The arguments of the appellants regarding the allegations against the KSEB officials are seen to have raised without any valid proof. The Appellants has expressed total disrespect against the CGRF and the Assessing Officer. The appellant has remarked the CGRF as a 'Punching arm of KSEB' and even this Forum (Ombudsman) is not spared by the remark 'a retired hand at the mercy of KSEB for Pension'. This is not a correct approach for the appellant and they should have avoided unnecessary comments in the Petition and in the hearings. The appellant is bound to honour the statutory Forum established by Law. Further, it is not correct to say that the Assessing Officer does not have the authority to determine whether a consumer is indulging in unauthorized use of electricity. The Assessing Officer is empowered to inspect a consumer's premise and if convinced of irregularity, can make provisional assessment.

Another contention of the appellants is the deficiency of service on the part of the KSEB in sanctioning the additional load requested by them and demanded a compensation of 1.5 crore and action against concerned KSEB officials. The 2nd appellant had submitted a request for 100 KVA additional contract demand and has not been granted so far. The KSEB replied that for any new connection or additional load to power intensive industries, the request will be considered when the power position improves. The consumer has lodged complaint against such a decision before the Hon Commission itself and got Orders. Since the Issue has already been decided, there is nothing left to be decided, on this point.

The contention of the appellants that they have obtained permission from Electrical Inspector to connect up a load of 382.56 KW installed inside the premise of the 2nd petitioner, by drawing underground power cables and eligible to use it, is not acceptable.The sanction of the Electrical Inspector as per Indian Electricity rules, 1956 or Rule under CEA 43(4), 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 and ascertains that Electrical standards are observed, in the Wiring circuits and Equipment installation works. No 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 party to connect load or additional load to the system. As per clause 14(b) of the agreement, the party cannot connect any new machines to the KSEB system without prior written consent from the Agreement Authority. 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 are bound to safe-guard the KSEB system.

DECISION: -

The main dispute of, extending Power Supply from one premise to another and connecting unauthorized additional load there, tantamount to "unauthorised use of electricity" under Sec. 126 of IE Act, 2003. Any dispute or complaints pertaining to such matters are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. The Hon High Court has also made it clear that, when

there is specific provisions in the Act itself, to hear such Cases by designated Appellate Authority, the same are excluded from the purview of Ombudsman. Hence I decide that the Appeal Petition filed before this Forum by the appellant is not maintainable.

As such, I have not gone deep into the merits of other points raised by the appellants in the Petition, but only on the point of the applicable tariff to be used for raising the penal Bill, for the offence of unauthorized extension of service from one premise to another. This matter has been dealt with, analyzed and a conclusion arrived at and is detailed under Point (2) above. As such this Authority felt that the Petition itself, is found having merit for reconsideration, of the tariff issue. Hence I am remanding the Petition to the Assistant Engineer, Electrical Section, Kanjikode, the Assessing Officer, to review the case and decide afresh as per Law, with in 30 days of the receipt of this order.

Please note that this Forum's (Electricity Ombudsman) findings are intended only for applying mind to look fresh into the case on the matter of applicable tariff and may decide, as the Assessing Officer may think proper and as per Law. Similarly, I make it clear that my conclusions will not be a bar, on the Appellate Authority, the Deputy Chief Engineer, to take appropriate decisions, if any Appeal Petition is filed by the consumer, against the final assessment of the Assessing officer, under Section 127 of IE Act, 2003, consequent to this verdict.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants' stands disposed of with the said decisions. No order on costs.

Dated the 28th of December, 2012.

ELECTRICITY OMBUDSMAN.

Ref. No. P/ 291 /2012/ 1513/ Dated: 28.12.2012.

Forwarded to:

1). M/s. Pyarelal Foam Pvt. Ltd. & M/S.Aditya Fabrics.
Koyyamarakkad, Kanjikode, Palakkad Dt.
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.