

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/270/2012.

(Present: T.P. Vivekanandan)

Appellant : Sri.A.Gopinathan.  
Plot No: 105, PTP Nager,  
Thiruvananthapuram, Pin- 695038.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Karunagappally South, KOLLAM (DT).

ORDER.

Background of the Case: -

The appellant Sri. A Gopinathan, is a domestic consumer under Electrical Section, Thevalakara, Kollam, with consumer No.12636. The ownership of this Electric connection has been transferred in the name of the appellant on his request on 18.12.2010. While being so, the APTS of KSEB conducted a surprise inspection on 29/3/2011, in the premises of the consumer and found an unauthorized line extension by using underground cable to the nearby building No. 7/391. A mahazar was prepared on the anomalies detected and got witnessed by Sri. Gireesh, a resident of the building. A provisional bill amounting to Rs.36500/- was issued and later it was confirmed under section 126 of IE Act 2003,since no objection was preferred by the consumer within the time limit. The CGRF, Kottarakkara, before whom the Petition was filed by the consumer to get the bill quashed, has ordered that the complaint as not maintainable and hence dismissed the Petition. This appeal has been filed as the petitioner is aggrieved by the order of CGRF dated 18<sup>th</sup> day of February 2012 in OP No: 702/2012 of CGRF (south), Kottarakkara, on the issues stated above among other things.

Arguments of the Petitioner: -

The arguments of the Appellant are based on the brief facts and circumstances which are narrated above. Further the Appellant has adduced the following arguments.

The order of the CGRF (S) is totally biased, prejudiced and in favor of the Licensee and even the Licensee could not establish the matter whether it comes under the purview of section 135,138 or 126 of the Electricity Act 2003. If it comes under section 135 &138, police case should be registered or compounding should be done in the case of section 135 of Electricity Act 2003 and the licensee has no authority to try the offence under section 138 of Electricity Act 2003.The Assessment was seen issued in section 24 (1) of the Electricity Act and disconnection notice issued. No modified order was

issued under section 126 Electricity Act 2003, and no personal hearing was imparted and hence there is no final order. So the order of the CGRF has no existence and hence liable to be quashed.

All the actions of KSEB were prejudiced and in connivance with the trespassed occupier in the building. A civil case No OS 419/2011 is pending before the Principal Sub Court, Kollam, on the same issue.

None of the grievances in the compliant has been considered in detail by the CGRF (S) under the influence of licensee's officials. So all the reliefs sought in the petition may be pleased to consider by the Hon: Ombudsman and appropriate relief may pleased be ordered.

Further, the date of inspection while transferring the ownership has not been taken in to account. The section 80 CPC notice pointed out in the para 10 of the complaint was replied very irrelevantly by an incompetent person for and on behalf of the Assistant Engineer and Secretary. Copy of the same is marked as Ext R8.

The appellant submits that the reliefs sought in the compliant/Grievance before CGRF (South) may be reconsidered and appropriate orders may please be issued. Also requested to stop all procedure of the licensee including the Revenue Recovery action if any initiated recently against the appellant.

Arguments of the Respondent: -

The respondent submitted the statement of facts opposing the contentions raised by the appellant.

The APTS of KSEB has conducted an inspection in the premises of consumer No: 12636 (House No. 7/392) on 29.03.2011 and found an unauthorized extension by using underground cable to the near by building (House No.7/391). A connected load of 560 watts was seen extended unauthorisely and was using in the building No: 7/391. A site mahazar was prepared in the presence of Sri. Gireesh, the resident of the said building (7/391) and got it witnessed by him. The original site mahazar has been served in the premises on 29.03.2011. A provisional bill for Rs.36500/- with letter for the offence of unauthorized extension was served at the premises on 30.03.2011, but with the sections recorded in the provisional bill as Section 135 &138, instead of Section 126 of Electricity Act 2003, by oversight. Since no objection was furnished in the stipulated time by the consumer, a final bill was prepared as per section 126 of IE Act 2003 and served on 08.04.2011. Later the notice for dismantling the service connection No: 12636, was issued to the consumer, Sri.Gopinathan, on 09.12.2011, for the defaulted amount with interest amounting to Rs.40845.00 and the Electric service connection was dismantled accordingly.

The respondent states that all procedure so far taken by the Assistant Engineer is as per rules only. The Licensee was not aware of the occupancy and not known the occupant of building No: 7/391 and about the Civil Case before the Principal Sub court, Kollam. The Unauthorized underground extension was not noticed when inspecting the premises for transferring the ownership of the Electric service connection in the building No 7/392, i.e. consumer no: 12636, standing in the name of Sri. Nrayanan, Kothazathu veedu, Thekkumbhagam to the name of the appellant, Sri. A. Gopinathan, Kothazathu veedu, Thekkumbhagam.

The Assistant Engineer, Electrical Section, Thevalakara has given reply to the notice under section 80 CPC to Sri. Gopinathan.

Analysis and Findings: -

The Hearing of the Case was done on 30.10.2012 in my chamber at Edappally and Sri A Ramesh Das, Advocate, represented the appellant's side and Sri. B. Mohanan, Asst. Exe. Engineer, Electrical Sub Division, Karunagappally, for the Respondent's side.

On examining the Petition, the counter of the Respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

It is an admitted fact that unauthorized use of electricity, by extending supply from one building No. 7/392 to the near by building No. 7/391, took place in the premises of the appellant. This fact is not disputed by the appellant. But the consumer argues that the extension of supply to the nearby building from his premises is without his consent and knowledge. According to him, the provisional demand notice issued to him under section 135 and 138 of IE Act, 2003, was an invalid one and KSEB has not followed the procedural formalities needed under Section 126 of the Act.

The respondent has stated that the quoting of Section 135 and 138 was a mistake done by oversight and was rectified later and charged consumer under Section 126 subsequently. They point out that notices were issued and the penal bill was also issued for which the Petitioner has not made any complaints and the provisional Bill itself was confirmed as final bill. The appellant has not a complaint that he was not issued a notice and the provisional bill. The appellant on receipt of the notice and Bill should have approached the respondents or its higher offices and lodged the objections against it and produced it as documents. Without resorting to any such legal procedures, the consumer cannot bring in newly invented points to counter the Case against him. In such a situation the argument of the appellant lacks credit.

The section 126 of IE Act, 2003, reads as; "126(5): If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection".

Another point of argument is that the service connection having consumer No. 12636 was actually provided to the brother of the present consumer and after the death of the brother, the ownership was transferred into the name of the appellant, for which a site inspection was conducted by the KSEB authorities on 18.12.2010. During this time, no unauthorized use of electricity was found in the premises. The respondent points out that an unauthorized extension, using cables concealed through underground, can escape a normal inspection done in connection with the change of ownership. It is said that 'The APTS conducted the surprise inspection in the premises of the consumer on 29/3/2011, on getting specific complaint of misuse of electricity (anonymous letter citing the anomaly) and Section 126 (5) of IE act 2003 is the applicable in this Case.

The respondent has admitted that there were mistakes in the notices issued and it was happened because the notices were prepared by using outdated forms available in the office and this has occurred by oversight. The assessing officer has to decide, whether the unauthorized extension, using

cables concealed through underground, was for illegal abstraction of energy that falls under section 135 of IE Act or whether it is an unauthorized use of electricity coming under section 126 of IE act, 2003. It is a lapse on the part of the respondent, to issue notice under section 135 and 138 of IE Act, if the irregularity detected was not considered as a theft of energy. But it is correct and proper to issue a provisional assessment under section 126 if it is treated as an unauthorized use of electricity alone. In such a case the respondent has to give the opportunities to the consumer to file his objections, if any, and to conduct personal hearing before issuing a final order. The Section 126 (3) gives the details of procedures to be followed on provisional assessment order, which reads as follows;

“126(3) The person, on whom an order has been served under sub section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after according a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person”. Moreover, it is the responsibility of the respondent to mention in the final bill the right of the consumer for preferring an appeal under section 127 of IE Act.

DECISION: -

It is an admitted fact that unauthorized use of electricity, by extending supply from one building No. 7/392 to the near by building No. 7/391, has taken place, in the premises of the appellant. This fact is not disputed by the appellant. Even the consumer argues that the extension of supply to the nearby building from his premises is without his consent and knowledge.

Since it is certain that the unauthorized extension of Electric supply has occurred in the premises of the appellant and it can either be booked under Section 126, if it is an unauthorized use and under Section 135 if it is considered as an illegal abstraction of energy. The respondent has finally concluded it as an offence under Section 126 of IE Act, 2003 only and has charged the consumer and preferred the penal bill accordingly. The CGRF and the Electricity Ombudsman are debarred from entertaining any disputes coming under the purview of Section 126 of IE act, 2003 and also under section 135 of IE Act. The KSERC (CGRF & Electricity Ombudsman), Regulations, 2005, clearly states under Clause 2(1) (f) (vii) (1) as;

2(1) (f) “Complaints” means any grievance made by a complainant in writing on: -

.....  
(vii) any other grievances connected with the supply of electricity by the licensee except those related to the following: -

(1) unauthorized use of electricity as provided under section 126 of the Ac;

Hence I am of the considered view that the Appeal Petition is not maintainable under this Forum for the reason stated above and hence has to be rejected. However, the appellant is at liberty to file an Appeal Petition against the penal bill issued by the Asst. Engineer, before the Appellate Authority, the Deputy Chief Engineer, under section 127 of the IE Act, 2003, if he desires so and if he has not done it already. In case the Appeal is filed under section 127 of the IE Act, 2003, the Appellate Authority may hear and dispose the same as per Law. But the appellant has to prefer the Appeal, with in 30 days of the receipt of this Order, failing which it has to be presumed that he is not interested in

filing the Appeal under Section 127 of the IE Act, 2003 and the Respondent shall be eligible to recover the penal bill as per rules.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant stands disposed of with the directions as stated above. No order on costs.

Dated the 1<sup>st</sup> of March, 2013.

Electricity Ombudsman

Ref No. P/270/2012/ 1599/Dated 01.03.2013.

Forwarded to : -

- 1). Sri. A. Gopinathan.  
Plot No: 105, PTP Nager,  
Thiruvananthapuram.
- 2).The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Karunagappally South,  
KOLLAM. (DT).

Copy to:

- (1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,  
Vydyuthibhavanam, Pattom, Thiruvananthapura-4
- (3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vydyuthibhavanam, Kottarakkara.