

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/289/2012.

(Present: T.P. Vivekanandan)

Appellant : Sri. Cherian V.Z.
AttumalilVarampathu House,
Town Ward, PUNALUR.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Punalur P O, Kollam Dt.

ORDER.

Background of the Case: -

The appellant is a domestic consumer No. 881 under Electrical Section, Punalur. A penal bill amounting to Rs.43000/- plus compounding charges was issued to the appellant consequent to an inspection conducted on 16.5.2011, in the premises of the consumer, where electricity was seen used to pump water using domestic supply to the nearby situated ice plant, owned by the consumer, but having a different tariff under LT IV- industrial. Since this unauthorized use of electricity attracted action under Section 126 of IE Act 2003, a notice with provisional bill was issued to the consumer by the respondent. The consumer filed objections against the same before the assessing officer. The Assistant Engineer who is the assessing officer heard the complainant and finalized the penal bill by revising it to Rs.9163/-. The consumer then approached the Dy. Chief Engineer, the Appellate Authority, after remitting 50% of the demand. The appellate authority has confirmed the orders of the assessing officer and disposed the petition accordingly. The CGRF (south), before whom the petition was filed by the consumer to get the bill quashed, has ordered that the Forum lacks jurisdiction in entertaining a complaint against a bill served under Section 126 and 127 of the Act and hence dismissed the Petition. This appeal petition is filed as the petitioner is aggrieved by the order dated 10th day of May 2012 in OP No: 729/2012 of CGRF (south), Kottarakkara.

Argument of the Appellant: -

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

On 16.05.2011, two officials from the Electrical Section Office, Punalur, said to have come to the complainant's residence where Meter no: 57315 situates under consumer No.881, and prepared a

site mahazar. It is said to have noticed that from the overhead tank of the house a water connection also has gone to the car shed where a small ice-plant was running under LT IV tariff. Subsequently a bill dated 18.05.2011 for Rs.43, 000/- plus compounding charges was issued. A complaint was lodged with the Assistant Engineer, Punalur, and consequently there was a hearing on 02.06.2011 and then finalized the penal bill to Rs.9, 163/- and was issued to the consumer.

On this, as a pre-condition for filing a complaint before the Deputy Chief Engineer, Kottarakkara, half the amount being Rs.4, 582/- was deposited with KSEBoard. A hearing was conducted on 03.02.2012 and sent me notice dated 19.04.2012 directing the consumer to remit the balance amount of Rs.4, 582/- as per the bill dated 02.06.2011. The complainant could not continue the ice-plant and stopped operation since 12.10.2011. Even after stopping the operation of the small unit, the electric bill amount remains the same range. The complainant had not misused the rules and regulations of the Board and also not misused power. Therefore, the consumer appealed to the Forum to exempt him from paying the penal bill amount of Rs.9, 613/-.

The reliefs sought for are as follows: -

- 1).The mahazar prepared by the Sub Engineer is incomplete, against the facts, rules and laws. Hence it may be cancelled.
- 2).The criteria taken to assess the fixed charge and energy charge in bill no. 525907 dated 2/6/2011 has not been mentioned. Hence the said bill may be cancelled.
- 3).The finding that water was used for the ice plant is baseless. The tap is fitted there for washing the car of the complainant. The ice plant water could not be poured from tap but it is directly drawn from the well and used after filtering. Hence the penal bill no. 525907 dated 2.6.2011 may be cancelled. The LT IV tariff is lesser than the domestic consumption tariff. For argument sake, if the water is used for making ice through domestic connection, it is profitable to the Board. This fact is overlooked by the Board. After cessation of the ice plant, there is no marked reduction in the electricity bill amount.

Argument of the Respondent:-

The respondent has submitted the Counter opposing the contentions raised by the appellant. It is argued as follows. An inspection was conducted in the premises of Sri. CherianV Z, consumer No: 881 under Electrical Section, Punalur on 16.05.2011. It is found that the consumer has unauthorisely used the Electric connection given under LT IA-domestic tariff for the use of the ice-plant that was housed in the nearby premises by using IHP motor of the house, by way of pumping water for the Industrial purpose of the ice plant. It is against the provisions contained in the IE Act, 2003. The consumer was served with a provisional bill amounting to Rs.60, 000/- (Rupees sixty thousand only).

He had lodged an appeal petition against the provisional bill and the compounding charges. He had admitted the offence of misuse of tariff. During the hearing done on 26.05.2011, after perusing the records submitted by the consumer, the penalization has been revised for 746 watts (1 HP) and issued a revised penal bill for Rs.9,613/-. The consumer has remitted 50% of the penal bill (Rs.4, 582/) on 08.06.2011 and lodged petition to the Deputy Chief Engineer, Electrical Circle, Kottarakkara on 13.06.2011. The Deputy Chief Engineer has ordered the consumer to remit as per the bill amount.

After that, he again approached the Consumer Grievance Redressal Forum, Kottarakkara and Forum ordered that the petitioner is liable to remit the penal amount.

The respondent has furnished the details of fixed charge and current charge portion of the penal bill which is as follows:

Total load	= 2956 watts	
Total units from 7/10 to 5/11	= 3578 units	
Proportionate unit for UAL	= 3578 X 1 KW (UAL)/ 3 KW	=1193 units
Fixed charges payable for 1 KW	= 1 KW x Rs.45/- X 12 months X 2 times	= Rs. 1080/-
Proportionate Current charge	= 1193 x 3.25 x 2 times	= Rs. 7735/-
Electricity Duty		= Rs. 328/-
Total amount payable		= <u>Rs. 9163/=</u>

Analysis and Findings: -

The Hearing of the Case was done on 1.11.2012 in my chamber at Edappally and V.Z. Cheriyan, the appellant and Sri. S.G. Sureshkumar, the Asst. Executive Engineer, Electrical Sub Division, Punalur represented their respective sides.

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.

The appellant has stated that the Car shed was used for running an ice plant and also a tap was in existence near the shed, for cleaning the car, using water from the domestic service. In a statement submitted to the Deputy Chief Engineer he has admitted misuse of tariff as using it unknowingly. His further contention is that his average bimonthly consumption is around 600 units and in such a case he is a loser by extending domestic supply seems correct because the industrial tariff is lesser than the domestic tariff at this consumption range of 600 units per bi-month and thereby has not caused any monetary loss to the Board. It is true that the domestic tariff rate is higher than the industrial tariff rate, if the energy consumption exceeds a certain limit (120 units per month), above which the domestic tariff rate is higher than the industrial tariff (which is Rs. 3.25 per unit- flat rate). Further, a payment at higher rate will not legalize an illegal act of the consumer, but can at the most indicate that the consumer has no malafide intention of cheating KSEB and was caused due to ignorance only.

Another contention of the appellant is that the mahazar prepared is incomplete and against the provisions of the rules. Normally, the mahazar is prepared recording the irregularities/anomalies detected at the premises on inspection time and usually got it signed by an independent witness, to prove the fact of inspection done on a certain date and time. Therefore it is considered as a prime document in legal field. However, in this case the consumer has not disputed the inspection done in 5/2011 and has not objected the detection of misuse of power seriously. Hence the allegation against the 'preparation of the mahazar' is not relevant as far as this case is concerned.

Here the only question to be answered is whether the consumer is eligible for consideration in the calculation of the penal charges payable by him for the misuse of tariff?

DECISION: -

It is noted that the Respondent has not a 'specific case' before me that, the disputed complaint fall under Section 126 and hence it is not maintainable before the Electricity Ombudsman, as per rules, as there is a separate designated Appellate Authority for hearing such cases. Further, the relevant clause of the Electricity Supply Code or the Sections of the IE Act, 2003, under which the action is initiated against the consumer, is not seen quoted in the notices or the penal bills, issued to the consumer. However, it is a fact that actions were initiated under Section 126 of IE Act, 2003, and the penal bill was also raised under it and based on the same a dispute was going on, between the consumer and the respondent.

As the consumer has approached this Forum with a grievance and since this Forum has found some justification in the arguments and contentions raised in the Petition filed, this Authority felt it reason-able to look into the same and express my considered view, for the review of the Assessing Officer's decision issued earlier.

As have been rightly expressed by the Exe. Engineer in Charge, Electrical Circle, Kottarakkara, in his order dated 31.3.2012, one aspect that has to be checked is whether the consumer has been benefitted by way of tariff misuse, for which the consumption pattern of his domestic connection has to be verified and is reported to be as follows;

1/2010	= 590 units
3/2010, 5/ 2010, 7/ 2010, 9/2010 & 11/2010	= 600 units (each bi-month)
1/2011	= 500 units
3/2011	= 627 units
5/2011	= 651 units
7/2011	= 607 units
9/2011	= 497 units

The energy consumption pattern listed above, shows that the consumer has a bimonthly average of 600 units i.e. has an average consumption of 300 units per month. It is further noted that the tariff rate of a domestic service for the consumption above 120 units, will yield to KSEB a higher revenue than that obtained from an industrial connection for the same consumption. For example, the tariff rate for the energy consumed for the domestic slab (121 – 150 units) is Rs 3.45 per unit and increases to higher rates for still upper slabs, whereas it is a flat rate of Rs. 3.25 per unit of energy consumed for an industrial connection. Hence, the Licensee was not at loss in revenue, as far as this particular case is concerned. However, the consumer is not supposed to indulge in tariff misuse knowingly or unknowingly, may be due to ignorance of rules.

On perusal of the Meter readings of the consumer (domestic service), it appears that there was an increase in consumption during the bi-months starting from 3/2011, (corresponding to months 1 & 2 of 2011) and maintained at that level and then started showing a decrease in energy consumption from 7/2011 onwards. From the above, it can be reasonably concluded that the misuse of tariff was in existence for a period of 6 months only i.e. from 1/2011 to 6/2011 and hence there is no need for

going for a penalization of one year, when the period of misuse can be reasonably assessed, under section 126 of IE Act, 2003.

Since the CGRF and the Electricity Ombudsman cannot entertain any complaints, falling under the Section 126 of IE Act, 2003, I hereby direct the respondent and the Assessing Officer to consider the findings and conclusions arrived at, as detailed above and may take appropriate decision on merits, on 'reviewing' the penal assessment ordered vide Bill dated 2.6.2011 for Rs. 9163/-, with in 60 days of this order.

No interest is payable by the consumer for the balance amount, if any, for the period of Appeal Petition pending, before this Authority.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant stands disposed of, with the above directions issued to the respondent. No order on costs. Dated the 7th of March 2013.

Electricity Ombudsman.

Ref. No. P/289/ 2012/ 1613/ Dated 07.03.2013.

Forwarded to: -

1). Sri. Cherian V.Z.
Attumalil Varampathu House,
Town Ward, PUNALUR.

2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
PUNALUR,

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, Vydyuthi Bhavanam, Kottarakkara.