

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/273/2012.

(Present: T.P. Vivekanandan)

Appellant : Sri. Abdul Basheer M.K.
M/S. Cochin Wires,
Kuttamasserry,
Aluva- 683 105.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Perumbavoor, Ernakulum Dt.

ORDER.

Background of the Case: -

The appellant Sri. Abdul Basheer MK has availed an electric connection with consumer No.13450 from Electrical Section, Vazhakulam, for running his Unit named 'Cochin Wires', under industrial-LT IV tariff. While being so, during 2003, the APTS of KSEB conducted an inspection in the premises of the consumer and detected an unauthorized additional load (UAL) of 23 KW against his authorized load of 68 KW. Consequent to the detection of the UAL of 23 KW, a penal bill was issued to the consumer by the respondent and he remitted the same, but he did not remove or regularize the UAL, till 1.11. 2008 and hence the KSEB continued the penalization for 'fixed charges' portion in the subsequent monthly bills, till 11/2008. Later, a short assessment bill for Rs. 64,795/- was issued to the party towards the 'energy charges' portion as well, on this UAL for the period from 7/2007 to 3/2008, on the basis of an audit report. Aggrieved by this bill, the appellant submitted a petition on 22.12.2011 before the CGRF, Ernakulum, seeking relief to set aside the short assessment bill issued. The Forum dismissed the petition vide order No. CGRF-CR/Comp.65/2011-12 dated 22/2/2012. Still not satisfied the appellant has submitted this appeal petition.

Arguments of the Appellant:-

The arguments advanced by the appellant in his petition are the following;
For initiating a claim as per Section 126, the Board should prepare a site mahazar and to comply the procedures in the KSEB for Serving of a Provisional Assessment Rules, 2005.

As per KSEBoard, the assessment was done in complying with the provisions in Electricity Act 2003 section 126 clause (6) amended w.e.f.15.06.2007. In this amendment nowhere it is mentioned that KSEBoard can charge proportionate energy charge. The same was followed by KSSIA and KSERC was pleased to release an order no: DP 75/2009 with the direction that only the charge is excess of 12 months average can be collected. A copy of the order is marked. Without amending the respective rules and regulations the Act cannot be implemented. The Amendment in regulation was effected in 2008 and even the impugned Board Order is dated 07.02.2008.

All claims are time barred as per 56 (2) of Electrical Act and Limitation Act.

Argument of the Respondent: -

The respondent has filed a statement along with connected papers. He has denied all the averments raised in the petition by the appellant.

As per the amended clause (6) of the section 126 of Electricity Act 2003 (amended w.e.f. 15.06.2007) and as per B.O. (FM) No.368/2008 (DCP-1/C-GI/182/2007) dated TVM 070.02.2008, the penalization shall be done both on Fixed charges and energy charges w.e.f 15.06.2007 onwards. But by mistake, the penalization on CC was not made during the period from 7/07 to 3/08 (9months). This mistake was pointed out by the Regional Audit Officer, Perumbavoor, after verifying the relevant register and records of Electrical Section, Vazhakulam. Hence a short assessment bill for Rs.64795/- for the penal CC on unauthorized additional load for the period from 7/2007 to 3/2008 was issued to the consumer.

Calculation of the Bills is as follows.

| | |
|--|---|
| Penal F.C to be charged | : from the date of inspection to the date of regularization |
| Penal F.C charged | : from the date of inspection to the date of regularization |
| Penal CC to be charged | : from 7/07 to the date of regularization |
| Penal CC charged | : from 4/08 to the date of regularization |
| Short CC | : from 7/07 to 3/08 (9 months) |
| Energy consumption during 07/07 to 3/08 | : 78880 units. |
| Proportionate consumption of UAL availed | : <u>Total consumption × unauthorised additional load</u> Total connected load |

$$= 78880 \times (23 \text{ KW}/91 \text{ KW}) = 19937 \text{ units}$$

Corresponding penal current charges = 19937 units × Rs. 3.25

$$= \text{Rs. } \underline{64795/-}$$

The KSEB had made an inspection in the premises of consumer and detected an unauthorized load of 23 KW against the sanctioned load of 68 KW. A site mahazar was then prepared and accordingly a penal bill was issued to the consumer and the consumer had remitted the bill. The consumer had not raised any contention against the issue of site mahazar at that time. In this appeal, the complainant states that for initiating a claim, as per clause 126 of Electricity Act 2003, the Board had complied with a Site Mahazar for the unauthorized use of electricity done by the consumer.

As the consumer has not removed or regularized the unauthorized load, the Board continued to issue penal bills in the subsequent months. But while issuing the subsequent penal bills, the Board by mistake has missed to penalize on CC part, for the period from 7/07 to 3/08, which was an omission. Hence a short assessment bill was issued to the consumer when the mistake was found out and the consumer is bound to remit the short assessment bill. The short assessment bill was made as per rules. The bill was served to the consumer premises directly by KSE Board staff. As per amended clause (6) (amended w.e.f. 15.06.2007) section 126 of Electricity Act 2003, the assessment under this section should be made at a rate equal to twice the applicable tariff. As per B.O. (FM) No.368/2008 (DCP-I/C-GI/182/2007) dated Tvm 07.02.2008, penalty shall be applicable to both fixed and energy charges for the unauthorized use. In B.O. (FM) No.368/2008 (DCP-I/C-GI/182/2007) dated Tvm 07.02.2008 it is said that the order shall be effective from 15.06.2007 and accordingly the penalization on CC shall be done w.e.f 15.06.2007.

The claim is not time barred. The demanded sum was raised only on 01.12.2011 and hence become first due in 12/2011. The sum becomes an arrear amount only after the demand is raised. Hence the bill is not time barred as per section 56 (2) of Electricity Act and limitation act.

Analysis and Findings: -

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam, on 26.07.2012. The appellant, Sri. Abdul Basheer and his counsel Sri. Shaji Sebastian were present for the appellant's side and Sri. John Varghese, AEE, Electrical subdivision, Perumbavoor, represented the opposite side. Both sides have presented their arguments on the lines as stated above. On examining the Petition of the appellant, the statement of facts filed by the Respondent, the arguments made in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The APTS has conducted an inspection in the consumer's premises in 2003 and have detected 23 KW unauthorized additional load (UAL) and a penal assessment was made and the same remitted was by the consumer. The penal assessment was continued as the UAL was not removed or regularized by the consumer and was made through his monthly bills till 11/2008. As per Clause 51(4) of KSEB T & C of supply, 2005, when the UAL is detected, the KSEB has to issue a provisional assessment for the same with a notice to the consumer, asking to remove the additional load or to regularize the same within a reasonable time. The unauthorized load should be got regularized by the consumer within a period of 3 months on application to the AEE and on paying additional security deposit and other charges, as per rules. It is the responsibility of the respondent to disconnect the connection if not regularized within these 3 months. The respondent admits that the UAL was regularized in 11/2008 only. The action of the consumer in readily paying the penal bill issued to him, for the irregularity of connecting the UAL of 23 KW, as alleged by the respondents, without raising any dispute or objection on the quantum of excess load, can be taken only as the acceptance of the UAL detected as correct by the consumer. That is to say, the consumer has added 23 KW load extra without Board's sanction and was enjoying the same by paying the penal charges. The appellant has not challenged this fact.

Further the appellant has averred that the additional charge collected by KSEB in the pretext of proportionate charges is totally illegal. As per sub section (3) of section 45 of the Electricity Act 2003, “the charges for electricity supplied by a distribution licensee may include (a) a fixed charge in addition to the charge for actual electricity supplied”. Since ‘tariff’ includes both fixed and variable charges, Commission clarified that penalty rate is applicable to both fixed and energy charges for the unauthorized use of electricity as per sub section (6) of Section 126 of Electricity (Amendment) Act 2007. Based on this clarification, KSEB has issued the executive order dated 7/2/08. In the judgment in WP (C) No. 12068 of 2009 (Maria Palana Society V/s KSEB), the Hon. High court of Kerala upheld the above order.

The Audit wing of KSEB has pointed out that, though the penal Fixed charges were collected from the consumer for using UAL of 23 KW, no ‘proportionate energy charges’ have been charged for the same period of 7/07 to 3/08. It is true that the KSEB is authorized to collect the ‘proportionate energy charges’ also if the party uses the unauthorized load. Here, the penal charges for the ‘Fixed Charges’ portion were seen collected from the consumer for the period of inspection date of 2003 to 10/2008 for connecting 23KW UAL, but the corresponding proportionate ‘energy charges’ were not levied on him, may be by omission. Hence the finding of the Audit team is found to be correct.

For imposing the penalty on energy charges the total energy is apportioned in proportion to the additional load detected and penalty is imposed for that part of energy which is assumed to be consumed on the portion of UAL connected. The Hon Commission while disposing the Petition No. DP/75/2009 has held that “the difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty.”

The argument of the appellant regarding the Limitation of the bill period of two years, as stated in section 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board, against consumption of electrical energy and will become due for payment, only after that demand has been raised. In a related case it has been clarified by Hon: High Court that “Amount of charges would become due and payable only with the submission of the bill and not earlier. Word ‘due’ in this context must mean due and payable after a valid bill has been sent to the consumer”, (Brihanmumbai Municipal Corporation V Yatish Sharma and others-2007 KHC 3784). For the above two reasons, I think the argument of the appellant that the claim is time barred by section 56 (2) of Electricity Act 2003, is not sustainable.

The consumer’s energy consumption for the previous 18 months prior to the date of inspection is produced below.

| Month | Consumption |
|-------|-------------|
| 10/01 | 6534 units |
| 11/01 | 11136 units |
| 12/01 | 9928 units |
| 01/02 | 15610 units |
| 02/02 | 6188 units |
| 03/02 | 6706 units |
| 04/02 | 10962 units |
| 05/02 | - |
| 06/02 | 19078 units |
| 07/02 | 6874 units |
| 08/02 | 6377 units |
| 09/02 | 7114 units |
| 10/02 | 10250 units |
| 11/02 | 12126 units |
| 12/02 | 8114 units |
| 01/03 | 4900 units |
| 02/03 | 12624 units |
| 03/03 | 9980 units |

The average consumption for the period 10/2001 to 9/2002 is 8875 units /month.

The average consumption for the period 10/2002 to 3/2003 is 9666 units/ month.

DECISION :-

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

The cause of dispute is the surprise inspection conducted on the consumer's premises by APTS of KSEB in March 2003 and the detection of unauthorized additional load of 23 KW connected to KSEB system without its approval. This fact is not disputed by the appellant and so he remitted the penal amount without any protest levied for the said anomaly. Moreover, there is no evidence to suggest that the UAL was removed subsequently by the consumer. At the same time the fact that the party was paying the penal charges (the Fixed Charges portion) for the usage of UAL continuously without any complaint during the period of 7/2007 to 3/2008, can be considered only as he was aware of the UAL and was in need of the same.

In this case, the consumer was seen issued a fresh short assessment bill for the period of 7/2007 to 3/2008, taking proportionate energy charges for the UAL availed. But, the proportionate energy charges have to be preferred according to the method devised by the Hon Commission in the Case DP: 75/2009 only. The Hon Commission has specified the method to be adopted for billing the proportionate energy charges in cases of availing the UAL i.e. for committing 'unauthorized use of electricity' under clause 126(4) of the Act, and hence the bill needs revision accordingly.

The Respondent has reported that the consumer was issued a penal bill, for connecting UAL of 23 KW, charging for the previous six months prior to inspection in 3/2003 and he paid the same amount. The average energy consumption during the said 6 months period i.e. 10/2002 to 3/2003 is found as 9666 units per month and for the previous one year, i.e. from 10/2001 to 9/2002, the corresponding monthly average energy consumption was found as 8875 units. Accordingly, the increase in energy consumption before and after availing the UAL of 23 KW is determined as $(9666 - 8875) = 791$ units per month. Therefore the corresponding proportionate energy to be billed for the period 7/2007 to 3/08 is determined as; $791 \text{ units} \times 9 \text{ months} = 7119$ units only, instead of 19937 units calculated by the respondents. This proportionate energy is assessed as per the decision in Petition No. DP: 75 of 2009 of the Hon Commission. The appellant has expressed his desire that, if at all he is to be billed, it should be as per the Hon Commission's said order.

Hence it is decided that, the short assessment Bill dated 1.12.2011 for Rs.64, 795/- raised for the period 7/2007 to 3/2008 (issued to consumer No. 13450), shall be revised, for charging proportionate energy of 7119 units (instead of 19937 units) only, as detailed above, and is found payable by the consumer. The consumer may be allowed 30 days (Due date of Bill) to pay the full amount. He is also eligible for 9 (nine) installments, if requested for, but will carry interest for the installments.

Having concluded and decided as above, it is ordered, accordingly. The Appeal Petition filed by the consumer is found having merits and stands allowed to the extent ordered as above. The CGRF order No. CGRF- CR/Comp.65/2011-12 dated 22.02. 2012 stands quashed. No order on costs.

Dated the 27th of March, 2013,

Electricity Ombudsman.

Ref: No. P/273/2012/1654/ Dated 27.03.2013.

Forwarded to

- 1). Sri. Abdul Basheer M.K.
M/S. Cochin Wires,
Kuttamasserry, Aluva- 683 105.
- 2). The Assistant Executive Engineer.
Electrical Sub Division,
KSEBoard, Perumbavoor.

Copy to: -

- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
- 3). The Chairperson, Consumer Grievance Redressal Forum,
KESB, Power House Building, Ernakulum - 682018.