

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/269/2012.

(Present: T.P. Vivekanandan)

Appellant : Sri. Antony SRT.
Senior Manager, M/S. Indus Towers Ltd,
Vankarath Tower, 8th Floor,
NH Bye pass, Kochi-24.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Neyyattinkara, Thiruvananthapuram (DT).

ORDER.

History of the Case.

The appellant, M/s Bharati Airtel represented by Sri. Antony SRT, senior manager, Indus Towers Ltd. is a consumer under Electrical Section, Marayamuttom, with consumer No.12975. The Electric connection was effected on 31/12/2005, for cellular mobile tower (registered in the address of Sri. Mohanakrishnan V), Bharathi Cellular Ltd. Kochi under LT VII A-commercial tariff with connected load of 7 KW and M/s Indus Towers Ltd, Is the power attorney holder of M/s Bharati Airtel Cellular Ltd. While being so, on 23.3.2009, the appellant submitted an application for additional power allocation for 13 KW and remitted Rs. 52000/- as ACD and regularized the total connected load as 20 KW. On 8.5.2009, the APTS of KSEB had conducted an inspection of the premises and detected that the Firm has unauthorisely extended power supply to connect 13 KW load in a separate shelter. The appellant was penalized for the unauthorized extension and connecting of additional load of 13 KW. The total amount penalized was Rs. 10,24,400/- under LT VIII tariff and later as per AG's audit report the penal amount was revised as Rs. 3,20,994/-, under LT VIIA tariff and the excess amount of Rs.7,03,406/- collected from the appellant was refunded by adjusting in the succeeding month's bills. Not satisfied, the appellant submitted a Petition on 6/1/2012 before the CGRF, Southern Region, Kottarakkara, seeking relief to set aside the bills issued and to refund the entire amount collected from them. The Forum dismissed the petition after hearing as it found no merits in the Petition and aggrieved by it the appellant has submitted this Appeal Petition.

Arguments of Appellant: -

The appellant has adduced the following arguments in his appeal petition.

1).M/s Airtel communications is a consumer under Electrical Section, Maryamuttom, consumer no: 12975. The connected load at the time of procuring service connection was 7 KW. Subsequently as a part of expansion, the firm had applied for an additional load of 13 KW. The appellant was given a Demand note for Rs.59000/- and the same was remitted on 20th April 2009 and regularized the total connected load as 20 KW. The additional load 13 KW was placed in a separate shelter for sharing our tacitly to idea mobile communications.

2).On 8.5.2009, a site inspection was conducted by the APTS. In the mahazar, they have mentioned about 13 KW loads, which was placed in a separate shelter, used for 'Idea mobile communications' equipment, already regularized on 20th April 2009. No separate load detail in the Airtel Shelter was mentioned in the site mahazar. The reason for not mentioning the load details is not understood. When an inspection was conducted by an authority, as usual practice, the entire load coming under the consumer premise should be mentioned in the site mahazar. So it is clear that it was purposefully avoided for penalizing.

3). At the time of inspection, in the Airtel shelter, the connected load was below 7 KW only. In the letter dated 31 August 2009, of Assistant Engineer, Marayamuttom, stated about some inspection which were conducted by him (Assistant Engineer) and APTS squad again, but the appellant was unaware about the inspection. As there is no evidence or site mahazar, the intimation about the said inspections are fabricated. So all the amounts the appellant have paid needs to be refunded. The entire amount was extracted from the appellant for a fabricated case. The connected load at the time of inspection was below the sanctioned load and hence all the proceedings may be stopped and amount may be adjusted in the succeeding bills.

Arguments of the Respondent: -

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

1).The Consumer No:12975 is an Electric service connection given under LT VII A tariff with address as Sri. Mohanakrishnan V, Bharathi Cellular Ltd, Kochi. However the petitioner is M/S. Indus Tower Ltd and actually there is no service connection in this office to Indus Towers. Date of connection of the Con. No: 12975 is 31.01.2005 with connected load of 7 KW for a single utility in a single shelter.

2). On 20.4.2009, they applied for an additional load of 13 KW for the same utility in the same shelter and remitted Rs.52, 000/- as ACD and regularized the total connected load as 20 KW. But on 8.5.2009, an inspection was conducted by the APTS and found an unauthorized additional extension of 13 KW loads which was placed in a separate shelter used for another utility, in addition to the load regularized on 20.04.2009. This was mentioned in the site mahazar itself and admitted by the representative of M/S Bharathi Cellular Ltd.

3). There is no argument raised regarding the total connected load is 20 KW + 13 KW = 33 KW by M/S Bharathi Cellular Ltd. or their representatives till before approaching Hon'ble CGRF. Kindly note that at the time of inspection they have admitted the total connected load and remitted the penal amount for unauthorized additional load extended.

4).The argument raised in para.7 is not supported with any documents.

5). The entire facts mentioned in letter No.BB/MTm/APTS Inspection/09.10/288/31.08.2009 of Assistant engineer, Electrical Section, Marayamuttam was admitted by the representatives of M/S. Bharathi Cellular Limited and remitted total amount of Rs.5, 01, 200/-. The bill was issued based on the inspection conducted by APTS on 08.05.2009.

The registered Contract load of the consumer as on 20.04.2009 is as follows;

SMPS	2×2000	= 4000 W
AC	2×1200	= 2400 W
16 A	2×500	= 1000 W
Light	10×60	= 600 W
SMPS	2×3000	= 6000 W
	2×2000	= 4000 W

and hence the total connected Load = 18000 Watts or 18 KW.

On 8.5.2009, the APTS, Thiruvananthapuram Unit, inspected the premises and found an extension of power supply of 13 KW (2600 W × 5 Nos.) to another shelter adjacent to the premise of the Con. No. 12975 connected unauthorisely. It may kindly be noted that the additional units, 2600 W × 5 Nos. is not mentioned anywhere in the 'Completion report or in the Drawings' submitted at the time of remitting the fees and ACD.

At that time (time of APTS inspection) they admitted entire thing and not raised any argument regarding the connected load i.e. total of 33 KW (20+13) and remitted the penalized amount.

The sketch of the premise of the appellant with load particulars, submitted to KSEB, while enhancing the load to 20 KW, was filed by KSEB subsequently.

ANALYSIS AND FINDINGS: -

The Hearing of the Case was conducted on 25.09.2012 and 30.01.2013 in my chamber at Kochi and Sri. Marceline Paul and Sudeep B, were present representing the appellant's side and Sri. Saseendran C, Asst. Exe. Engineer, Electrical Sub Division, Neyyattinkara, has appeared for the opposite side. On examining the Petition and the argument notes filed by the Appellant, the statement of facts of the Respondent, perusing all the documents filed and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The respondent in his statement and during hearing stated that this Authority has no jurisdiction to entertain the complaint since the impugned demand was an assessment made under Section 126 of the IE Act and the CGRF has dismissed the petition by confirming the above version. However, the consumer's main complaint is that he has already regularized the additional load of 13 KW in 4/2009 which was detected as unauthorized additional load in the next month's inspection, charging it as unauthorized extension of 13 KW load and hence there is no cause for case under Section 126 of the IE Act and the CGRF and Ombudsman can hear a complaint which was framed by the respondent.

It is not disputed that the appellant had applied for 13 KW additional load and regularized the same on 20.4.2009. The APTS inspection was conducted on 8.5.2009, just after the load was regularized. The mahazar prepared by the APTS had only furnished the details of 13 kW load extended to the near by shed. Normally, when a premise is inspected, the total load existing in the premise including the anomalies like the unauthorized load detected etc should be recorded so as to have the clarity of

different loads found in the premises. But, in this case, it was not seen to be followed by KSEB. Had the full load details been recorded in the mahazar, including the irregularities detected, the confusion would have been avoided.

The representative of the appellant who was present at the site during inspection has signed the mahazar as witness stating it was true. The appellant has filed objection against the finding of UAE in his premises and against the penal bill [for the unauthorized extension (UAE) of 13 KW load], through letter dated 9th June 2009. The appellant states that the load mentioned in the mahazar has been regularized on 20.4.2009 and there is no excess load, but he does not seriously challenge the fact of 'electric supply extended', as alleged in the mahazar nor any discrepancy in the rating of the load as '2600 watts x 5 Nos.' mentioned in the mahazar. However, the Connected load details of the consumer furnished by KSEB (given above) or the load details furnished by the appellant (stated in his argument note) does not contain the load of '2600 watts x 5 Nos', that is recorded in the mahazar.

Similarly, the next bill issued to the consumer also contained penal charges and the appellant has filed objection vide letter dated 09.09.2009 refuting the excess load. But even when the dispute was not resolved, he has not taken pains to bring it to the attention of higher authorities' of KSEB or resort to any legal remedies, but opted to pay the subsequent penal bills for about an year without any complaints, which is almost like accepting the charges of UAE of electric supply leveled against him.

As per rules, when the UAE is detected, it is the responsibility of the KSEB to issue a provisional assessment for the irregularity committed, along with a notice to the consumer, asking to remove the additional load or to take steps to regularize the same within a reasonable time. The Clause 51 (4) of the KSEB T & C of Supply, 2005, says that the unauthorized load should be got regularized by the party (consumer) within a period of 3 months on placing the application to the Asst. Exe. Engineer and on payment of additional security deposit and other charges, as per rules. It is the responsibility of the respondent to disconnect the electric service connection, if the UAE is not regularized within three months, after giving notice. If objections are filed, the licensee has to inspect the premise afresh and see whether any irregularities still exist or are being done there and then proceed against him as per rules. It is not proper to depend on an incomplete mahazar prepared by the inspection team, against a consumer, for continued penalization. The principles of natural justice imply to maintain procedural fairness also.

The KSEB has been asked to produce the copy of the Completion Report of the Wiring installation and the Sketch of the premises submitted to KSEB while filing the application for enhancement of load to 20 KW on 20.4.2009, which was filed by them for verification. The Sketch shows two numbers outdoor units as Loads, i.e. O/D Unit 1 & 2 with ratings of 6 KW (2 x 3 KW) and 4 KW (2 x 2 KW) each, totaling to 10 KW only. The existing load is shown as 8 KW whereas the total load is noted as (6 KW + 4 KW + 8 KW) = 20 KW (instead of 18 KW got by adding).

Both sides argue the existing load as 7 KW only but in the Sketch it is written as 8 KW. Similarly there is discrepancy in the load of the outdoor units. But the fact is that, there exists outdoor units as argued by the appellant.

Decision: -

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

I have gone through the site mahazar prepared by the inspection team. The mahazar does not reveal the total connected load details at the consumer's premise, but contains only the details of the 13 kW load unauthorisely extended (UAE) to a nearby shed in the same premise.

The witness to the 'site mahazar' has signed it, noting the finding of additional load, as true. The appellant argues it as the same 'additional load' of the outdoor units, recently connected by remitting the required fees on 20.4.2009, just before the inspection. The fact of connecting 13 KW additional load on 20.4. 2009 is not disputed by KSEB. The appellant states that he has paid the penal bill and also paid the subsequent penal bills, for avoiding disconnection of service. The APTS inspection was done in 5 / 2009, i.e. with in one month of regularizing the additional load of 13 KW.

The KSEB is bound to make an inspection before regularizing this additional load of 13 KW in 4/2009. Hence, if at all there was any UAE, it will never necessitate a back assessment of 12 months prior to inspection done by the APTS on 8.5.2009, but for a period of maximum one month only, i.e. for the period from 20.4.2009 to 8.5.2009, say one month (rounded). Hence the penalization done for the previous twelve months prior to inspection seems to be a glaring anomaly from the side of KSEB.

The appellant has filed objection against the penalization. However he has paid the subsequent penal bills. But the respondent is bound, to suitably answer the complaints filed after verifying and confirming whether the disputed load is one and the same additional load regularized last month or not, when it is seriously questioned by the consumer. But the KSEB has failed to do so.

The main dispute of extending Power Supply to near by shed for connecting unauthorized load there, tantamount to "unauthorized use of electricity" under Sec. 126 of IE Act, 2003. Any complaint on such matters (charges booked under Sec. 126 of IE Act, 2003) are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1) (f)(vii)(1) of the 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 Deputy Chief Engineer), 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 the main point (Whether the unauthorized load detected is one and the same load that was regularized on 20.4.2009?) raised by the appellant in the Petition. However, this Authority feels that the Petition is having some merits, for review of the order of Asst. Engineer in issuing the penal bills. Hence I am remanding the Petition to the Assistant Engineer, Electrical Section, Marayamuttam, (Assessing Officer), to review the case and decide afresh as per Law. The Assistant Engineer may issue notice to the appellant and give an opportunity of the consumer being heard and take a decision accordingly, with in 30 days of the receipt of this order. The respondent is directed to arrange a fresh 'Hearing of the objection filed by the consumer' urgently. The penalization of the consumer on this matter, if any, shall be discontinued, till the Case is finalized.

Please note that this Forum's (Electricity Ombudsman) findings are intended only for applying mind to look fresh into the case 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 made consequent to this order) , under Section 127 of IE Act, 2003.

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

Dated the 9th of April , 2013.

Electricity Ombudsman

Ref. No. P / 269/ 2012/1681/ Dated 09.04.2013.

Forwarded to

1. Sri. Antony SRT,
Senior Manager, M/S.Indus Towers Ltd,
Vankarath Tower, 8th Floor
NH Bye pass, Kochi-24.
2. The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Neyyattinkara, Thiruvananthapuram (DT).

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,
KSEBoard, Vydyuthibhavanam, Kottarakkara.