

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/344/2013.

(Present: T P Vivekanandan)

APPELLANT : Sri. A P James,
Arakkal House, Kodikulam P.O.
(Via) Thodupuzha, Idukki Dt.

RESPONDENT : The Assistant Executive Engineer
Electrical Sub division, Thodupuzha East, KSEB,
Thodupuzha.

ORDER.

BACKGROUND OF THE CASE: -

The appellant has availed an electric connection with consumer No.6839 from Electrical Section, Vannapuram, on 27.1.2000, under LT IV- industrial tariff, with a connected load of 10 HP motor and lighting load totaling to 7725 watts, for running a small scale Flour mill, Oil mill and Rice mill. While so, on 22.10.2010, the APTS of KSEB inspected the industrial unit of the consumer and detected some anomalies; unauthorized extension of electric supply being availed from the 'light meter' to a shop run by the consumer in the same building. Subsequently, he was issued a penal bill amounting to Rs.18200/-. Being aggrieved, the consumer challenged the bill before the CDRF, Idukki and on dismissal of the petition by the Forum, he approached the State Consumer Commission, where also the petition was dismissed. The penal bill with interest has risen to a high amount, by the time, when the final order was delivered by the Hon Court. The consumer did not pay the penal bill and hence the electric connection was dismantled on 27. 07. 2012. After that the party was served with revenue recovery notice for an amount of Rs.103157/- for realizing the electricity dues, which included the succeeding month's penal charges for the continued usage of UAL, since he did not neither regularize the unauthorized load nor removed it from KSEB system. The appellant lodged complaint before the CGRF, Ernakulum, on 23.11. 2012. The CGRF dismissed the Petition on the ground that, the bill issued by the respondent is in order and it is devoid of any merits. Aggrieved, the appellant approached this authority and submitted the Appeal petition on 18.2.2013. He also filed a Petition before the Hon High Court and the Hon Court in WP(C) No. 5734 of 2013(N) dated 28.2.2013 has directed this Forum to hear and dispose with in two months.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition. The appellant is conducting a small scale industrial unit from 1999 onwards in the name of ' Arackal Oil Mills' in the building No. IV/502-B of Kodikulam Panchayath. The electric connection was availed on 27.1.2000 under LT IV tariff with Con. No. 6839. The appellant is engaged in producing coconut oil and making curry powders. The appellant claims that the 'packing unit' of his industrial unit

is functioning in the upstairs of the building to avoid the noise pollution. He uses electricity to operate the machineries of the Mill and is measured by the power meter provided to the Unit and also uses electricity from the light meter for the 'packing unit' in the 1st floor and the lighting circuits of both floors.

While so, the APTS inspected the Industrial Unit on 22.6.2010 and prepared a mahazar. In the mahazar, it is alleged that unauthorized extension of electric supply was done by the appellant from the light meter of the industrial unit. Based on this mahazar, a provisional penal bill for Rs. 18200/- was issued to him. The appellant filed an objection before the AE, but he confirmed the bill and the final demand was issued on 13.7.2010. His petitions before the CDRF, Idukki, and then before the State Consumer Commission and the CGRF, Ernakulam were all got dismissed. Hence he filed this appeal petition before this Forum and obtained the Hon High Court order.

1. The appellant submits that the order of CGRF is against law and facts of the case.
2. The order passed by the CGRF is without considering the evidences and facts submitted by the appellant. The respondent misrepresented the facts before CGRF by hiding the real facts. The Building No. IV/502-A of Kodikulam Panchayath is a house where the appellant resides and the SSI unit is functioning in an adjacent building No IV/502-B. There is no building numbered as VI/279 and VI/280 prevailing in Kodikulam Panchayath and to clear the doubt, a certificate issued by the Panchayath is produced. The site mahazar was prepared hiding these facts and the CGRF has not considered the arguments based on these facts.
3. The CGRF has not considered the License issued to the 'Arackal Oil Mills' as a SSI unit functioning in Kodikulam Panchayath building No. IV/502B, though the appellant raised this argument before the Forum, but not examined.
4. The appellant had approached the AE with an application to cancel the penalization after removing the alleged unauthorized extension, but the CGRF has not considered this fact also.
5. The packing unit is a part of the industrial unit and it cannot be considered as in a different part of the building.

Arguments of the Respondent: -

The Respondent has filed the counter statement against the averments contained in the Appeal Petition, stating that all except which are admitted, are false and hence denied by them.

- 1). The respondent submits that building No. VI/279/08-09 of Kodikulam Grma Panchayath was a well-established multi business shop with stationery and grocery items in the first floor of a double storied building. This was not a part of the industrial unit, but works as a business shop with 4 Nos of lights, one sealing machine, one television and one tube light being connected in service and uses power from the non-working energy meter with Sl. No. 568427/ 5-20A (unilec make) provided as Light meter to the industrial unit. According to the purpose of energy used, the applicable tariff to the shop is LT VII-A commercial. So this is a clear case of tariff misuse. It is very clear that the unauthorized extension was taken on a later date after getting the electric supply in the year 2000. This extension was taken from the light meter of the industrial unit with the aid of 2 open wires from the fuse unit & neutral link respectively, as recorded in the mahazar, prepared during APTS inspection done on 22.6.2010.
- 2). The contention of the respondent is that the order of CGRF is judicious and correct as per Section 16 of Electricity amendment Act 2007, sub-section V and Section 126 of Electricity Act.
- 3). In the site mahazar, it is clearly recorded that the building Nos. VI/280/08-09 and VI/279/08-09 are assigned to the SSI unit and commercial shop respectively. This was read and accepted by Smt. Shaly, wife of the appellant. It is the usual practice of renumbering the buildings by the

Panchayath periodically. This issue of change in building number has not been raised before the CGRF and now this new argument was raised at this stage only with an intention for misleading. 4). The appellant has not approached the AE of Vannappuram Section with necessary document (i.e. completion report), so as to regularize his industrial and commercial load separately, so as to avoid further penalization.

5). The packing room as mentioned by the appellant is not actually meant for packing, but it was a well-established business shop with sales of other products also which are not produced in his SSI unit. The shop contains stationery and grocery items and the appellant has not denied this version of the respondent. Also the said shop is situated in the upstairs of the SSI unit and is having a different building No. as VI/279/08-09. This matter was clearly recorded in the site mahazar prepared during inspection and was accepted by Smt. Shaly, wife of the appellant. Hence the penal assessment made was correct and standing.

Analysis and Findings: -

The Hearing of the case was conducted in my chamber at Edappally, Kochi on 11.4.2013 and 19.4.2013. The appellant, Sri. A P James was present and argued the Case and Sri. P.K. Anil Paul, AEE, Thodupuzha, appeared for the opposite side. On perusing the Appeal Petition, the counter of the Respondent, the documents submitted 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 explained in detail the facts of the case during the Hearing and repeated the arguments which were stated in his Appeal petition and requested to cancel the penal bills issued and to restore the electric connection already disconnected as it is his livelihood.

The appellant was penalized for the anomaly committed in his premise, i.e. the unauthorized extension of electric supply from his Light meter (of Industrial unit) to the 1st floor of the same building, where the party was running the Flour mill in the ground floor and the disputed shop in the upstairs. This irregularity was detected consequent to an inspection conducted by the APTS of KSEB on 22.6.2010. The party does not dispute the fact of, either the APTS inspection or the mahazar prepared on that date. But he denies some findings recorded in the mahazar. His main contention is that the 1st floor (upstairs) was meant and used as the 'packing unit' of the products manufactured at the Flour and Oil mill working downstairs and forms an integral part of the Industrial unit (Mill), from the date of taking the electric supply.

The whole building is owned by the appellant and it is a two storied building with different i.e. having two building numbers for the ground floor and 1st floor. The Mill is functioning in the ground floor and a business shop for selling the products of the mill (manufactured in the Flour mill, Oil mill and Rice mill) including its packing is done in the shop of the 1st floor. The ground floor where the Mill is working is below the road level and the 1st floor with shop is on the same level of the main road and hence is ideal for a shop. The shop was included as a part of the Mill (industrial unit) from the date of taking electric connection to the Mill and being shown as the 'packing' place and the selling shop, since the ground floor was noisy due to the working of the Mill, argues the appellant. Also the electric supply to the shop, from the beginning, was tapped from the Light meter and it was authorized by KSEB and hence there is no case for unauthorized extension of electric supply, as alleged by KSEB, the appellant insists. But in course of time, he has added some more items at the shop in a small scale like a little stationery and grocery items for sale and is not denied by him.

The respondent was directed to produce the set of papers submitted by the appellant, while

taking the new Electric connection to his industrial unit (Con. No. 6839) in the year 2000, like the "Installation wiring completion report and sketch", to verify the argument of the party and confirm whether the upstairs (Shop) was a part of the Mill (working downstairs) or not, but the respondent failed to produce the same as they could not trace it.

Another contention of the appellant is that he had removed the unauthorized additional load and the extension of supply by removing the two wires and approached the AE with a request to stop penalization. The appellant has produced a letter in support of his argument. Since the letter dated 02.01.2011 is seen as an original copy and the respondent also denies the receipt of such a letter, its genuineness is doubtful. But the appellant says that the AE did not accept the letter and the version of respondent is that they required the test report from a Licensed Wiring Contractor.

The APTS has conducted inspection in the consumer's premise on 22.6.2010 and have found unauthorized additional load (UAL) and unauthorized extension (UAE) of electric supply, and a penal assessment bill was issued. When detecting UAL/UAE, it is the responsibility of KSEB to provisionally assess the consumer as well as issue a notice to remove the UAL and UAE or to regularize the same within a reasonable time. The Regulation 51(4) of KSEB T & C of Supply, 2005, says that the unauthorized load should be got regularized by the consumer within a period of three months on application to the AEE and on making payment of additional security deposit and other charges as per rules. It is the responsibility of respondent, to disconnect the supply to the consumer, if the UAL is not regularized within three months and also if the UAL is found detrimental to KSEB's system. If the UAL is not adversary to KSEB's system, the respondent can allow the UAL to be enjoyed by the consumer, provided the party pays the penal charges levied for the UAL connected, until it is regularized.

A perusal of the mahazar reveals that, the UAL in the upstairs shop was a sealing machine of 300 watts capacity, out of the total load of 545 watts found connected to the Light meter Circuit. The appellant has used this extension of electric supply from the light meter, for packing the oil and curry powders, produced at his SSI unit (Mill) and for its sale at the shop including other items. The appellant concludes that he had stopped the production and packing of oil and curry powders, since the receipt of penal bill and was taking only job works for those who bring the items, for powdering and for oil extraction.

The main point to be decided is, whether the 1st floor or the upstairs of the building, where the consumer conducts a shop, for selling the products manufactured at the Mill, is an integral part of the Industrial unit (Flour Mill, oil mill etc.) that is working in the ground floor?.

The KSEB's usual practice in an industrial premise was to provide two Energy meters namely (i) the Power meter which measures the quantity of electricity used by the machineries, equipment and other electro-motive devices etc. and

(ii) a light meter to measure the energy consumed by the lights, fans, other office equipment like computers, Telephone, scanners, printers, drinking water cooler, A/C's etc.

In this Case, the shop was found having a 'connected load' more than the sanctioned load of the Light Meter circuit of the Mill. Hence, even if the argument of the consumer was accepted that the shop was an integral part of his Mill, he is found having connected excess connected load than his sanctioned load and hence he is liable to be penalized for the UAL availed.

The shop is on the 1st floor of the building and is occupying the same level, with that of the road, while the Mill is located in the ground floor of the same building, which is below the level of the road. The shop was reported to be having electric supply from the date of connection to the Mill, in the year 2000. The local KSEB section officials never took any action against the

consumer for the last 10 years, as they might have fully satisfied or convinced of the Shop's electric connection being availed from the Industrial unit as in order. It is difficult to believe, that a shop was working with unauthorized electric supply, on the road side, without being detected for so many years. Surely the Meter reader or the Sub Engineer, who takes the Meter reading of the Mill regularly in every month, will notice such a discrepancy. Further, the mahazar does not contain the connected load details of the Mill and the Lighting load details of the ground floor and only the extension of electric supply (UAE) to the shop on the upstairs and its load details were given in the mahazar. Had it furnished the full details, it would have been easy to calculate the light load of the Ground floor (Mill) clearly and thereby ascertaining the difference with the sanctioned load details submitted to the Board while availing the supply. Similarly, had the KSEB been able to produce the papers submitted by the appellant while taking the new Electric connection in the year 2000, the "Installation wiring completion report and sketch", it would have been easy to verify the argument of the consumer that the upstairs (Shop) was a part of the Mill (working downstairs) and determine whether the shop's supply was energized from the light meter itself from the beginning or not. But the respondent was not able to produce the documents, as it was reported as misplaced and could not be located. In its absence, the benefit goes to the appellant and his contentions have to be accepted. Moreover, the shop which is more readily and easily accessible by others, appears to be a part of the industrial unit (Mill) only, as otherwise the consumer would have taken an independent electric connection to the shop.

DECISION :-

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

The penal bill issued to the consumer, for the detection of UAE and availing UAL of 1 KW and being assessed for the period of previous six months prior to date of inspection, i.e. from 21.1.2010 to 22.6.2010 was seen done as follows;

Penal Charge = UAL of 1KW x Rs.50/- per day x 2 times x 6 months (182 days) = Rs.18200/-.

The UAL has to be penalized at the appropriate tariff for which the energy was misused. Here it is seen charged under LT VIII- temporary extension tariff rate, which is found to be not in order.

I am of the view that there is strong possibility in the argument of the appellant, that originally the shop's electric supply was tapped from the light meter of the Industrial unit itself, for the use or purpose of packing the items produced in the Mill (Flour mill or Oil mill or Rice mill), which is located in the ground floor of the same building and I am inclined to accept it. Hence I decide that there was no case of extension of electric supply in the consumer premises.

But it is true that that the consumer has added equipment in the shop premises like sealing machine etc. and expanded the items in the shop for sale, other than that produced in the Mill. Hence the allegation of UAL and misuse of tariff (industrial tariff misused for commercial use) stand proved. Since it is clear that only the Light meter was misused, the penalization is required only to that extent and need not be levied on the whole industrial load. The tariff of a shop with below 1000 watts as connected load has to be categorized under LT VII B tariff. Hence it is decided as follows;

(i).The appellant has to be penalized, for the misuse of tariff of the Light meter consumption, as it was seen connected excess load than the sanctioned. Hence the party shall be assessed under LT VII- B tariff, at two times the tariff rate, from 01/2010 onwards, (starting date of assessment by KSEB) till date of disconnection in 10/2011. The shop has a connected load of 545 watts and its energy consumption is that recorded in the Light meter for the respective period. In short,

from 01/2010 onwards, for billing purpose, there are two connections, one for the Industrial unit of the ground floor and a shop under LT VII B tariff on the 1st floor and needs to be billed accordingly and the penalization is required for misuse of tariff of the shop only.

(ii) The consumer has to avail a new electric service connection to the shop on the 1st floor, for which he has to submit fresh application and remit the charges as per rules. In such a case, the Industrial Unit (Mill) shall have its lighting circuits limited to the ground floor use alone.

(iii) The appellant shall be issued a detailed bill showing the penal charges of the shop and the arrears of the Mill within a week and be given 30 days' time (Due date of bill) to pay the sum. The consumer is also eligible up to 15 installments, if requested for. The installments will attract interest from the due date of the bill to the date of payment.

(iv) The consumer has to remit the up to date monthly bills (at normal rate) of the Mill with interest till disconnection in 10/2011. The consumer shall be given reconnection to his mill provided he clears the arrears in full or pays the first installment of it and submit Test Report of the Licensed wiring contractor. He may be given the benefit of Demand charges exemption, which is eligible for those industrial units opting for reopening of their closed units.

(v) The appellant is required to pay the bill of the Industrial unit (consumer No.6839- LT IV) from 1/2010 onwards, excluding the light meter charges for the reasons stated under (i) above and if any excess payments has been made, credit adjustments shall be given for the same and only the balance amount due is to be collected, through the revised bill ordered under (iii) above.

(vi) If the consumer pays the amount as decided, the consumer shall be exempted from the Revenue Recovery Action, initiated for the recovery of dues of Con No.6839- LT IV, as on date.

(vii) The CGRF, order in Petition No. CGRF-CR/Comp.107/12-13 dated 21.1.2013 is set aside.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having some merits and is allowed to the extent it is ordered. No order on costs. Dated the 20th of May, 2013,

Electricity Ombudsman

Ref. No. P/ 344/ 2013/ 1752/ Dated 20.05.2013.

Forwarded to:

- 1). Sri. A P James,
Arakkal (H), Kodikulam P.O.
Thodupuzha, Idukki Dt.
- 2). The Assistant Executive Engineer
Electrical Sub division, KSEB, Thodupuzha East ,
Thodupuzha.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power house Bldg, Cemetery mukku, Ernakulam-682 018.