

## THE STATE ELECTRICITY OMBUDSMAN

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### **APPEAL PETITION NO. P/333/2012.**

(Present T.P. Vivekanandan)

Appellant : Sri. Ramachandran,  
Chekannurvariath, Madhav Nikethan Appartments,  
Near Balakrishna Theatre, Thaikkad P.O,  
Guruvayoor, Thrissur Pin -680 104.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Guruvayoor, Thrissur (DT).

### **ORDER.**

#### **Background of the case: -**

The appellant, Sri. Ramachandran, Chekannur Variathu, has availed an electric connection of 7 KVA connected load, from Electrical Section, Guruvayoor, for the purpose constructing the Multi storied (High rise) building named, 'MadhavNikethanAppartments', with consumer No.14024 under LT VII-A tariff. While so on 22.06.2012, the Section squad headed by the Sub Engineer, Electrical Section, Guruvayoor, conducted an inspection in the premises of the consumer and detected unauthorized additional load (UAL) to the tune of 186 KW (total 193 KW) against his authorized load of 7 KW. Consequently a provisional short assessment bill for Rs. 607393/- was issued to the consumer by the respondent. The consumer filed objections against the same before the Assessing officer, The Asst. Engineer and he heard the petitioner and finalized the penal bill by revising it to Rs.7, 12, 375/-. The consumer then approached the Dy. Chief Engineer, the Appellate Authority, after remitting 50% of the demanded amount and he after hearing both sides ordered, determining the UAL as 162.36 KW instead of 186KW and revised the penal bill to Rs.534278/- and disposed of the petition accordingly.

The CGRF (Central), Ernakulam, 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 26<sup>th</sup> December 2012 in Order No.CGRF/CR/Comp.123/2012-13/487 of CGRF (Central Region), Ernakulam.

Arguments of the Appellant: -

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

(1). The appellant is electric consumer No.14024 under Electrical Section, Guruvayoor, taken for the purpose of constructing the building under LT VII-A tariff with 7 KW connected load at the premise named, 'Madhav Nikethan Apartments', Guruvayur. As the building construction was not complete, the handing over of the apartments to the owners is not over. While being so on 22.06.2012, the Sub-Engineer from Electrical Section, Guruvayoor, came to the premises and prepared a site mahazar (Exbt-1). In the mahazar, it is noted that 186 KW of unauthorized additional load is connected and in use. Based on it, the Assistant Engineer, Electrical Section, Guruvayoor, issued a penal bill for Rs.607393/-, assessing for one year period from 6/2011 to 6/2012 (Exbt-2) and a notice dated 25.06.2012 (Exbt-3). We filed objection on the bill to the AE on 29.6.2012 (Exbt-4). The AE conducted a hearing on 30.07.2012 and issued the final bill for Rs.712375/-, reckoning for the period from 6/2011 to 10.08.2012 (Exbt-5) and a notice was served with last date of payment as 17.09.2012 (Exbt-6). In the notice it is mentioned that, if there is any complaint regarding the final bill, appeal can be filed to the Deputy Chief Engineer (DCE), Electrical Circle, Thrissur, on remitting 50% of the bill amount, within thirty days of the issue of the bill.

As the project is nearing completion, the appellant was in urgent need of electric supply and hence they were compelled to remit the sum of Rs.357000/- (50% of the bill amount-Exbt-7) and the appeal fee of Rs.7124/- on 18.09.2012 (Exbt-8) and an appeal was filed to the Deputy Chief Engineer (DCE), Electrical Circle, Thrissur (Exbt-9). The DCE conducted the hearing on 25.09.2012, but did not accept our contentions and upheld the mahazar prepared by the Sub-Engineer (Exbt-10). The DCE in his hearing reduced the connected load of the Geysers from 3000 to 2000 Watts, omitted the Fire pump load of 3.7 KW and directed to prepare the penal bill for 1 year from 6/2011. Thus the UAL was reduced to 162.36 KW from 186 KW and penal bill revised for Rs.534278/- (Exbt-12). The appellant could not remit the bill on 20.12.2012 and hence the respondent disconnected the supply on 21.12.2012. So the appellant requested for installments and sanctioned 3 installments for the balance amount from the office. When the appellant remitted the 1<sup>st</sup> installment on 22.12.2012, they reconnected the supply. After wards the consumer filed a petition before the Hon: CGRF, Ernakulum on 24.12.2012 (Exbt-13) with documents Exhibits 1 to 12. The CGRF returned the petition saying section 126 not coming in the preview of the Forum (Exbt-14).

2). The Sub Engineer (SE), Electrical Section, Guruvayoor, on inspection stated that the supply was extended to the whole building and is using. He arrived to the conclusion that 193.KW load (186 KW UAL and 7 KW sanctioned load) was connected and in use. But the construction of the building was not complete and the key has not been handed over to the owners of the apartments. Moreover the bulbs, tubes, fans, geysers, TV, fridge etc. has to be provided by the owners themselves. Nobody has occupied the apartments and there is no need of extending the supply to the whole building. The SE might have inspected the Watchmen's shed, where

they are staying in a studio (in ground floor) and might have inspected the apartments where interior and paneling works were going on, which is part of construction work. The inspection started at 2.30 PM and completed at 3.55 pm. It is not possible to inspect and verify connected load of 96 apartments which is spread in five different floors. Hence based on the facts stated, the Hon Forum may declare the mahazar is bogus.

3). In the site mahazar, it is saying as 6232 watts is the sanctioned load of Con. No.14024. But no details are furnished about the sanctioned load in the site mahazar. The name plate details of the fire pump motor, water pump motor, lift motor are not furnished. In 26 apartments the geyser load is recorded as 3000 watts in the mahazar which was reduced to 2000 watts by the DCE at the time of hearing. It proves the DCE itself is having doubt about the correctness of the site mahazar. There are 96 apartments in different floors, the load details include that of the lift motor, water pump motor, fire pump motor etc.in the building. The SE prepared the site mahazar within 1 and 1/2 hours. So it can be assumed that, with in this short time the SE has not verified the fact, whether the supply to all apartments has been connected and using. Moreover, technically it is not possible to connect and use 193 KW (186 UAL & the sanctioned load of 7 KW) from a '10-40 Amps' rated Energy meter. The appellant requests that mahazar dated 22.06.2012, prepared by the Sub Engineer without proper verification, may be quashed.

4).The penal bill was issued based on the site mahazar prepared by the SE and it is recorded as 186KW load connected unauthorised and using in 96 apartments (46 studio apartments, 26 double apartments, 25 single bed apartments). They have not allotted the flats to the owners and nobody was staying there at the time of inspection. It is clear that in mahazar no household appliances such as TV, Washing Machine, Fridge, Oven, Induction Cooker, Mixi etc. are stated as connected and using. Only the wired points are recorded and taken as the connected load. That also, the SE may not have verified whether it is connected or not. Moreover the SE could not find any inmates in the apartments. If he could see them, he has to record their name, address and statements from them stating how long they were staying in the building. As nobody is staying in the apartments there is any need of connecting all load to the supply. The paneling and interior work was going on in the apartments. That is a part of construction work. From the above, it is clear that 186 KW unauthorized load connected and using is not correct. Hence this Hon Forum may cancel the penal bill issued based on the site mahazar.

5).The supply was given to the consumer No.14024 using 10-40 amps 3 phase meter. The bimonthly consumption for 1 year is detailed below. (Exbit-2).

8/2011-----2814 units	2/2012-----3210 units
10/2011 -----2567 units	4/2012-----4306 units
12/2011-----2790 units	6/2012-----4717units

It can be seen that from 8/11 to 6/12 the monthly consumption has increased is only 1407 to 2360. It includes water pump motor load 0.746 KW, lift 4.5 KW. The above 2 loads are always

in use as paneling work and interior decoration works are going on. So the statements 193 KW load connected and used is false as now also the meter is intact and working properly.

**Reliefs sought for: -**

- i) to cancel the site mahazar dated 22.06.2012 which is prepared without proper verification by the Sub Engineer.
- ii) The action taken based on the site mahazar may be quashed.
- iii) The payment made may be directed to refund.
- iv) Further payment regarding the penal bill may be kept pending and further action may be stayed till the complaint petition is disposed.

**Arguments of the Respondent: -**

All the averments in the petition are denied except those which are specifically admitted by the respondent.

1).Sri. Ramachandran, Chekannur Variath, Madhav Nikethan Apartments, Thiakkad, Gruvayur, is a 3-phase consumer of Electrical Section, Guruvayur with consumer No.14024, under LT - 7A tariff (construction purpose) and having a connected load of 6232 watts.

2). The section squad headed by Sub-Engineer, Electrical Section, Guruvayoor had inspected the consumer's premises on 22.06.2012 and a site mahazar was prepared and readout the same in the presence of the petitioner. The petitioner agreed the site mahazar and received it without raising any objection. The squad directed the party to remove the entire unauthorized load immediately.

3). On inspection it is found that the petitioner had extended and permanently connected their electricity supply directly to electrical panel board through LT cable. In this building there are 45 studio flats, 26 double bedded rooms and 25 single bed room flats existing .Moreover lift, water pump, fire protection pump and common area lights are seen connected to the electric panel. Total connected load detected in the premises was 193 KW and the registered load was 7 KW, so the unauthorized load is 186 KW (193-7). Based on this provisional assessment, a bill for Rs.607393/- was issued under section 126 of Electricity Act, 2003 and clause 11 of the electricity amendment Act-2007. The billing period was fixed as per clause 11 (5) of the same.

4).The consumer filed objection against the bill on 29.06.2012 and conducted a hearing, in which the petitioner admitted the load noted in the mahazar and raised no objection on the unauthorized load. The party stated that the construction of 55 flats had been completed and 5 Nos were already occupied and agreed to produce necessary documents to prove the above facts. They produced an invitation letter not authorized by any of them showing the inaugural function was held at 6.30pm on Friday 1<sup>st</sup> June 2012. Consequent to this bill for Rs.712375/- was issued on 18.08.2012. The bill amount was increased because the petitioner continued connecting the additional load without the permission of KSEBoard. So the period of bill was

extended from 1.08.2011 to 10.08.2012. A written statement was obtained from the petitioner on 10.08.2012 stating that the entire unauthorized load has been disconnected and will not be connected without permission. From the above statement it is clear that they admitted the usage of unauthorized additional load.

5). The petitioner filed an appeal before the Deputy Chief Engineer, Electrical Circle, Thrissur and the DCE conducted hearing on 25.09.2012 and in the hearing the petitioner raised no objection against the usage of unauthorized load and mahazar. Based on the order of DCE dated 13.10.2012, the connected load was reduced to 163 KW instead of 196 KW. As such the final bill was revised to Rs.534278/- and was issued to the petitioner on 21.11.2012, giving ample time to remit along with details of calculation and notice as per rules. The petitioner did not remit the bill and so the service was disconnected on 21.12.2012. The party requested for instalments which was sanctioned on 22.12.2012 and remitted the 1<sup>st</sup> instalment and electric supply was reconnected on the same day. Later, they approached Hon CGRF, which was not admitted by the Forum. The party himself has agreed that all the construction is over and inaugural function was carried out on 01.06.2012 as per the Exhibit-1.

6. The petitioner themselves admitted in the various statements that construction of 55 flats are completed and 5 of them occupied. Since all the electrical panels are located at one place and the supply was extended to the whole panel, all the connected equipments from the panel can be used as and when required. So the argument against extending the supply to whole buildings by the petitioner is false and not admissible. The Sub Engineer had inspected the premise along with squad members and the representative (Sri. Manikandan) of the consumer and whatever the data included in the site mahazar was convinced by the representative of the petitioner and also admitted the site mahazar without objection. If any construction work was going on at that time, the same would have specifically recorded in the site mahazar and no construction works were noticed at the time of inspection. So the argument that panel works were going on as a part of construction work and the SE inspected the watchmen apartment only etc. is false and cannot be admitted.

7. Normally a site inspection of large electrical installation will be conducted by a squad in which three or four persons will be assisting. Also the inspection starts with collection of data from site and confirmed from the representative of the consumer, like details of equipment, connected load, position of equipment installed, how the loads are connected etc. Only after collecting all these data, the preparation of site mahazar starts. Here also the preparation of mahazar started at 2.30pm and completed at 3.55pm due to the complexity of the installation. As there were persons to assist the squad, the preparation of site mahazar started only after inspection of the installation. The argument that it is not possible to inspect and verify the connected load of 96 apartments is false and liable to be rejected. On preparation of mahazar whatever data available and acquired from the site are included which was admitted by the representative of the petitioner and was not denied so far in the previous occasions given to

the petitioner. So the comments of the petitioner regarding the site mahazar is misleading only.

8).At the beginning of the site mahazar the registered load was recorded from the available bill at site which is not affecting the unauthorized connected load, since all the loads at site were taken and recorded in the site mahazar. Since all the name plate details except wattage of the electric equipments are not required in assessing the connect load, same was not recorded in the mahazar. The Deputy CE after hearing reduced the wattage of 'heaters' as per the plea of petitioner, with in the power of the appellate authority, but has not commented bad about the site mahazar. Only the load calculation error was pointed out, which was considered while issuing the final bill.

9).In the temple town of Guruvayoor, so many flats and villa complex are available, where it is a common phenomenon that occupants of flats or villa are coming just for going to temple and then return home, according to their convenience. So the total load of the complex will not be used at any time except some rare occasions. So the diversity factor will be very high and no question of full load at any particular time. Hence the technical feasibility of connecting the load to 10 -40 Amp Meter is high due to the random use of the load with very high diversity factor. So the request of the petitioner to quash the mahazar is baseless and is to be rejected. Also petitioner produced an invitation letter in which the inauguration of the project was shown as 01.06.2012. From the above it is clear that the construction was over before 01.06. 2012 in every respect. That means electric connection, water supply etc will be ready to all apartments and ready for occupying but the electric connections to each apartments was not effected from this office. The first connection was given only on 06.09.2012. From these facts it is clear that petitioner was misusing the construction purpose connection by connecting UAL to all apartments through permanent electric panel installed. So the argument of the petitioner that no-body was staying in the apartments is baseless and contradictory to the evidence and statements submitted. Also it is stressed that there was no construction noticed at the time of inspection. So the statements, the load noted in the mahazar connected through electric panel is true and the penal bill issued based on the mahazar as per the prevailing rule. The Deputy Chief Engineer revised the connected load as follows:

1. Single studio flats	45@ 1.04 KW =46.80 KW
2. Double bed flats	26 @ 3.42 KW =88.92 KW
3. Single bed flats	25 @ 0.78 KW =19.50 KW
4. Lift	1 no @ 4.5 Kw = 4.50 Kw
5. Water pump	1 No. @.746 KW=0.746 Kw
6. Water Pump	1 No.@ 1.492KW=1.492KW
7. Common area light	20 No @ 20w =0.400 KW
Total	<u>162.36 KW</u>

10).The consumption pattern from 8/2011 to 6/2012 itself shows that the petitioner is using power to the apartments as and when he desires by connecting them through the electric panel.

<u>Date</u>	<u>Meter reading</u>	<u>Units</u>	<u>Date</u>	<u>Meter reading</u>	<u>Units</u>	
24.04.2007	282	275	22.08.2011	25535	2814	
20.06.2007	625	343	21.10.2011	28102	2567	
21.08.2007	732	107	20.12.2011	30892	2790	
15.10.2007	1268	536	21.02.2012	34102	3210	
15.12.2007	1590	322	21.04.2012	38408	4306	
14.02.2008	2247	657	21.06.2012	43147	4739	
13.04.2008	2608	361	20.08.2012	47651	4504	
16.06.2008	2956	348	19.10.2012	51311	3660	Meter changed on 21.
16.08.2008	3230	274	01.01.2013	129 x 20	2060	11.2012, IR= 3.2 x 20
15.10.2008	3497	267	01.02.2013	213 x 20	1680	
16.12.2008	3906	409	01.03.2013	301 x 20	1760	
10.02.2009	4370	464	01.04.2013	404 x 20	2060	
13.04.2009	4810	440	<u>01.05.2013</u>	<u>502 x 20</u>	<u>1960</u>	
10.06.2009	5210	400				
12.08.2009	5932	722				
15.10.2009	6891	959				
11.12.2009	7993	1102				
11.02.2010	9303	1308				
13.04.2010	10418	1117				
15.06.2010	11759	1341				
13.08.2010	13248	1489				
16.10.2010	14650	1042				
24.12.2010	16069	1419				

23.02.2011	18085	2016
25.04.2011	20220	2135
21.06.2011	22721	2501

**Analysis and Findings: -**

The Hearing of the Case was done on 11.4.2013 in my chamber at Edappally, Kochi and the appellant's side was represented by Sri. K.K Deepanandan, Sri. Rajesh Kumar and Sri. Deepesh S. Warriar and the opposite side by Sri. Purushotama Panicker, Asst. Executive Engineer and Sri. K.G. Dileep Kumar, Senior Supdt., Electrical Sub Division, Guruvayoor and they have argued the Case mainly on the lines stated above. On examining the Petition, the counter statement of the Respondent, the documents attached and the arguments raised in the hearing and considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions.

(1). The CGRF has not admitted the petition filed before it and delivered its verdict on 26.12.2012 stating that since the complaint falls under Section 126 of Electricity Act, 2003 and vide Regulation 2 (1) (f) and Regulation (7) of the KSERC (CGRF & EO) Regulations, 2005, the Forum is restricted from admitting such complaints.

(2). The electric connection vide Con No. 14024 was availed on 02.02.2007 with a connected load of 6232 Watts under LT VIIA tariff. The Inspection was conducted on 22.6.2012 and the main allegation was that the consumer was found indulged in unauthorised use of electricity in the Multi-storied Building, Madhav Nikethan Apartments, by extending supply to the whole building. The consumer has agreed that he has extended supply to 5 Nos. of Flats out of the 96 Nos of Apartments. Hence it is established that the consumer has committed unauthorised use of energy and hence is liable to be penalized under Sec. 126 of Electricity Act, 2003. More over the complaint against the consumer under Sec 126 does not come under the purview of Electricity Ombudsman. However, as the complaint has been brought to my attention and a glancing over the same, I find some flaws in the proceedings of the Licensee which is stated below and I feel it should be brought out to the notice of the respondent for their active consideration, before finalizing the penal charges.

(i). The Board after inspection of the consumer premise on 22.6.2012, has issued a provisional assessment for Rs. 6,07,393/- under Sec.126 of Electricity Act, 2003, (Un authorised use of Electricity), penalising for the last one year. After conducting the Hearing on the objections filed by the consumer, the Asst. Engineer has revised the bill to Rs. 7,12,375/-, extending the penalty period up to 10.08.2012. But it has been clearly stated under Regulation 50 (5) of KSEB T & C of supply, 2005, as ; *".....and if however the period during which such unauthorised use of electricity has taken place cannot be ascertained such period shall be limited to a period of 12 months immediately preceding date of inspection"*. This implies that the Assessing officer cannot extend the date of penalization beyond the date of inspection while finalizing the



provisional assessment after conducting the hearing. In this case, the period was extended up to 10.8.2012 and accordingly the assessment bill increased. This action of AE is not in order.

(ii). The Asst. Engineer has to issue notice to the consumer, as per Regulation 51, of KSEB T & C of supply, 2005, asking either to disconnect the Unauthorised Additional Load (UAL) availed by the party or to regularize the same immediately. The penalty for continued availing of the UAL can be levied till the said UAL is removed or regularised as per Reg. 51(2). But it has to be done after giving notice to the party (Reg. 51), that is to say, the penal bill for the subsequent period has to be raised only after giving notice to the party and through a separate bill.

(iii). The total UAL detected as 186 KW correspond to the total connected load of the Multi-storied building. It is impractical to avail this much load through the 10-40 Amps, capacity Energy meter. The electrical power or Light load that can be availed safely at a time through a 10-40 Amps. Capacity rated Meter is 25 KW and with a diversity factor of 2, it can have a value of maximum 50 KW. The energy meter has not burnt during this period, which means the UAL availed has never exceeded the capacity limit of the Meter. So I am of the opinion that the assessment done on the consumer for 186 KW is on the higher side.

(iv). The final assessment bill prepared on the proportionate energy charges portion, is not seen done according to the method suggested by the Hon KSERC. As per the decision in DP 75/2009 dated 19.01.2010, the Hon Commission has clarified the method to be adopted for assessing the proportionate energy charges. The order specifies that it has to be done, based on the difference in the average consumption of 12 months prior to the period of assessment, and with that (average consumption) obtained during the penal assessment period. Hence the proportionate energy assessed requires a fresh look into it, based on the Hon KSERC decision.

For the above reasons, I am of the view that the penal assessment bill raised against the consumer needs a retrospection.

**Decision :-**

From the analysis done above and the conclusions and Findings arrived at, I take the following decision.

I have not gone deep into the merits of the points raised by the appellants in the Petition, as after all the main point is that, as the Case is booked under Sec.126 of the Electricity Act, 2003, the Case itself will not come under this authority's purview for decision.

But once a petition is filed before me by an electricity consumer and when it is noticed that there is some apparent error or glaring injustice on the face of the decision taken by the KSEB (Distribution Licensee), I feel that it should be brought to the attention of the concerned. As such this Authority feels that the Petition is having merit for reconsideration by the Assessing Officer and the Appellate Authority. I feel that, it is a fit case to be looked into afresh by the appropriate authority, taking into consideration the facts mentioned above and then take a decision accordingly. Hence I am remanding the Petition to the Assistant Engineer, Electrical Section, Guruvayur, the Assessing Officer, to review the case and decide afresh as per Law, with in 60 days of the receipt of this order, giving an opportunity to the consumer for a personal Hearing.

Please note that this Forum's (Electricity Ombudsman) findings are intended only for applying mind to look fresh into the case on the matter stated above and may decide, as the Assessing Officer may think proper and as per Law. Similarly, I make it clear that my Findings and 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, under Section 127 of IE Act, 2003, consequent to this verdict.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants' stands disposed of with the said decisions. The Case is remanded to the Asst. Engineer, Guruvayur, to decide on the dispute afresh, after giving an opportunity of hearing the Petitioner. No order on costs.

Dated the 30<sup>th</sup> of September, 2013.

Electricity Ombudsman

Ref. No. P /333/ 2012/ 1983/ Dated 30.09.2013.

Forwarded to : -

(1). Sri. Ramachandran,  
Chekannur Variath, Madhav Nikethan Appartment,  
Near Balakrishna Theatre, Thaikkad P.O,  
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(2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Guruvayoor, Thrissur (DT).

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,  
KSEB, Power House Bldgs, Ernakulam-682018.