

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/331/2012.

(Present T.P. Vivekanandan)

Appellant : Smt. Mymoona Khader Kunju,
W/O Mr. Abdul Khader Kunju,
PanakkaVadakkathil, Mubarak,
Memana, Oachira.P.O, Pin-690 526.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Oachira P O.

ORDER.

Background of the Case:-

The appellant is electrical consumer, No: 8500, availed for his residential house and he owns yet another building in the same compound with Consumer No: 19654, under Electrical section, Oachira. While so, on 16.08.2012, the Division squad headed by the Assistant Engineer inspected the premises of consumer No: 8500 and detected misuse of electricity by interlinking a phase line of electric supply from the nearby electric connection of consumer No:19654, using flexible wire to the outgoing side of the cutout of his house, thereby dishonestly tapping energy, amounting to misuse and theft under Electricity Act 2003, alleges the respondent. Based on the said anomaly noticed, action was initiated against the consumer, under Section 135 of Electricity Act, 2003 and also penal assessment under Sect.126, by issuing provisional bill for Rs. 56255/- dated 17/8/2012. A compounding fee of Rs. 24000/- was also realized from the consumer under Section 135 of the Act. The consumer filed a complaint before the CGRF, which was dismissed, holding that the same was not maintainable, as per Regulation 22 of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005 vide order No. OP- 820/2012 dated 5.11.2012. Aggrieved by the order of CGRF, the Appellant has submitted this appeal before this Forum.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition filed before this Forum.
(1). For the last 3 years, the appellant and his wife are staying occasionally in their house, since their daughter is studying in Tamil Nadu. While so on 15.8.2012 while reaching the house, they

noticed that the power supply was absent. So the appellant himself took a temporary supply from the nearby service connection to the double storied building. The Division squad inspected the site on 16.8.2012 and prepared a mahazar alleging that the appellant has indulged in theft of electrical energy by connecting a single wire to the phase line of the nearby premises of his house.

(2).The seals of the meter were intact, and yet charged him for theft of electricity and directed to remit the compounding fee of Rs.24000/- and a provisional bill for Rs.56255/- was also issued. The appellant had only temporarily used electric supply from the nearby premises which he owns himself and allegation of theft is a violation of natural justice and hence it is prayed to direct the officials to refund the amount collected from him illegally.

(3). The order of the Hon Consumer Grievance Redressal Forum, Southern Region, Kottarakkara in OP No.820/2012 dated 05.11.2012 in not interfering with the proceedings initiated under section 126 and 135 of the Act is opposed to law and facts of the case. (4). The CGRF ought to have appreciated that since the appellant had not tampered the meter or unauthorisely used electricity, he is not liable to pay any penalty.

(5). The CGRF ought to have quashed the assessment and realization of the compounding fee by the Assistant Executive Engineer for want of sanction from the Executive Engineer concerned.

(6). The initial assessment dated 17.08.2012 for Rs.56225/- and the revised assessment dated 05.12.2012 for Rs.41243/- relating to Consumer No.8500 belonging to the appellant are contrary to the provision of Electricity Act and allied Acts, Rules and norms prescribed by KSEBoard.

(7). The assessment is made arbitrarily, without any basis and in flagrant violation of the principles of law and natural justice.

During the Hearing day on 20.08.2013, the appellant concluded that the Sec. 135 of Electricity Act, 2003, would not be attracted, as he was using energy by extending supply from his nearby house and that too through the Meter of Cons. No. 8500. Hence, if at all any Section is attracted, only Sec. 126 (5) & (6) is applicable. Further, no tampering of Meter or pilferage has occurred in this case and hence there is no theft of electricity and if any assessment is required, it has to be done as per the energy recorded in the meter.

Relief Sought: -

(1). Set aside the order in OP No. 820/ 2012 of the CGRF, Kottarakkara.

(2). To quash the final assessment bill of Rs 41243/- dated 5.12.2012 relating to Cons.No.8500

Arguments of the Respondent: -

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

(1). The complainant, Sri. Abdul Khader Kunju is a domestic consumer with consumer No: 8500 under Electrical Section, Oachira. The registered load of the consumer No: 8500 was only 990 watts and the actual connected load at the time of inspection was 6000 watts.

(2). As per Section 135 of Electricity Act 2003," Whoever, dishonestly (a) taps, makes or causes to be made any connection with overhead, underground, or underwater line, or cables or service wires, or service facilities of al license or supplier as the case may be tampers a meter, install or use a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted", will be coming under theft of electricity and is a criminal offence and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Hence as per the request of the consumer, a compounding fee of Rs.24000/- was collected after getting sanction from Executive Engineer, Electrical Division,Karunagapilly, for exempting from further criminal proceedings and a penal bill of Rs.56255/- was also issued as per section 126 of Electricity 2003.

(3). The bimonthly consumption pattern of the two meters of consumer No: 8500 and consumer No:19654 for the last one year shows that the consumer was using energy from both meters on alternate months so that the reading of the meters will be within the minimum limit. This shows the consumer was willfully tapping energy for keeping the consumption within the limits, which in turn causes revenue loss to KSEBoard.

(4). The petitioner himself agreed that there was alteration in the connected load, which has not been intimated to the Section office in time and hence the penal bill was issued under section 126 of the Act 2003.

(5). As per rule, the petitioner remitted 50% of the assessed amount and filed appeal before the Deputy Chief Engineer, Electrical Circle, Kollam on 18.08.2012 and as per directions hearing was conducted at the Section office by the Assistant Engineer and the final bill was issued to the petitioner for Rs. 41880/- on 27.10.2012.

The Bimonthly consumption pattern of the two meters for the last one year is as follows.

<u>Consumer No: 8500/LT I A</u>		<u>Consumer No: 19654 LT I (A)</u>	
<u>Month</u>	<u>Units</u>	<u>Month</u>	<u>Units</u>
10/2011	52	10/2011	227
12/2011	140	12/2011	54
2/2012	54	02/2012	147
4/2012	107	04/2012	43
6/2012	24	06/2012	173
8/2012	52	08/2012	132

The petitioner is a retired Senior Superintendent of KSEBoard and is well aware of the standing rules and regulation of KSEBoard. The compounding fee was collected after getting sanction from the Executive Engineer, on the request of the petitioner. As per the direction of Hon CGRF (south)

Kottarakkara, the final penal bill issued, explaining the assessment method based on Board orders, to the petitioner.

Analysis and Findings: -

The Hearing of the Case which was posted on 10.04.2013 was not represented by the appellant and hence a second hearing was scheduled on 13.06.2013 and both parties requested leave of absence as the appellant has expired. So the case was adjourned to 20.08.2013. In the said hearing done in my chamber at Edappally on 20.08.2013, Smt. Ameena Beevi, Advocate has represented for the heir of the appellant and the Asst. Executive Engineer, Electrical Sub Division, Oachira, appeared for the respondent's side. It is reported that the original appellant, Mr. Abdul Khader Kunju has expired on 02.04.2013 due to a motor accident and hence his wife Smt. Mymoona Khader, wants to proceed with the case on behalf of her late husband, which was allowed.

On examining the Petition, the counter of the Respondent, perusing 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, thereof.

The site mahazar prepared by the Division Squad of the KSEB alleges the offence of theft and misuse of the electricity by tapping the supply from the premises with consumer No. 19654 to the residential building of the appellant having consumer no. 8500, by connecting a phase line using flexible wire to the outgoing side of the cut out of the other meter. The appellant has admitted that he took temporary supply from the nearby electric connection of a building belonging to him, to his house when there was a failure of electric supply. The contention of the respondent is that the action of the appellant comes under the offence of theft of electricity under Sec. 135 of the Electricity Act, 2003.

On the other hand, the main plea of the appellant is that the Sec. 135 of Electricity Act, 2003, would not be attracted, as he was using energy by extending supply from his nearby house and that too through the Meter of Cons. No. 8500. Hence, if at all any Section is attracted, only Sec. 126 (5) & (6) is applicable. Further, no tampering of Meter or pilferage has occurred in this case and hence there is no theft of electricity and if any assessment is required, it has to be done as per the energy recorded in the meter.

By extending the electric supply given to one consumer to another consumer's usage i.e. for the premises or areas other than for which the supply of electricity was authorized, is an irregularity under the provisions of Electricity Act and the said offence is not disputed by the appellant. Hence this Forum does not want to go into the merits of the case as the relevant clause under which the consumer was booked, Sec. 126 and Sec. 135, does not come under the purview of this Forum. Because, it is clearly specified in the "The KSERC (CGRF and Electricity Ombudsman) Regulations, 2005", under the sub clause (f) (vii) of the Section -2, that the Complaints and grievances connected with Sections 126, 135 to 139 and 161 of the Electricity Act, 2003 will not be maintainable before the CGRF and Electricity Ombudsman for consideration.

Another complaint of the Appellant is that the calculation procedure adopted in the impugned invoice is not consistent with procedure and proceedings. The initial assessment dated 17.08.2012 was for Rs.56225/-, which was revised to the balance sum of Rs. 13115/- vide bill dated 27.10.2012 (after assessing for Rs.41243/-, less the remittance), relating to Cons. No. 8500. The assessment is seen to be made as follows;

(Connected Load= 6KW, Load factor= 0.4, Hours = 6 Hrs/day, days = 30 Days/month).

Monthly consumption = 6 KW x 0.4 x 6 x 30 = 432 units per month i.e. 864 units per bi-month for which the applicable electricity charges is Rs. 3490.

I feel the above type of assessment to arrive at the energy usage of a domestic consumer is not scientific nor envisaged in the KSEB Terms and Conditions of Supply of electricity. The method suggested is either to take the previous average energy consumption of the consumer, when he was supposed to be working perfectly or the succeeding consumption after rectifying the defects, if the previous energy consumption is not reliable. In this case, from the meter readings furnished by the respondent and produced above, I find a maximum energy use of 250 units per bi-month only. Hence I feel the penal assessment done on the consumer is on the higher side.

Further, this Forum does not want to comment on the Compounding charges collected from the appellant by KSEB for the allegation under Sec. 135 of the Electricity Act, 2003.

DECISION: -

Since in this case, the grievance has arisen out of the detection of extension of wire from one premise to another and the charges leveled against the consumer is under Sec.135 and the penal assessment made is under Section 126 of the Electricity Act, 2003, it is clear that the Petition itself is not maintainable before the CGRF or the Electricity Ombudsman as per the KSERC Regulations. That is any dispute or complaints pertaining to such matters are not maintainable before the CGRF and Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. The Hon High Court of Kerala has also made it clear in the Catholic Reformation Literature Society Vs. KSEB [2011 (1) KHC 457] that, when there is specific provisions in the Act itself, to hear such Cases, the same are excluded from the purview of CGRF and hence before the Electricity Ombudsman. Hence I decide that the Appeal Petition filed before this Forum by the appellant is not maintainable and this Forum has not gone deep into the case.

But this Forum has felt that the penal assessment made on the consumer by KSEB, deserves for reconsideration, when the appellant pointed out it during the Hearing. Hence I am remanding the Petition to the Assistant Engineer, Electrical Section, Oachira, the Assessing Officer, to review the case and decide afresh as per Law, with in 30 days of the receipt of this order, on the matter of penal assessment made for Rs. 41243/-.

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

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

Dated the 21st of October, 2013.

ELECTRICITY OMBUDSMAN.

Ref. No. P/ 331 /2012/ 2014 / Dated 21.10.2013.

Forwarded to : 1). Smt. Mymoona Khader Kunju
W/O Mr. Abdul KhaderKunju,
PanakkaVadakkathil, Mubarak,
Memana, Oachira.P.O, -Pin-690 526

: 2). The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Oachira- Alleppy Dt.

Copy to : - (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
(2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapura-4
(3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vydyuthibhavanam, Kottarakkara.