

## STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road  
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph.0484 2346488 Mob: +91 9567414885  
Email:ombudsman.electricity@gmail

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### APPEAL PETITION NO. P/360/2013

(Present: T.P. Vivekanandan)

APPELLANT : Sri. C. S. Kamalasanan,  
August Mandiram,  
Pulamon P.O., Kottarakkara.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division, KSE Board,  
Kottarakkara P O.

### ORDER.

#### Background of the case:-

The appellant is a domestic consumer with Con. No. 851 under Electrical Section, Kottarakkara and having a connected load of 9115 watts. While so, the APTS, Kollam, conducted an inspection in the consumer premises on 11.5.2012 and detected tariff misuse, unauthorized additional load and extension of electric supply to a shed. The supply to the house was disconnected under Sec.135 and a provisional penal bill of Rs. 1, 83,685/- was issued to the party under Sec. 126 of Electricity Act, 2003. The consumer paid an amount of Rs.1,20,000/- as compounding fee, in terms of Section 152 of the Electricity Act, 2003 and also paid Rs.20000/- to get reconnection of supply. The consumer has lodged petition before the Assistant Engineer, Electrical Section, Kottarakkara, against the bill and after conducting a hearing, the bill was confirmed and the Petition dismissed by the AE. Being aggrieved, the consumer filed an appeal before the Dy Chief Engineer, Kottarakkara, after remitting 50% of the bill amount. The appellate authority ordered the penal bill absolute and directed to remit the balance amount. Not satisfied with the order, the consumer filed a petition before the CGRF, Kottarakkara, and the Forum ordered as follows, in OP No. 867/2013 dated 8.2.2013;

*“the case is remanded back to the Assessing Officer for making fresh assessment in the light of the schedule of tariff and terms and conditions for retail supply by the KSEB, with effect from 1.12.2007 applicable to the petitioner under LT I-A tariff”* ..... Still aggrieved by the said order, the Appellant has filed the Appeal Petition, before this Authority.

#### Arguments of the Appellant: -

(1). The appellant is the occupier of the premises having domestic consumer No: 851 of Electrical section, Kottarakkara and was remitting the electricity bill without any default. The sanctioned load of his house is 9115 watts and for the last few months, he has temporarily used a portion of energy from the domestic connection for the manufacture of some bakery items in a portion of his dwelling house. Such use is permitted act under the tariff rules for which separate sanction of KSEB is not at all required. More over the rate of domestic usage as per the rule is Rs.5.45 per unit, while he was using energy to a lower tariff of LT IV for making the bakery items, the rate of which is Rs.3.25

per unit. Though he was sustaining loss because of such use, as a temporary measure he resorted to such a use. Also used energy from his residence to a nearby shed for functioning of a borma by extending wires, as a temporary measure.

(2). While so, on 11.05.2012 the APTS of KSEB visited the premises and prepared a mahazar on the electrical appliances found in the premises and the total load was found as 11797 watts (12KW). A true copy of the mahazar is marked as Annex-1. In the mahazar two allegations are made. One is that the appellant is using 2081 watts of load (items 12 to 17 in the mahazar) for the use of making bakery items in a portion of the house with the energy from the House. The other allegation is that the appellant is using 3915 watts (4KW) of energy by drawing wires from the Distribution Board at the upstairs of the house to a nearby building for the use of the bakery borma.

(3). At the time of inspection the appellant who is aged was on bed rest following a heart surgery. Immediately after serving the mahazar, the Assistant Engineer (AE) disconnected the supply to the house. Thereafter he told the appellant to remit Rs.120000/- immediately in order to avoid police case for misusing 12 KW of energy, otherwise the appellant would be implicated in the police case for theft of electricity and he would be arrested. As the appellant did not commit theft of electricity or any other offence warranting a police case, he requested a written notice or demand for paying the penalty. Then the AE told that no written notice is necessary and if the amount is not remitted soon, he would be arrested by the police upon the complaint of the KSEB for theft of energy. Thus the appellant was compelled to remit the amount of Rs.120000/- on the same day. A true copy of the cash receipt for Rs.120000/- dated 11.05.2012 is marked as Annex-2. After some time, the AE served a provisional invoice under Sec.135 of the Electricity Act, for Rs.183684/-. A true copy of the provisional invoice dated 11.05.2012 is marked as Annex-3. A calculation statement was also attached with the above bill the details of which are as follows (on remitting Rs.20000/- as directed by the respondent the appellant got reconnection of supply).

(4). No provisional assessment bill was issued to the appellant. However, he filed objection to the above bill. A copy of the objection 14.05.2012 is marked as Annex-4. Disregarding the objection of the appellant, the Asst. Engineer passed an order dated 21.6.2012, confirming the provisional bill issued under section 135 of the Act. A copy of the order dated 21.6.2012 is marked as Annex-5. In the said order there was a proposal to file appeal under the section 127 of the Act, after remitting 50% of the amount. Accordingly the appellant remitted Rs.71353/- towards 50% and other charges as demanded by the 1<sup>st</sup> respondent and filed appeal. A copy of the cash receipt 03.07.2012 for Rs.71353/- is marked as annexure-6.

(5). The appellant Authority, the Deputy Chief Engineer disposed the appeal vide order dated 20.12.2012 upholding the final bill and is marked as Annex-7. Then a letter dated 05.1.2013 along with a bill for the balance amount of Rs.95303/- was issued to him on 14.01.2013, warning disconnection in case of default (marked as Annex-8). Fearing disconnection, appellant remitted it.

(6). The appellant, being aggrieved by the illegal billing, filed a petition before the CGRF on 10.10.2012 vide OP No.867/2013 and the Forum disposed the petition vide order dated 08.02.2013. The CGRF, on finding no theft energy done by the party, has admitted the complaint into file and disposed the same by directing the AE to make fresh assessment on the basis of the schedule of tariff and terms and conditions of retail supply by the KSEB under LT I A tariff, since the appellant is lawfully permitted to use domestic energy for a different purpose in the same premise.

(7). Actually the energy is used for manufacturing of bakery items and as such the CGRF's finding that it was used for commercial-LTVIIA- purpose is not correct and has to be under industrial LT - IV tariff. But the Forum failed to take note of this. However the Forum, in the order correctly gave

direction to reassess the amount under LT1-A tariff. Accordingly, if reassessment is made as above, the appellant would become entitled to refund the entire amount of Rs.250884/- collected from him. (Compounding fee of Rs.120000 + penal fixed charges of Rs.28800 + penal energy charges of Rs.102084/-). But the CGRF did not quantify the amount, thereby compelling the appellant to approach the Appellate Forum.

(8). It is submitted that though the assessment of penalty of Rs.52800/- made for unauthorized extension of 4 KW is illegal and incorrect; the appellant is not pressing for the refund of this amount, now. But all other amounts illegally collected by the respondents, excluding the amount of Rs. 52800/- comes to Rs.120000 + Rs. 28800 + Rs.102084 = Rs. 250884/-. This amount is liable to be refunded to the appellant. But the CGRF, while finding no theft of energy and the assessment to be illegal, failed to order the refund of the amount.

(9). The orders of the Assistant Engineer as well as the Deputy Chief Engineer are per-se illegal and unsustainable. The CGRF, though found the impugned bill to be erroneous and illegal, failed to compute the amount illegally collected from the appellant and order for its refund.

(10). By using domestic connection to make bakery items inside the house of the appellant does not amount to theft under section 135 of the Act or unauthorized use of electricity under section 126 of the Act. Under the tariff regulations a domestic consumer is authorized to use additional load for other purposes for his own use in the same premise. If such load exceeds the limit of 20% of the connected load or 500 watts, whichever is less, he is liable to pay the higher tariff for the whole consumption. Disregarding this statutory provision, the respondent is alleging theft of electricity and forced him to remit the compounding fee of Rs.120000/-. It is noteworthy that the respondent did not make any police complaint, if there was theft, as required under law. They also did not even serve a notice or any communication alleging theft and demanding the compounding charges. They simply disconnected the supply and threatened the appellant to remit Rs.120000/- as compounding fees with dishonest intension to harass him. As no offence of theft is committed by the appellant he is entitled to refund the above amount. Moreover, the compounding authority is Executive Engineer who knowing the innocence of the consumer, did not issue any order for realizing the compounding fees. There was no police case or criminal proceedings against the appellant so as to compound the offence. So the AE has unauthorisely collected the compounding fee Rs.120000/- which is liable to be refunded to the appellant.

(11). As the use of domestic energy for other purposes in the same premises is an authorized act as per the tariff notification itself, there is no unauthorized use of electricity by the appellant to be proceeded under section 126 or under 135 of the Act for using energy for making bakery products in a portion of his house. Facts being so, the respondents unnecessarily proceeded against the appellant for misuse of energy under Sec. 126 of the Act and realized a penalty. The respondent is liable to refund this amount to the petitioner with interest.

(12). Further, the respondent's allegation of unauthorized extension of 4 KW from house for the use of manufacturing of bakery items in a nearby building, has realized an amount of Rs.52800/- under LT VIII tariff. The appellant admit the use of 4 KW of domestic energy for manufacturing of bakery items in a nearby shed for 132 days under LT IV tariff. So the assessment for this ought to have been done for the LT IV tariff applicable to manufacturing of bakery items and not under LT VIII tariff applicable. However the appellant is not challenging the said assessment in this appeal.

(13). While the CGRF found no theft or misuse of energy under Sec.135 or 126 of the Act for using domestic connection for making products, it did not adjudicate the Case but simply remanded the case for fresh assessment. As there was no theft or misuse of energy either under Sec. 135 or 126 of

the Act, on using domestic connection for making bakery items in the same premises (except the use of 4 KW for a different premise under LT IV), the CGRF had jurisdiction to entertain and dispose the complaint on merits. Hence this case is liable to be remanded to the CGRF for fresh disposal for computing the amount to be refunded to the appellant.

(14). The appellant neither indulged in theft of energy under Sec.135 nor in any unauthorized use of energy under Sec.126 of the Act. In fact, domestic tariff of the appellant at his consumption level was much higher than the bakery tariff under LT IV. By using domestic energy for bakery purpose he paid higher rate. So there was no unlawful gain for him and on the other hand he had loss and the Board achieved gain. As such there was no dishonest intention on his part in using the domestic energy for a purpose under a lesser tariff. More over it was a permitted act. Hence the appellant was unnecessarily proceeded against alleging theft and recovery of compounding fees of Rs.120000/- and also for recovery of penalty of Rs.28800+10208/- under section 126 of the Act, total being Rs.250884/-. This amount is liable to be refunded to the Appellant with interest.

**Reliefs sought for: -**

- (1). Pass an order declaring that the appellant has not indulged in theft of electricity as contemplated under Sec. 135 of the Act or unauthorized use of electricity under Sec. 126 of the Act for having used domestic energy in the same domestic premises for making bakery products.
- (2).Pass an order declaring that the collection Rs.120000/- as compounding fee and penal charges of Rs.130884/- by KSEB is illegal. Direct to refund the amount of Rs.250884/- with interest to him.
- (3).Quash the CGRF's order and remand the case to the CGRF for fresh consideration and disposal.

**During the hearing, the appellant has concluded to the following prays;**

- (1). The tariff applied to the UAL of 2081 watts, should be limited to the appropriate tariff and the penal bill may be raised accordingly. That is the UAL taken inside the domestic building has to be billed under the appropriate tariff.
- (2). No contention against the bill raised for unauthorized extension taken to the outside building.

**Arguments of the Respondent: -**

- (1). The consumer No: 851 is registered under LT-1A tariff with a connected load of 9115 watts in the name of the appellant. The APTS, Kollam, conducted an inspection in the consumer premise on 11.05.2012 and the AE issued a penal bill for tariff misuse and unauthorized extension of supply. The findings of the APTS were as follows.
  - (i).The service connection was allotted for domestic purpose, but the consumer unauthorisely used for commercial purpose. (ii). The registered connected load was 9115 watts, but the consumer used 11197 watts, and (iii). The consumer extended electric supply to the outside of the premises and used a connected load in that building totaling to 3915 watts.
- (2). On the basis of site mahazar provisional penal bill was issued to the consumer for Rs.183685/- under Sec. 126 of Electricity Act 2003. The penal bill was issued to a period of past one year. But for the unauthorized extension penal bill was issued for 132 days by considering the statement of consumer mentioned in the site mahazar. As per the site mahazar it is defined as the supply used by the consumer was for the purpose other than for which the usage of electricity was authorized, vide, clause 50-Misuse of energy- in the KSEB Terms and Conditions of Supply, 2005.
- (3). The registered load of the LT I-A connection is 9115 watts. The load used for bakery purpose in his house for packing and sealing of bakery items, as admitted in the mahazar is 2013 watts. The authorized tariff is LT-1A, but the domestic supply is unauthorisely used for bakery purpose. Hence disconnected the supply to the consumer as per section 135(1A) of the EA, 2003. Subsequently, the

consumer was relieved of all the criminal proceedings, by compounding the offence, on collecting a sum of Rs.120000/- as compounding fee, in terms of section 152 of the Electricity Act,2003.

(4). On receiving the penal bill, the consumer has remitted a sum of Rs.20000/- to get reconnection.

(5). Against the provisional assessment, the consumer lodged an appeal to the Assistant Engineer, Electrical Section, Kottarakkara to consider the following argument.

(i). The petitioner got a connection under LT 1 A tariff and the penal bill is prepared in LT VII A tariff and LT VIII tariff. The petitioner argued that the bill may be cancelled and should be penalized in one tariff i.e. LT VII A tariff or LT VIII tariff.

(ii). As per site mahazar the misuse is seen as for industrial purpose but the penal bill is prepared under commercial tariff. Hence the bill may be cancelled and be revised in industrial tariff. Also, the item (i) to be considered only if the bill amount is reduced during the time of reassessment.

(6). The Assistant Engineer, Electrical Section, Kottarakkara, after conducting a hearing, decided to dismiss the petition filed by the consumer. Against the penal bill he had filed an appeal petition before the appellate authority, the Deputy Chief Engineer, Electrical Circle, Kottarakkara, as per section 127 of Indian Electricity Act 2003 by remitting 50% of the bill amount. The hearing was conducted on 06.11.2012 and ordered the penal bill as absolute.

(7). Not satisfied with the verdicts on both these fronts, the consumer filed a petition before the CGRF South. The CGRF, explicitly is forbidden by clause 2 (f)(vii) of the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, from considering any grievance under Sec.126 and offences under Sec.135 of the Act. In spite of categorical bar of jurisdiction, the CGRF admitted the complaint and delved into the merits of the case that is a violation of the Act, which is one among several such violations from the Forum in the recent past. The CGRF (South) is obviously unmindful of the provision of the Act and its subordinate regulations and is guided by some extra considerations, which is to be curtailed.

(8). The specific grievance presented by the consumer before the Forum in this case is listed below.

(a). To limit the charging of the compounding fee excluding the registered connected load and to treat the penalty of unauthorized load. (b).As the unauthorized load was used for bakery, the penal bill may be calculated in LT IV tariff and (c).The bill for Cons. No. 851 is done both in LTVII-A and LT-VIII tariff, which is against rules.

(9). A reading of the grievance would reveal that all pertain to criminal consequent to commission of theft and unauthorized use of electricity. Besides this, the grievance is itself de facto admission of guilt. In spite of such circumstances, the Forum admitted it, violating its own formation of order as well as the Act. The respondent brought to the notice of the Forum that it lacks jurisdiction to entertain the complaint and hence it is not maintainable, but the Forum admitted the complaint stating that the consumer insisted for examining, whether there is unauthorized use of electricity, calling penalty under Sec. 126 of the Act, for having used a room of his house with domestic tariff LT I A, for a different purpose for packing and sealing the bakery items that are manufactured in a separated premise. The Forum has deliberately constructed that the consumer desires such a relief and went on to examine it, though the party never expressed such an opinion in his written statement or during the proceedings. Such an approach is unheard of and is a violation of principle of jurisprudence.

#### Analysis and Findings: -

The Hearing of the case was done on 25.9.2013, in my chamber at Edappally and Sri. Rajeevan, Learned Advocate represented the appellant's side and Mr. G. Anil Kumar, the Assistant Executive

Engineer, Electrical Sub Division, Kottarakkara, represented for the respondent. On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments made during 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, thereof.

**1.0** It is the contention of the appellant before this Forum that the provisions of Sec. 126 and 135 of the Electricity Act, 2003, will not be attracted in the present case. According to the appellant, he did not make any theft or misuse of energy, by using additional load for other purpose, in a portion of the same house and is permissible as per the tariff rules published by KSERC. The condition for such use is that, if the additional load used exceeds 20% of the connected load or 500 watts, whichever is less, the consumer is liable to pay the higher tariff for the whole consumption.

**1.1** The respondent, in his counter has challenged the authority, jurisdiction and integrity of the CGRF in admitting the complaint, coming under Sec. 126 and 135 of the Electricity Act, 2003. Their contention of the Respondent is that the Forum (CGRF/EO) is barred to hear the complaints falling under Sec.126 &135 of EA, 2003 and hence lacks jurisdiction to entertain such complaints. Therefore the Petition of the appellant is not at all maintainable before the CGRF or the EO, the Respondent contends vigorously.

**1.2** It is noted that the CGRF has neither interfered with the decisions of the Assessing officer nor with the Appellate Authority (Deputy CE) on this matter, as alleged by the respondent. But it is true that the CGRF has examined some relevant points of the issues raised in the Petition. I am also having the same feeling, that the respondent has exceeded its power in penalizing the consumer and raised unwanted comments against the orders of the CGRF in the Petition filed before me, which is quite unfair. The respondent is required to furnish counter statements on the facts on the allegations raised by the appellant, try to convince the charges leveled against the consumer with evidences and quoting the relevant rules, regulations and orders pertinent to the Case under dispute and raise contentions as per Law and should not in any case attempt to malign the Forum established by Law.

**1.3** The claim of the appellant that no misuse or theft was done by him is opposed by respondent stating that the Board has conducted an inspection of the consumer premise and detected tariff misuse and unauthorized extension of electric supply from one premise to another. That is to say the Board's main allegation is that the domestic supply was unauthorisely used for bakery purpose and also extended to near by shed. Hence they proceeded against the consumer under Sec.135 of the Electricity Act, 2003. According to them, unauthorized use of electricity as defined in Sec. 126 of the EA 2003, will apply when the domestic supply is misused for bakery purpose. In the Case, "Executive Engineer Vs Seetaram Rice Mill", (Civil Appeal No. 8859 of 2011), the Hon. Supreme Court has analyzed the distinction between Sections 126 and 135 of the 2003 Act in detail and has pronounced as follows:

*“.....Upon their plain reading, the mark difference in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sect. 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV, relating to ‘offences and penalties’ and title of Section is ‘theft of electricity’. The Section opens with the words ‘whoever, dishonestly’ does any or all of the acts specified under clauses (a) to ( e) of Sub-section (1) of Section 135 of the 2003 Act, so as to abstract or consume or use electricity.....”*

*In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression ‘unauthorized use of electricity’.”*

*“16. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mensrea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intent and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mensrea.”*

*“17. Thus, it would be clear that the expression ‘unauthorized use of electricity’ under Sec.126 of the 2003 Act deals with cases of unauthorized use even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the method enlisted under Sec. 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Sec.126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Section 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter. Therefore, there is clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.”*

**1.3.** From the reading of the above portion of the Judgment, I do not find any scope for charging the consumer under Sec.135- Theft of energy, which is exclusively indented for the act of illegal extraction of energy. Here there is no case of illegal abstraction of energy or tampering of Meter. However, there is the allegation of extending electric Supply from one premise to another and availing unauthorized additional load there, which may fall under Sec. 126 of the Electricity Act, 2003. But at the same time, the domestic consumers are given some exclusive reliefs, under the LT-I (a) tariff rules, by the Hon. Electricity Regulatory Commission, which has to be considered, by the respondent.

**1.4.** As per the tariff orders notified in the Kerala Gazette dated 28<sup>th</sup> June, 2010, by the State Electricity Regulatory Commission, vide the “Schedule of Tariff and Terms and Conditions for retail supply by KSEB with effect from 01.01.2010”, under the heading, “Low Tension-LT-I”, Note (3) reads as follows;

*“Domestic consumers shall be allowed to utilize electrical energy in some portion of their residence for their own use for purposes other than domestic as defined under LT I when such connected load does not exceed 20% of the total connected load or 500 watts in their premise. When connected load other than domestic use in such cases exceeds the above 20% or 500 watts whichever is less, such loads shall be segregated and separate service connection obtained under appropriate tariff. When this is not done, the tariff applicable to the whole service shall be at the appropriate tariff applicable to the connected load used for the purpose other than domestic, if such tariff is higher than the tariff for LT-I”.*

**1.5.** It is clear from the above stated tariff rule that the ‘domestic consumer’ is not permitted to connect extra load, in excess of 20% of his sanctioned load, for his own use other than his domestic purpose. If load exceeds 20%, then he has to take separate connection. In this case, the registered load of the domestic connection is 9115 watts and as per the mahazar report, the total load found during inspection was 11797 Watts (12KW). The appellant does not dispute the findings in the mahazar in this regard. It is also not disputed by the consumer that he had extended power supply to a near by building and used 4 KW unauthorized load there.

**1.6.** Further, the note given under the tariff rule for LT-I-(domestic consumers), stipulates that the domestic consumer need only be billed under the appropriate tariff, if he is found connected at his house excess load and is using it for other than domestic purpose. But this clause does not cover for the anomaly of extending the electric supply from one premise to another and it falls under Sec.126 of the Act and has to be dealt and penalized accordingly.

**1.7.** But for the above irregularities done by the consumer, the KSEB has booked the consumer under Sec. 126 and 135 of Electricity Act, 2003. As per Clause 2(1)(f)(vii)(1) of KSERC (CGRF and Ele. Ombudsman) Regulations, 2005, any dispute or complaints pertaining to ‘unauthorized



use of electricity' under Sec. 126 or 'theft of energy' under Sec.135 of Electricity Act, 2003, are not maintainable before the CGRF and the Electricity Ombudsman. The Hon High Court of Kerala, reported as 2011(1) KHC 457 in Case No. WA No.52 of 2011 has also made it clear that, when there is specific provisions in the Act itself, to hear such Cases by designated Appellate Authority, the same are excluded from its purview.

**DECISION :-**

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

**(i). Point (1). Whether the present dispute is maintainable before the CGRF and Ombudsman?**

The allegation of extending supply from one premise to another premise and connecting extra load than the sanctioned load (unauthorized additional load-UAL) there with the Licensee's system, tantamount to 'unauthorized use of electricity', as specified under Sec. 126 of Electricity Act, 2003. However, if there is any allegation of dishonest or illegal abstraction of energy or tampering of the Meter against the consumer, then it will attract the provisions under Sec.135 of Act, 2003. This fact has been clarified by the Hon Supreme Court in the Judgment referred above. Any such disputes or complaints are not maintainable before the CGRF and Electricity Ombudsman, by virtue of Clause 2(1)(f)(vii)(1) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. The Upper Courts of Law has also made it clear that, when there is specific provision in the Act itself to hear such Cases by designated Courts or Appellate Authorities, then the same are excluded from the purview of CGRF. Hence I am convinced that since the respondent has raised the allegations under Sec. 126 and 135 of Electricity Act, 2003, against the consumer, the Petition filed by the consumer is not maintainable before the Electricity Ombudsman, as per the KSERC Regulations cited above.

**(ii). Point (2). When the Appeal Petition itself is not maintainable before this Forum, as it comes under section 126 & 135 of EA, 2003, whether the Petition has to be dismissed or remanded?**

The contention of the appellants is that the tariff applied for raising the penal bill is wrong, for which the respondent has submitted that the Hon High Court of Kerala in Case No. WA No.52 of 2011 (2011(1) KHC 457) has taken the position that – '*when the regulations specifically exclude the jurisdiction of the CGRF on all disputes pertaining to bills raised under Sec.126 of the Act on allegation of unauthorized use the only remedy available to the appellant against such bill is to file an appeal under Sec. 127 before the statutory authority*'. The said ruling makes it clear that CGRF and Ombudsman are barred from entertaining the tariff part of the bill, raised under section 126 of the Act. But I feel that the Assessing officer needs to review the case to do natural justice and hence remanding the case to him. It is made clear that, I am not imposing my findings and conclusions on

the Assessing officer or on the Appellate Authority, as the case may be, but they may pay attention to the Findings stated above and may decide on the Petition, independently.

As such, I have not gone deep into the merits of the points raised by the appellant in the Petition, but only analyzed some points as this Forum felt that the Respondent has exceeded their powers in booking the Case under Sec. 135 of the Act, and in raising the bill for the offence of unauthorized use of electricity. This matter has been dealt with and is detailed under the sub head 1.3. to 1.6. in the heading, 'Analysis and Findings' above. As such this Authority feels that the Petition itself, is found having merits for reconsideration. Hence I am remanding the Case to the Assistant Engineer, Electrical Section, Kottarakkara, being the Assessing Officer, to review the same and decide afresh as per Law, with in 60 days of the receipt of this order, with an opportunity given to the consumer for being heard. The consumer is eligible for filing the appeal, if aggrieved by the order in such a case, before the appellate authority, the Dy. Chief Engineer.

Please note that the Electricity Ombudsman's 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 Dy. Chief Engineer, to take appropriate decisions, if any Appeal Petition is filed by the consumer, against the order of the Assessing officer, issued based on this Forum's direction.

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 and the Petition is remanded to the Assessing Officer for arranging a fresh hearing and issuing an order. The related CGRF order vide, OP No. 867/2013 dated 08.2.2013, of the CGRF, Kottarakkara, is set aside. No order on costs.

Dated the 6<sup>th</sup> of December, 2013.

Electricity Ombudsman.

Ref. No. P / 360 / 2013 / 2102 / Dated 16.12.2013.

Forwarded to : (1). Sri. C. S. Kamalasanan,  
August Mandiram, Pulamon P.O., Kottarakkara.  
(2). The Assistant Executive Engineer,  
Electrical Sub Division, KSE Board, Kottarakkara.

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