

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/362/2013.

(Present T.P. Vivekanandan)

Appellant : Sri. Saseendran S.
Thachapillil House,
Sreemoolanagaram P.O, Aluva-683 580.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Chengamanad, (via) Nedumbasserry, Ernakulam (Dt).

ORDER

Background of the case:

The appellant is industrial consumer No.7327 under Electrical section, Chowara. While so, on 24.09.2008, the KSEB had conducted an inspection of the consumer's premise and found connected, unauthorized additional load (UAL) of 5KW and issued a penal bill for Rs. 3907/- and the consumer remitted the same. Later, on 09.07.2012, he was issued a short assessment bill amounting to Rs.36,343/-, said to be the arrears of penalization charges for the said UAL used till date. Aggrieved by the bill, the consumer approached the Executive Engineer, Aluva on 28.07.2012 and as there was no response from there, he filed a petition before the CGRF, Ernakulam. The Forum disposed the petition by limiting the penalization to just previous 12 months to 04/2011. Being not satisfied by its decision vide order no. CGRF-CR/Comp.122/12-13 dated 11.02.2013, the appellant has filed the Appeal petition before this Forum.

Arguments of the Appellant:-

(1). The Mahalakshmi Garments was functioning in the building owned by the complainant with Con. No. 7327 under LT -4 tariff. It was claimed by licensee that in 2008, Chowara

Electrical Section staff had inspected the building and found unauthorized additional load.

The fixed charges were fixed and he was paying the bill regularly along with creeping charges.

(2). On 30.07.2012, KSEBoard Chowara Section has instructed me to pay an additional sum of Rs.36343/-, on or before 30. 7.2012. Being aggrieved by the instruction, a complaint was filed before the Executive Engineer, Aluva on 28.07.2012 and no further actions were initiated till 07.12.2012. On 07.12.2012 a notice was issued by Assistant Engineer, demanding to pay Rs. 36343/- failing which the supply to the above will be disconnected. Further, KSEB, informed that no other regular bill will be accepted without paying the said additional bill.

(3). It was prayed before the CGRF on 24.12.2012 to stay the proceedings and also to allow payment of regular bills, which was allowed by the CGRF. It was also prayed that there may be proper adjudication on the above matter and since the consumer was paying the bills regularly, he had constrains to pay additional assessment bills and hence to do justice.

(4). The Forum gave an opportunity to hear both sides on 29-01-2013 and order was passed on 11.02.2013 partly allowing the contentions of the appellant. During hearing, complainant submitted that he had paid penalty bill issued to him on 24.09.2008 itself and no further bill was issued or had been served with notice to remove the additional UAL ever since 10/2008. He was unaware of the penalty done for the 3 years which is unfair under Sec. 52 of the Act.

(5). Respondent has admitted that the UAL of 5 KW detected in petitioner's premises on 24.9. 2008 and the penal bill issued for Rs.3907/- was paid by him. No penalization was continued and the omission was noticed by audit wing and a short assessment bill towards the penalty for the period 10/2008 to 04/2011 was issued on 09.07.2012.

(6). The CGR Forum observed that the respondent has not given proper direction to the party to remove/regularize the unauthorized additional load while issuing the short assessment in 09.07.2012 and found it as a laxity on the side of licensee and ordered penalization of UAL for one year back from audit that is prior to 4/2011.

(7). It is submitted that the penalty assessed from 4/2011 is arbitrary and consumer himself had no information about the same making him liable to pay penalization charges from that date. The notice was issued on 9.7.2012 and he was unaware of the penalization until then.

(8). It is also submitted that short assessment of penalty in 2012, for back period of 3 years was unfair.

Reliefs sought for: -

(1). To set aside the order in CGRF-CR/Comp.122/2012-13 dated 11.02.2013 by the CGRF, Central Region, Ernakulum against the complainant.

- (2). To declare the demand letter dated 06.11.2013, issued by Assistant Engineer, Chowara Section demanding the complainant to pay Rs.18040/- with in 15 days failing which supply to be discontinued without further notice as ex facie void and unenforceable
- (3). To allow the cost of this complaint to the complainant, payable by licensee.

Argument of the Respondent: -

The main contentions of the respondent are the following.

(1). The appellant, Sri. Saseendran S, Thachappilly, Sreemoolanagarm, had availed the electric connection under Industrial Tariff with Cons. No. 7327 on 12.03.2003, from Electrical Section, Chowara. The said connection was for running a garment making unit named 'Mahalakshmi Garments'. On 24.9.2008 the respondent conducted inspection and detected unauthorized additional load of 5 KW and issued a penal bill of Rs.3907/- and he remitted the same. But the consumer did not regularize the additional load, but the penalization was not continued in the Section office by mistake.

(2). The Audit Officer, Perumbavoor in the inspection report dated 28.10.2011 had pointed out the mistake. Hence penal bill of Rs.36343/- as shown below was issued for the period of 10/2008 to 4/2011.

Unauthorized Additional Load for 5KW for 10/08 to 4/11.

Fixed Charge	= 5×45×2×31 (KW×Rate×2 times×no.of months) =Rs.13950
Proportionate Current Charges	= 10163×3.25×5/8 {Total units × unit rate×(UAL/Total load)}
	= Rs. 20644
Electricity Duty	= Rs. 1749
Total	= Rs. 13950+20644+1749 = <u>Rs. 36343/-</u> .

(3). The consumer did not remit the amount and instead filed a complaint dated 28. 07.2012 before the Executive Engineer, Electrical Division, Aluva. As per the direction of Executive Engineer, the Assistant Engineer, Electrical Section, Chowara had directed the consumer to remit the amount. The consumer then approached the CGRF for redress his grievances, by filing case with the Asst. Executive Engineer, Electrical Sub Division, Chengamanad and Assistant Engineer, Electrical Section Chowara as respondents.

(4). Based on the hearing, the CGRF ordered (dated 11.02.2013) to limit the short assessment period to previous 12 months to 4/2011 and directed the petitioner to regularize the UAL. Accordingly the bill was revised on 06.04.2013 to Rs. 18040/- with direction to regularize the UAL (unauthorized additional load). But the consumer did not comply with the direction of CGRF and approached Hon Ombudsman by filling an appeal petition.

Analysis and Findings: -

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam, on 25.09.2013. The counsel of the appellant, Sri. V.V. Sadanandan, represented for the appellant's side and Smt. Jessy Rose Chacko, AEE, Electrical Sub Division, Chegamanad, appeared for opposite side. They have argued the case on the lines as stated above. On examining the Petition of the appellant, the statement of facts filed by the Respondent, the arguments made 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.

(1.0). It is undisputed that the KSEB officials have conducted an inspection in the premises of the consumer on 24.9.2008 and detected 5 KW unauthorized additional load (UAL) and the party was issued a penal bill for 'unauthorized use of electricity' of 5 KW. The consumer has paid the said penal bill without any protest, but did not taken any action either to regularize the additional load or to remove the same till date.

(1.1). The procedure to be followed in cases of detection of UAL is detailed under Regulation 51 of KSEB Terms and Conditions of Supply, 2005, which reads as;

"Where a LT consumer exceeds the connected load and/or resorts to UAL and if the connected load exceeds 100 KVA, the UAL shall be disconnected by the consumer with in 24 hours of detection of the unauthorized load by the Board's officers or take action to regularize the UAL. If he fails to disconnect the UAL with in the time stipulated, the power supply to the premise shall be disconnected after the expiry of 24 hrs.....".

Further, Regulation 51 (4) says; *"In case of Low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding UAL, the procedure stated in clause 50 (1) shall be applicable. The UAL should be got regularized by the consumer within a period of 3 months on application to the Asst. Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Asst. Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit".*

(1.2). The above clause clearly specifies the procedures to be followed after detection of UAL in the premises of the consumer. It is clear that the Licensee can raise the penal bills against the consumer, for the UAL connected, till the time the UAL is removed or regularized. But at

the same time the Licensee is bound to issue notice to the consumer either to remove the extra load, if it is detrimental to KSEB's system or it may be allowed to continue to use the UAL, if party is willing to pay the penal charges thereof. Here the Licensee has failed to issue such notice as stipulated under clause 51 of KSEB T & C of supply, 2005.

DECISION: -

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

(i). The consumer has not disputed the availing of 5 KW excess load unauthorisely in 9/2008 and has paid the penal charges thereof. But it was seen that the Licensee has not issued notice either for its removal or regularization within a specified period. At the same time, the party was also enjoying the extra load without paying any charges there of, for the period 10/2008 to till date. Accordingly, as on the day of discovery of omission of penal bill in 4/2011, the arrear bill was raised till date i.e. for a period of 31 months. The CGRF has ordered to limit the penalization to the previous one year (12 months) to 4/2011, instead of 31 months.

(ii). I am also of the view that, as the consumer was enjoying the UAL of 5 KW (unauthorized use of Electricity under Sec.126 if Electricity Act, 2003), all these years i.e. from 10/2008 to till date, he is bound to pay the penal charges under Clause 50 & 51 of KSEB T & C of Supply, 2005. But since the respondent has failed to issue notice as contemplated under Clause 51, I am of the view that the penalization shall be limited to one year only, as decided by CGRF. But the period of one year, in such a case shall be in continuation of the date of Inspection, i.e. for the period of 10/2008 to 9/2009 only and not the one year period prior to 4/2011. Also it is decided that no further penalization is required thereafter, in this case. The consumer has to either regularize the additional load, as per rules, if he is in need of it or may remove the same and submit report to the respondent, with in 30 days of this order. With out a fresh inspection of the consumer's premises by the Assessing officer and detection of irregularities, if any, and preparation of mahazar noting the same, the Board should not proceed against the consumer, if he fails to obey the direction issued above.

(iii) The respondent is directed to revise the bill as decided under (iii) above and issue to the consumer. The consumer shall be given 30 days time (Due date) to pay the bill. The appellant need not pay any interest for the Petition pending period before the CGRF and this Forum and up to the due date of the revised bill. The consumer is eligible for, up to 10 installments, if he requests, and the respondent shall allow the same. The consumer shall pay the whole bill or

the 1st installment on or before the due date of the revised bill. The installments, if requested and allotted, will attract interest from the due date, to the actual day of payment, as per clause 22(8) of Electricity Supply Code, 2005.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is disposed of accordingly with the extent it is ordered. The related order No. CGRF-CR/Comp.122/2012-13 dated 11.02.2013 of the CGRF, Central Region, Ernakulum is set aside. No order on costs.

Dated the 23rd of January, 2014,

Electricity Ombudsman.

Ref. No. P/ 362 /2013/ 2167/Dated 23.01.2014.

Forwarded to (1). Sri.Saseendran.S.
Thachapillil House,
Sreemoolanagaram P.O, Aluva-683 580.

(2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Chengamanad, (via) Nedumbasserry, Ernakulum Dt.

Copy to 1).The Secretary, Kerala State Electricity Regulatory Commission ,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
2).The Secretary, KSEB,
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB,Power house Bldg, Cemetery mukku, Ernakulum-682 018.