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APPEAL PETITION NO. P/163/2015

(Present: V.V. Sathyarajan)

Dated: 08th February 2016

Appellant : Smt. Padmini Balan
Parattupara HO,
Perambra P.O.,
Kozhikode.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEB Ltd.,
Perambra.

ORDER

Background of the case:

The registered owner of the service connection bearing consumer no. 12035 provided in shop No. PP XII/943 under Electrical Section, Perambra is Sri. Chekkotti V., Veluthedath Veedu, Payyoli Angadi. The appellant is the occupier of the shop and is running a tailoring unit in the premises. The connected load in the premises is 340 watts and tariff allotted is LT VII A. On detection of unauthorized additional load of 2000 Watts during the inspection conducted by the Section Squad in the premises of appellant, she was served with a provisional assessment bill amounting to Rs. 4,082.00 and later a final bill for Rs. 2,041.00.

Due to non regularisation of the additional load, the respondent levied penal charges in every bill issued thereafter. Against this, the appellant filed a petition before CGRF, Kozhikode seeking relief to refund the penal charges levied and to transfer the connection in the name of the appellant. The Forum disposed of the petition by directing the respondent to regularize the load existing in the premises of the appellant upon request from the latter, vide order No. OP No.39/2015-16 dated 17-09-2015. Not satisfied with the above order, the appellant has approached this Authority with this appeal petition seeking relief for refund of penal charges levied and to assign appropriate tariff and to change the ownership in the appellant's name.

Arguments of the appellant:

The grievance of the appellant is based on the above facts and circumstances as narrated above. Further the appellant has submitted the following arguments in her appeal petition.

The appellant is a widow and her only earning is from the tailoring shop functioning in the premises. Due to her ignorance, she installed a buttonhole machine in the shop and after inspection by the KSEB Engineer, an amount of Rs. 2,000.00 was charged as fine for unauthorised load. Thereafter the penalization is being continued in the subsequent bi-monthly bills issued by the respondent. Due to this she is facing difficulties for her subsistence. Though the appellant has removed the machine in September 2014, the penalization is still continuing. An inspection in the premises was conducted on the instigation and petition filed by the building owner, but nothing unauthorized was detected.

Though the appellant obtained SSI registration for her firm, the licensee has not changed the tariff on the ground that a case is pending. The CGRF has not allowed the relief requested for refund of penal amount levied, tariff reclassification and transfer of the connection in the name of the appellant and thereby denied justice.

Arguments of the respondent:

1. The appellant Smt. Padmini Balan bearing consumer No.12035 is the occupier of shop No. PP XII/943. The registered owner of service connection is Sri Chekkotti.V, Veluthedath HO, Payyoli Angadi PO, Kozhikode District. The appellant is running a tailoring shop in the said premises with a connected load of 340 Watts under LT VII A tariff after execution of rent agreement between the building owner, Sri Chekkotti. V. and the appellant.
2. On 05-03-2014, the Section Squad inspected the premises and detected unauthorized additional load of 2000 Watts. Hence a provisional assessment bill for Rs. 4,082.00 was served and after hearing the Assessing Officer revised the bill to Rs. 2,041.00. As the unauthorised additional load was not regularised till date, the penalization in every bill was continued.
3. On 07-07-2015 the appellant filed a petition before the Hon'ble Consumer Grievance Redressal Forum, Kozhikode to refund the penal charges levied and to allow a connection in the name of the appellant.
4. The Hon'ble Consumer Grievance Redressal Forum, Kozhikode passed an order dtd.17-09-2015 by directing the respondent to regularize the load existing in the premises of the appellant upon request from the latter.

5. The appellant submitted the application along with related documents on 21-10-2015 and tariff has been changed to LT IV A (Industrial) with load of 1080 Watts as per the request vide order No. DB/ESDP/2015-16/Tariff change/ 91 dated 21-10-2015.

Analysis and Findings

The Hearing of the case was conducted on 12-01-2016 in the Court Hall of CGRF, Kozhikode. Smt. Padmini Balan has represented the appellant and Sri. Gopi N.K., Assistant Engineer, Electrical Section, Perambra, has appeared for the respondent's side. On examining the petition, the counterstatement of the respondent, the documents attached and the 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.

The argument of the appellant is that though she had removed the additional load during September 2014, the respondent regularised the additional load only on 21-1-2015 and till that date penal amount was collected from the appellant. The respondent's action to penalize the appellant till the date of regularization is a violation of Supply Code Regulations, 2014. According to the respondent tariff was changed with effect from the date of application itself vide order No. DB/ESDP/2015-16/Tariff change/91 dated 21-1-2015. Further the respondent contented that change of ownership can be made only after production of sufficient documents by the appellant.

The point to be decided in this case is as to whether the request of the appellant to refund the penal charges levied by the respondent is in order or not and the reason for not changing the ownership of the appellant is genuine or not.

On going through the records it can be seen that the neither the appellant nor the respondent has not produced a copy of the site mahazar for the alleged inspection dated 05-03-2014. During the hearing this Authority has directed the respondent to produce a copy of the site mahazar for the inspection conducted in the above premises of the appellant on 05-03-2014. **But the respondent in his letter dated 03-02-2016 has intimated that the APTS of KSEB Limited has not issued such inspection report to Section authorities.** However, in the argument in the statement of facts the respondent has stated that on 05-03-2014 the Section Squad inspected the premises and detected unauthorized additional load of 2000 Watts. Hence the statement of the respondent is felt as contradictory.

As per the guidelines issued by the licensee vide Board Order (FB) No. 2518/2013 dated 28-11-2013 it is the duty of the Assessing Officer or the Authorized Officer to conduct inspection and preparation of site mahazar. All relevant findings including the nature of unauthorized use detected,

description of evidences seized etc. should be included in the site mahazar. The site mahazar which is the main evidence and essential document to substantiate the claim of the respondent to prove any unauthorized use of electricity has taken place is not seen produced by the respondent in this case. There is no justification for not producing the mahazar if it is so prepared at the time of inspection. So the assessment is not sustainable before law and is liable to be set aside.

In the absence of a site mahazar, the action of the respondent to penalize the appellant for unauthorized additional load is violation of the existing rules and regulations. It is mandatory to comply with the **General Provisions Relating to Inspection under Regulation 173 and Issue of Notice to the Consumer under Regulation 174 of the Supply Code, 2014**. The **Regulation 153 of the Kerala Electricity Supply Code, 2014** clearly depicts the estimation and regularisation of unauthorized additional load. It is specified that unauthorized additional load in the same premises and under same tariff shall not be reckoned as 'unauthorised use of electricity'.

Under **Regulation 153 (7)**, "if it is found that any additional load has been connected without due authorisation from the licensee or in violation of any of the provisions of the **Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010**, as amended from time to time, the licensee shall direct the consumer to disconnect forthwith such additional load and the consumer shall comply with such direction, failing which the supply of electricity to the consumer, shall be disconnected by the licensee". In this particular case, the respondent has failed to act in accordance with the provisions in the Supply Code and guidelines issued by the licensee regarding inspection and preparation of mahazar etc.

In the aspect of change in the name of the registered consumer due to change in the ownership or occupancy, the applicant shall apply for the same in the prescribed application form accompanied with the required documents. So the appellant's grievance regarding change of name can be done only after receipt of an application along with related documents by the licensee.

The assessment made in this case is without observing the above mentioned Regulations in Supply Code and the guidelines issued by the licensee. Hence the request of the appellant to refund the penal charges levied by the respondent is found in order. Regarding the other issue I am of the opinion that the appellant has not produced required documents for changing the ownership and hence the respondent is not in a position to act on that part.

Decision

The mahazar which is the crucial document is not seen produced by the respondent in this case and not even followed the General Provisions Relating to Inspection under Regulation 173 and Issue of Notice to the Consumer under Regulation 174 of the Supply Code, 2014. So the assessment is not sustainable before law and set aside. The respondent is directed to refund the entire amount charged from the appellant by way of unauthorised use of additional load in connection with the inspection dated 05-03-2014. This should be done at any rate within 30 days from the date of receipt of this order. It is also directed to change the ownership of the connection as and when she approaches the respondent with necessary documents.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is found having some merits and is admitted. The order of CGRF in OP No. 39/2015-16 dated 17-09-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/163/2015/ _____ Dated: _____

Delivered to:

1. Smt. Padmini Balan, Parattupara HO, Perambra P.O., Kozhikode.
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Perambra.

Copy to:

- 1 The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2 The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
- 3 The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSEBoard Ltd, Gandhi Road, Kozhikode