

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/166/2015
(Present: V.V. Sathyarajan)
Dated: 15th February 2016

Appellant : Sri Nassar. P.
Pullambath House,
Pookkum, Panoor P.O.
Kannur.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Panoor, KSE Board Ltd,
Kannur.

ORDER

Background of the case:

The appellant had availed a temporary service connection No: 26490 on 29-12-2010 with a connected load of 1200 watts under VII A tariff for construction purpose. It was revealed in the inspection conducted by the APTS team on 6-1-2015 that the appellant had indulged in unauthorized extension of supply from the above connection for construction of four houses and also detected unauthorized additional load to the tune of 8 kW against the sanctioned connected load of 1200 Watts. Accordingly the appellant was issued with a penal bill for Rs.4,27,050.00 as final bill under Section 126 of Electricity Act, 2003. Aggrieved against this, a complaint was filed before the CGRF, Kozhikode. As the assessment was made under Section 126 of Electricity Act and Forum does not have any jurisdiction on such assessment and the case is not legally maintainable, Forum dismissed the complaint vide order in OP No. 121/2014-15 dated 30-09-2015. Against the above order, the appellant has filed the appeal petition before this Authority.

Arguments of the appellant:

The appellant had filed a petition before the Hon'ble CGRF, Kozhikode on 21-02-2015. After taking more than seven months Forum disposed the petition as dismissed on 30-09-2015 stating that the assessment was made under Section 126 of the Electricity Act, 2003, deals with Unauthorized Additional Load, is not maintainable before the Forum. The appellant

believed that the Forum has taken such a decision based on the version that there was unauthorized extension of load from one premise to another.

The appellant and his three brothers had started construction of 4 independent houses in a single compound in the undivided property owned by them, five years back. For the construction of these houses the appellant took an electric connection with Consumer No. 26490 having connected load of 1200 Watts. The said electric connection was installed in a temporary shed constructed in the middle of the compound. The construction was carried out in the compound with a single compound wall. The appellant has never extended the electric connection beyond this compound wall.

In the site mahazar it was also stated that appellant has not extended the connection beyond compound wall. But on the basis of inspection at the premises on 06-01-2015, the respondent issued a penal bill to them for Rs.4,27,050.00 stating that they have indulged in unauthorized extension of load from the above said electric connection. The respondent is of the view that the appellant should have taken 4 separate temporary connections for the construction of the four houses, even if the four houses are being constructed in a single premise / compound.

The appellant have seen flats, Villas and schools having separate blocks, being constructed in a single premise/compound using one single electric connection. If the appellant had started the construction of the four houses one by one, that is, starting one after finishing the other, by using the single connection, there would not have been any problem for the respondents. In other words, the construction of the four houses can be started at the same time or at a stretch, using a single connection. It is a common practice that since the connection is given at one point and construction site is located at another point, even if it is a single or 4 house, energy can be used only by extending power to the construction site.

Then, how can it be treated as unauthorized extension? If the appellant had no additional load, can the respondents charge him for unauthorized extension for extending power load from the temporary shed to the construction sites located in the same compound? Regulation 154(a) of the Kerala Electricity Supply Code, 2014 states that extension of electric supply through the meter to adjacent rooms or toilets or sheds or such other structures within the premises or to portable electrical equipment for the use in the same premises and for the same sanctioned purpose, shall not be treated as unauthorized extension. Regulation 52 of the Supply code, 2014 also insists that supply of electricity to be given only at one point for same purpose at the same voltage level in single premises.

The situation in the premise/compound is exactly the same as explained in the above regulations. Therefore, the appellant requests the Hon'ble Ombudsman to dismiss the averment of the respondents that the complaint is related to Section 126 of the Electricity Act, 2003 which deals with unauthorized use of electricity.

But the appellant has agreed that load in excess of the sanctioned load (1200 watts) had existed in the premises. Although in the site mahazar it was stated that there was three induction cookers in the site, two of them were damaged. As per Regulation 153(7) of the Kerala Electricity Supply Code, 2014, the respondents have no power to impose penalty on additional load, except to disconnect the supply, if the consumer fails to disconnect the additional load after getting notice from the Licensee. Therefore, the appellant requests the Hon'ble Ombudsman to set aside the order of the CGRF, Kozhikode and reject the averments of the respondents on the basis of the tenets inscribed in the Regulations 52, 154(4), 153(7) of the Kerala Electricity Supply Code, 2014.

The appellant has also pointed out that the calculation of the penal bill itself is wrong. That is, in the bi-monthly bills appellant has regularly been charged for 2 kW from the date of connection, since the sanctioned connected load is 1200 watts, but the respondents have taken 9 kW, instead of 8 kW, as unauthorized load for calculating the penal bill. After all, total load at the premises is only 10 kW, that is, (sanctioned load) 1200 Watts + 8080 Watts (unauthorized load) = 9280 watts.

Reliefs sought for is the cancellation of the penal bill.

Arguments of the respondent:

The respondent stated that the service connection No: 26490 was activated on 29-12-2010 with a connected load of 1200 Watts under VII A tariff as per the tariff classification prevailing at that time. Later the connection was converted to VI F tariff as per the revised tariff norm. Petitioner himself points out in the petition that energy from this connection with Consumer No. 26496 was used for four houses.

As part of routine actions to prevent and misuse of electricity, the APTS Squad at Kannur unit had conducted an inspection at the appellant's premises on 06-01-2015. It was revealed in the inspection that the consumer had indulged in unauthorized extension of load from the above connection. During the inspection, the team had noticed a PVC wire network for unauthorized power extension to other nearby buildings from the service connection of consumer No. 26490. Inspection Team has noticed and recorded that the unauthorized extension has been extended to the south side building with 2 induction cookers of 1500 Watts each, 1 tube of 40 Watts and 1 CFL of 20 Watts.

Similarly, two more extensions from the same service connection, one to the east side building with an Induction cooker of 2000 Watts, a tile cutting machine of 850 Watts, a cutter of 500 Watts and a tube light of 40 Watts and other to the north side building with a cutting machine of 400 Watts. It is submitted that "the detection of unauthorised extension of load has explicitly been mentioned in the mahazar where the Petitioner's

nominee has signed as read and convinced and Sri Hameed, brother of Sri Nasser P, also agreed who was present on behalf of Nasser in the hearing conducted on 24-01-2015 at the Electrical Section, Panoor.

Regulation 153 (7) of the Kerala Electricity Supply Code 2014 deals with additional load and is not applicable in the Petitioner's case since the assessment made is for unauthorised extension to other premises. The argument that the KSEB has no right to impose fine as per Kerala Supply Code, 2014 is absolutely wrong and unfounded. Penal bill prepared for unauthorised extension of load is correct and as per the regulation 154 (5) of the Supply Code 2014. Since the period of the unauthorised extension could not be conclusively established the period of assessment is limited to twelve months immediately preceding the date of inspection according to Section 126 of the Electricity Act 2003 and Regulation 155 of the Supply Code 2014.

It is also submitted most respectfully that the grievance related to unauthorised use of electricity as provided under Section 126 of the Electricity Act is specifically excluded from the purview of this Hon'ble Forum as per Section 2(f) vii (l) of the CCRF & Ombudsman Regulation. Some of the examples for higher forums upholding this view are as follows.

- This Hon'ble Forum itself in the order dated 28-09-15 in the Appeal Petition No: P/115/2015
- Appellate Tribunal for Electricity in the order dated 07-01-15 in Appeal No: 158 of 2014

The CGRF has mentioned in its order that the petitioner is at liberty to approach the appropriate forum for relief. The appropriate forum in this context is the appellate authority and not this Hon'ble Forum.

In view of what stated above, the petition may be dismissed with cost to the respondents.

Analysis and findings

A hearing of the case was conducted in the Conference Hall of Electrical Circle, Kannur, on 14-01-2016. Sri Hameed P., Pullambath House, Pookkom, Panoor P.O., was present for the appellant's side and Smt. Sujatha I.M., Assistant Executive Engineer, Electrical Sub Division, Panoor represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in 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.

On going through the documents it can be seen that the appellant has admitted that the temporary connection availed by him for construction purposes were being used for construction for four houses in a single compound. But the appellant challenged the allegation raised by the respondent regarding the unauthorized extension of supply. The appellant argued that the supply was used for the sanctioned purpose and had never extended beyond the premises or outside of the compound wall. At the same time the respondent argued that the appellant had indulged in unauthorized extension of supply to the nearby buildings from the service connection with consumer No. 26490. Hence the appellant was served with a penal bill for an amount of Rs. 4,27,050.00 towards the unauthorized use of electricity as provided under Section 126 of Electricity Act, 2003. The respondent's contention is that as per Section 2(I) (f) vii of KSERC (CGRF and Electricity Ombudsman) Regulation, 2005 the appeal petition is not maintainable before the Authority.

The point to be decided in this case is as to whether the appellant had indulged in unauthorized extension of supply and the penal bill issued as per Section 126 of Electricity Act is in order or not.

Regulation 154 of Supply Code 2014 reads as: "Unauthorised extension (1) Extension of supply of electricity shall be reckoned as unauthorised if:-

- (i) The extension is beyond the limits of the premises; or
- (ii) The extension is for a purpose other than for which the supply is authorised whether or not such extension is within or outside the premises;

As per Regulation 2 (67) 'premises' includes "any land or building or structure which is included in the details and sketches specified in the application or in the agreement for grant of electric connection or in such other records relating to revision of connected load or contract demand".

Further, Regulation 49 (8) of Supply Code, 2014 reads as; "If the authority or promoter or developer or any other person submits an application **for single point supply**, the same shall be processed as per the Regulations for single point supply under Regulation 56 and such other relevant provisions in the Code". As per Regulation 56 of the Supply Code 2014 deals with **single point supply and sharing of electricity charges** – the licensee may give single point supply to the following premises with multiple beneficiaries subject to the conditions specified in the sub regulations hereunder:

- (i) multi-storeyed buildings;
- (ii) colony developed by any development authority or private builder or promoter or developer;

- (iii) domestic, commercial or industrial complex;
- (iv) residential complex constructed by any employer for his employees or by a panchayath or a co-operative society or a registered association of beneficiaries;

Further, sub regulation 8 of the Regulation 56 specifies that “Providing of connections to individual beneficiaries in such premises with multiple consumers and sharing of expenses of consumption of electricity as per the above provisions shall not be construed as unauthorised extension of supply or resale of energy”. Regulation 52 of the Code insists that supply of electricity to be given only at one point for same purpose at the same voltage level in a single premise.

Here in this case, the appellant has stated that he submitted a single plan with permit No. A2-2325/10 for availing the temporary connection and the respondent sanctioned the above service connection after proper verification. As the respondent has issued the service connection for the construction of 4 houses in the premises as per the Regulation 2(67) based on the above permit issued by the local authorities and the application, the argument of the respondent that the appellant had unauthorisedly extended supply cannot be justified. Further, the respondent has not challenged the argument of the appellant that the construction of the building is in a single compound. In view of the above facts and based on the above mentioned Regulations, I am of the view that the appellant’s case is not related to the use of unauthorised extension of supply and the bill issued under Section 126 of Electricity Act, 2003 is not in order.

The appellant has agreed that additional load of 8080 Watts in excess was used in the premises and thus the total load in the premises is 1200 watts + 8080 Watts = 9280 Watts. But the respondent fixed the total connected load as 11 kW which is found incorrect. According to the appellant the total connected load including the additional load detected is 9280 Watts. Hence the provisions related to unauthorised additional load in sub regulations (1) to (13) of Regulation 153 shall not be applicable to any domestic consumer if his total connected load including the additional load detected is of and below 10 kW, vide Regulation 153 (14). The Regulation (15) of 153 of the Supply Code, 2014 also says “Unauthorised additional load in the same premises and under same tariff shall not be reckoned as ‘unauthorised use of electricity’. Hence the assessment made under Section 126 of Electricity Act cannot be applied in this case.

Another argument of the respondent is that there is violation of the safety standards in the premises of the appellant. It shall be the duty of the respondent to take proper action against the violation of any safety aspects if detected in the premises of the appellant.

Decision

In view of the discussions, the penal bill issued for Rs. 4,27,050.00 for the unauthorized extension of supply under Section 126 of Electricity Act cannot be justified on the above reasons and the Regulations mentioned herein, hence decided to quash the bill. The appellant is directed to take necessary action to regularise the additional load if desires so. The respondent shall continue single point supply as per Regulation 56 of Supply Code, 2014 till the completion of the construction after ensuring proper safety methods in the appellant's premises.

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. 121/2014-15 dated 30-09-2015 is hereby set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/166/2015/ _____ Dated: _____

Delivered to:

1. Sri Nassar. P., Pullambath House, Pookkum, Panoor P.O., Kannur.
2. The Assistant Executive Engineer, Electrical Sub Division, Panoor, KSE Board Ltd, Kannur.

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