

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/178/2015
(Present: V.V. Sathyarajan)
Dated: 29th March 2016

Appellant : Sri Divyanandan
Opera Cools & Bakes,
Parambil Peedika,
Malappuram.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Parappanangadi,
Malappuram.

Background of the case:

The appellant Sri Divyanandan is a tenant of the premises having service connection with consumer No. 34732 under Electrical Section Chelari. The service connection was registered in favour of Sri. Prasobhan, Anchil House, Parabilpeedika. On 21-05-2015, the officials of KSEB Limited conducted an inspection in the premises of the appellant and detected a total load of 1250 Watts. Based on the inspection, the appellant was issued with a provisional bill amounting to Rs. 16,814.00 under LT VII A tariff on 22-05-2015 towards the tariff misuse as per Section 126 of Electricity Act 2003.

Aggrieved against this, the appellant the appellant filed a complaint before the CGRF, Northern Region, Kozhikode. The CGRF dismissed the petition vide order dated 27-10-2015 by holding that the case is not maintainable as the penal bill disputed in the subject was issued vide Section 126 of the Electricity Act 2003. Against the decisions of the CGRF, the appellant has approached this Authority with this appeal petition on 01-12-2015.

Arguments of the appellant:

It is submitted by the appellant that on 21-05-2015 an inspection was conducted in the premises of the appellant by a Sub Engineer and a Lineman of KSEB Limited, prepared a site mahazar and directed him to sign on it. On a plain reading of the mahazar it is revealed that the site mahazar was prepared in the presence of Smt. Ambili, Assistant Engineer, Sri Abhilash, Lineman and Sri Krishnakumar, Sub Engineer. Smt. Ambili, the

Assistant Engineer who was not present during the site inspection, the appellant denied to sign the mahazar. On threatening disconnection of the service by the staff, he was forced to sign the mahazar.

The appellant further contented that though the site mahazar was prepared it was not served on him at site but served on him only after few days. The appellant was issued a number of electricity bills under LT VII B tariff during this period, but not informed or issued any notice regarding the change of tariff. Further, the appellant was not given an opportunity for hearing by the Assessing Officer. The appellant has argued that the change of tariff to VII A without issuing a notice is against the existing Rules and Regulations.

Arguments of the respondent:

The appellant, Sri Divyanandan is a tenant of the premises of the consumer No: 34732 and this connection was given under VII B tariff with a total load of 280 Watts. As per the anomaly written by the meter reader in the anomaly register the Section Squad inspected the premises on 21-05-2015 and detected a total load of 1250 Watts.

A site mahazar was prepared and a copy of the same was served on the appellant. Based on the site mahazar a provisional bill for Rs. 16,814.00 has been served on the appellant on 22-05-25015 under tariff misuse as per Section 126 of the Electricity Act, 2003. Since the total connected load of the appellant is above 1000 Watts the tariff comes under VII A.

The respondent argued that this is a clear case coming under section 126 of Electricity Act, 2003 and if the appellant is aggrieved by the final order issued by the Assessing Officer under section 126 of the Electricity Act may file an appeal before the Appellate Authority as per Section 127 the Act

The consumer had filed petition before the CGRF Kozhikode and CGRF, Kozhikode dismissed the case as the bill was issued as per the section 126 of the Act, which is not maintainable before the Forum.

Analysis and findings

A hearing of the case was conducted in the Conference Hall of Tirur Electrical Circle on 09-03-2016. Sri Divyanandan was present for the appellant's side and Sri Asif Kilimannil, Assistant Executive Engineer, Electrical Sub Division, Parappanangadi and Smt. Ambili K Assistant Engineer, Electrical Section, Chelari 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.

The appellant's electricity connection no. 34732 was provided under VII B commercial tariff with a connected load of 280 Watts. It is revealed from the statement of the respondent that an anomaly was noted in the anomaly register by the meter reader. On the basis of this report a team consisting Sub Engineer and a Lineman inspected the premises of the appellant and detected that the connected load in the premises is 1250 Watts in the place of the sanctioned connected load of 280 Watts.

The appellant has argued that tariff assigned to his connection is LT VII B and he was not issued any notice regarding the change of tariff which is against the existing Rules and Regulations. But at the same time the respondent's contention is that since the appellant's case relates to misuse of tariff he was penalized under Section 126 of the Act and the appeal is not maintainable before this Authority.

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

It is a fact that the tariff eligible for a bakery having the connected load of and below 1000 Watts is VII B tariff and when connected load of these consumers exceeds 1000 Watts, such consumers shall be charged under LT VII A tariff. The respondent has not furnished the exact date of reporting of the anomaly by the meter reader. So many bills were seen issued to the appellant under VII B tariff during this period. This shows that if the appellant fails to regularise the additional load, then the respondent has to take action in this regard. The tariff has to be fixed according to the purpose for which electricity is being utilized and in consistence with the tariff notification issued by the Hon'ble Regulatory Commission.

The Regulation 152 of Supply Code, 2014 in which the heading itself stated that "anomalies attributed to the licensee which are detected at the premises of the consumer'. In clause 1 "Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in purpose of use of electricity by consumer and the inaccuracies in metering shall not attracted the provision of Section 126 of the Act or Section 135 of the Act."

In this case the tariff assigned to the appellant was LT VII B and there is no change in purpose of use of electricity by the appellant. The only charge that can be attributed to the appellant is the failure to regularise the additional load availed by him. In view of the finding of foregoing paragraph and the Regulation mentioned above, the respondent's action in issuing the bill under Section 126 of Electricity Act, 2003 is against the Regulations which cannot be admitted.

Regulation 97 of Kerala Electricity Supply Code, 2014 which reads as

- (1) “If it is found that a consumer has been wrongly classified in a particular category of the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category.**
- (2) The consumers shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.**
- (3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer approximately.**
- (4) Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be suitably adjusted.**

If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.”

Even though there is provision for suo moto reclassification of consumer category by the licensee under Regulation 97 of the Kerala Electricity Supply Code, 2014, the respondent has not taken any action. On a plain reading of the above contentions it is revealed that if the respondent has taken timely action to change the tariff after conducting proper inspection, the whole issue could have been avoided. The action of the respondent for revision of tariff without issuing a notice to the appellant in time is also against the rules. This is highly irregular and hence cannot be justified.

The appellant has not disputed the unauthorized additional load detected in his premises. But raised objection against the penal bill issued for an amount of Rs.16,814.00 towards the unauthorized additional load. As per Regulation 153 (15) of the Kerala Electricity Supply Code 2014, “Unauthorized additional load in the same premises and under same tariff shall not be reckoned as ‘unauthorized use of electricity’.

On a perusal of the documents it can be seen that the allegation of appellant is that the mahazar is prepared in the absence of site verification by the Assistant Engineer and the respondent has not produced any convincing evidence to disprove the allegation. In this background, when the genuineness of the mahazar is disputed, this Authority constrained not

to rely on the mahazar which is the crucial documents for deciding the issue. As per Regulation 151 of Supply Code, 2014, a site mahazar shall invariably be prepared at site and the same shall be handed over to the consumer or his representative at site immediately under proper acknowledgement. Here in this case, the respondent failed to produce a copy of site mahazar as per the above Regulation and there is no justification in issuing such a penal bill without observing the mandatory provisions of the Act and Regulations.

Decision

In view of the settled legal position the penal bill issued without observing the mandatory provisions of the Act and Regulations mentioned herein cannot be justified. The action on the part of respondent without complying with the legal formalities amounts to arbitrariness and denial of natural justice. In the above circumstances the penal bill issued for Rs. 16,814.00 is not sustainable and hence quashed.

The appeal petition is found having some merits and is allowed. The order of CGRF in OP No. 51/2015-16 dated 27-10-2015 is set aside. Having concluded and decided as above it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/178/2015/_____ /Dated:_____

Forwarded to:

1. Sri Divyanandan, Opera Cools & Bakes, Parambil Peedika, Malappuram.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Parappanangadi, Malappuram.

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, KSE Board Ltd, Gandhi Road, Kozhikode