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APPEAL PETITION NO. P/172/2015

(Present: V.V. Sathyarajan)

Dated: 31st March 2016

Appellant : N.J. James
Managing Director,
Neerackal Latex (P) Ltd.,
Muttuchira P.O.,
Kottayam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Kuravilangad P.O.,
Kottayam District.

ORDER

Background of the case:

The appellant, Sri N.J. James, Managing Director, Neerackal Latex (P) Ltd., is a consumer of electricity having consumer No. 22890 under the Electrical Section, Kaduthurthy. The connection to the premises was originally given under LT supply with a sanctioned load of 77 kW. Later on request, the connected load was enhanced and the connection was converted into HT supply. Since the light load in the premises of the appellant was not segregated and metered, a penal bill for Rs. 1,70,005.00 served on him by the respondent. The appellant filed an objection against the penal bill before the Special Officer (Revenue), but the said bill was confirmed by proceedings dated 30-05-2015. Aggrieved against this, a complaint was filed before the CGRF (South), Kottarakkara. The Forum dismissed the complaint vide order in OP No. 1523/2015 dated 08-10-2015. Against the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant is engaged in the processing of Latex and is an ISO-9001:2000 certified company. The supply to the premises was originally under LT tariff with a

connected load of 77 kW and the consumer No. 22890. Since appellant was in need of additional load, it was decided to convert into HT connection from LT. After obtaining the approval of the scheme from the Electrical Inspectorate, Kottayam to convert into HT connection, all the works in the industrial unit had taken place and thereafter the Electrical Inspector, Department of Electrical Inspectorate, Star Junction, Kottayam was pleased to sanction of energisation of the electrical installations as per order dated 23-5-2011. After the conversion appellant was given with new consumer number code as LCN: 5/6918 and HT connection given from the month of July, 2014.

The energisation order was approved by the Electrical Inspector is after verifying the 'as fitted drawing' of the installation at the premises of the industrial unit. As per the 'as fitted drawing' certificate, it can be seen that separate wiring was given for light load switch and also for the meter (kWh) in the light load, which was installed at the time of sanctioning energisation order. A perusal of 'as fitted drawing' certificate would clearly show that light load is segregated from the power load and is metered through the meter installed at LSB (Light Switch Board). After verifying the entire installations, the respondents converted into HT supply in the month of July 2014 with a contract demand of 130 kVA.

While so, to the utter dismay of the appellant, a penalty bill dated 24-03-2015 was issued to the appellant directing him to pay an amount of Rs.1,70,055.00 towards penalty by alleging non-segregation of light load and power load by relying on the tariff and Terms and Conditions of Retail Supply. At the outset it is respectfully submitted that the demand raised is misconceived and without verifying the wiring installed at the industrial premises of the appellant. Separate meters have been installed by the appellant as per the instructions issued by the Electrical Inspectorate which were verified by the respondents. After fully satisfying with the installation, the respondents have converted the connection into HT tariff.

Had there been any default as stated that there was non-segregation, the same ought to have been intimated to the appellant which could readily be rectified by the appellant. Moreover, the light meter installed at the LSB is recording properly and the entire light consumption is recorded in that meter. Hence it is respectfully submitted that the allegation of non-segregation of light load from the power load is a false story and contrary to the facts.

Challenging penalty bill the appellant filed an objection before the Special Officer (Revenue) stating the entire facts and also challenged the penalty demanded prior to the conversion into HT connection. Intact conversion was effected by the respondents only in the month of July, 2014 and hence the penalty demanded in bill for the months of May and June, 2014 is contrary to the facts and so illegal. Thereafter the Assistant Executive Engineer passed an order rejecting the objection by a non-speaking order. However it is admitted in the order that "an energy meter was connected in the light circuit owned by the consumer without the knowledge of the KSE Board Limited.

From the above alone it is clear that the allegation of non-segregation of light load from the power load is legally unsustainable.

Thereafter the appellant filed a complaint before the Consumer Grievances Redressal Forum (CGRF), Kottarakkara and the matter was numbered as OP.No.1523/2015 dated 15-06-2015 praying for setting aside the penal bill and the order issued by the Assistant Executive Engineer and to declare that the imposition of penalty on the allegation of non-segregation of light load at the premises of the appellant is wrong particularly in the light of the admission in the order of the Assistant Executive Engineer and to direct the Special Officer (Revenue) not to impose penalty in the monthly bill on the allegation of non-segregation of light load. But the Hon'ble Forum as per the order dated 08-10-2015 dismissed the complaint without considering the crucial question whether there was segregation or no segregation.

- A. The order passed by the Consumer Grievance Redressal Forum Southern Region Kottarakkara is without considering the grievances highlighted in the complaint and hence liable to be set aside.
- B. The crucial question to be decided in the case on hand is whether any penalty can be imposed on the appellant on the allegation of non-segregation of power load and light load. A perusal of Special Officer (Revenue)'s order would clearly show that an energy meter was connected in the light circuit owned by the consumer. The above admission alone is sufficient to hold that there was segregation of light load and power load and the penalty is legally unsustainable since there is no mens rea.
- C. A perusal of the general conditions for HT & EHT tariff would clearly show that in case when lighting load exceeds 5 % of the connected load for power then the lighting load should be segregated and metered by a sub-meter and in case of excess consumption over 10% of the bulk supply, the licensee is empowered to charge 20 paise extra per kWh. Hence maximum with the respondents demanded is extra charge of 20 paise per kWh in the monthly bill. Hence there cannot be any penalty and the amount demanded by way of penalty is without the support of law.
- D. There is no provision to retrospectively penalize a consumer as per the tariff order for KSEB Limited 2014-15 for non-segregation. Hence the demand of penalty is without jurisdiction.
- E. The penalty demanded is not only for the period in which HT connection was availed but also demanded for the period while consumer was under LT connection. In fact conversion was effected by the KSEB in the month of July 2014 and the penalty is demanded also for the months of May and June 2014 which is contrary to the tariff order, assume (not admitted) penalty is liable to be levied.

Reliefs sought for:

1. To set aside penal bill, Special Officer (Revenue)'s order and orders issued by CGRF.
2. To direct the respondents to refund the amount deposited by the appellant with interest @ 18%.
3. To award cost for these proceedings.

Arguments of the respondent:

The appellant, M/s Neerackal Latex (P) Ltd is a High Tension consumer of the Kerala State Electricity Board Limited under Electrical Section, Kaduthuruthy and also under the jurisdiction of Electrical Circle, Kottayam. Tariff of energy is at HT-I Industrial rate. Originally, connection was given at LT supply later by request of the consumer converted to HT supply. The Contract Demand as per the agreement entered into between the appellant and Kerala State Electricity Board Limited is 130 kVA and the connected load is 175.81 kW. That is Power Load is 156.99 kW and light load 18.882 kW. Since the light load is over and above the 5% of the Power-load, it should be segregated and metered; otherwise demand and energy charges shall be increased extra. Since the light load was not segregated and metered, penal bill for Rs. 1,70,005.00 served on the consumer. The said bill was confirmed by proceedings dated 30-05-2015 of the Special Officer (Revenue).

Tariff of different categories of consumers are determined by the Kerala State Electricity Regulatory Commission (KSERC) under Section 62 of the Electricity Act, 2003. The tariff applicable at the time of inspection was one ordered by the Kerala State Electricity Regulatory Commission on 14-08-2014 in O.P. No. 9 of 2014 as published in the Kerala Gazette (Extra Ordinary) as per No. 2379 in Volume 3 dated 27-09-2014. As per the order

- (a) "Factory lighting - when the total connected lighting load of the factory is less than or equal to 5 % of the connected load for power, it can be tapped off from the power mains without segregation. When the above lighting load exceeds this limit of 5%, the whole lighting load should be segregated and metered by a sub-meter and lighting consumption in excess over 10% of the bulk supply consumption for power, shall be charged at 20 paise extra per kWh for HT and 10 paise extra per kWh for EHT consumers.
- (b) Colony Supply - colony supply, when availed from the HT/EHT supply of the consumer, such supply shall be segregated and metered by means of a sub-meter and the consumption will be charged at 20 paise extra per kWh for HT and 10 paise extra per kWh for EHT consumer.
- (c) If no segregation is made as specified in clause (a) or (b) above, the bill amount of the consumer shall be increased for demand and energy charges by 10% for both HT and EHT consumers".

It is very clear that supply for colony/factory use shall be separated and metered as the tariff rate is different from the main usage. It is not separated, the whole usage is charged at 10% of the tariff of industry.

The higher rate for non-segregation of power and light load is intended for pursuing consumers to segregate the light and power load. Since the charges are to be paid by the consumers, the consequence of non-segregation is to be borne by the consumer itself. The fixation of tariff is a legislative process. Tariff determined by the KSEB from time to time forms part of the agreement of supply arrived between the consumer and KSE Board Limited. It is the duty of the consumer to segregate power load and light load failing which it shall face the consequences. The liability to remit the current charge is a statutory one, as laid down by the Hon'ble Supreme Court in *Kusum Hotels vs. K.S.E. Board*.

In the instant case, total light load is not segregated and metered. As per the scheme approval by the Electrical Inspectorate, Light Switch Board (LSB) is tapped from the MSB through an energy meter and connected to LDB1, LDB2, and LDB3 with total connected load of 17.84 kW. Another light circuit LDB4 tapped from SSB2 without separate energy meter with a connected load of 1KW. Schematic diagram of LT supply and HT supply are different. Consumer has not installed sub meter to measure the quantum of consumption recorded in the light load. If the light load and power load are not segregated and metered demand and energy charges will increased as per the rates stipulated in the Tariff Order. As such there necessitates penalization as per the Tariff Order.

A distribution licensee supplying electricity to its consumers under a statutory liability cast upon it by Section 43 of the Electricity Act, 2003. At the same time, consumer has a liability to pay its charges under the agreement executed by it. Besides, the Act further confers right on the licensee under Section 45 to recover the charges of electricity supplied by it to its consumers. This right cannot be taken away by any Forum/ Court of Law provided the licensee has acted in accordance with the provisions of the Act and the regulations thereon. The consumer has no legally sustainable contention that the KSEB has violated any of the provisions of the Act or the regulations made under the Act. The Consumer Grievance Redressal Forum (Southern Region) in its order dated 08-10-2015 in O.P.No.1523/2015 upheld the demand raised by the Board. The demand raised by the Special Officer (Revenue) is legally sustainable and issued based on the tariff notification in force. The complaint is liable to be dismissed.

Analysis and findings

A hearing of the case was conducted in the Conference Hall, of Electrical Circle, Thodupuzha on 10-02-2016. The appellant has intimated his inability to attend the hearing on 10-02-2016 and requested for another hearing on a later date. But the Assistant Executive Engineer, Electrical Sub Division, Kuravilangad, who was present

for the respondent's side and his statement, was recorded on that date. Next hearing of the case was conducted in the chamber of Ombudsman, Edappally on 15-3-2016. The counsel for the appellant Sri Firoz K Robin was present and Sri Gopinathan P.K., Special Officer (Revenue) represented for 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 respondent's contention is that, the Contract Demand as per the service connection agreement entered into between the appellant and Kerala State Electricity Board Limited, the Power Load is 156.99 kW and light load is 18.882 kW and has clearly shown the total connected load as 175.81 kW. This fact establishes that the appellant is having more Lighting load, i.e. has more than 5% of the total Power load of 156.99 kW, which necessitates the imposition of extra charges on the consumer, for non-segregation of Light load and Power Loads and arranging to wire and metered separately. So the appellant is liable to pay the extra charges.

Further, as per revised tariff notification, under Part B- HT and EHT Tariff Clause 7 reads; "In the cases of factory lighting and colony supply of HT/EHT (Industrial) consumers, the applicable tariff shall be subject to the following conditions:

(a) Factory lighting: when the total connected lighting load of the factory is less than or equal to 5% of the connected load for power, it can be tapped off from the power mains without segregation. When the above lighting load exceeds this limit of 5%, the whole lighting load should be segregated and metered by a sub meter and lighting consumption in excess over 10% of the bulk supply consumption for power, shall be charged at 20 paise extra per kWh for HT and 10 paise per kWh for EHT consumers". As per Clause 7 (c); "If no segregation is made as specified in (a) or (b) above, the bill amount of the consumer shall be increased for demand and energy charges by 10% for HT and EHT consumers respectively".

But the argument of the appellant is that a perusal of the general conditions for HT & EHT tariff would clearly show that in case when lighting load exceeds 5 % of the connected load for power then the lighting load should be segregated and metered by a sub-meter and in case of excess consumption over 10% of the bulk supply, the licensee is empowered to charge 20 paise extra per kWh. Hence there cannot be any penalty and the amount demanded by way of penalty is without the support of law. It is contended that there is no provision to retrospectively penalize a consumer as per the tariff order for KSEB Limited for non-segregation. The penalty demanded is not only for the period in which HT supply was availed but also for the period during the appellant was under LT supply. In fact conversion was effected by the KSEB Limited during the month of

July 2014 but demanded penalty for the months of May and June 2014 also which is contrary to the tariff order dated 14-08-2014.

As per agreement executed between KSEB Limited and the appellant, the total connected load of the Factory was shown 175.81, i.e. a power load of 156.99 kW plus a Light circuit load of 18.882 kW. This means, the light load has exceeded the prescribed 5% limit of the total Power load. But the appellant claims that light load is segregated from the power load and is metered through the meter installed at LSB (Light Switch Board). The appellant was issued the extra charges bill by KSEB, based on the said schedule to the agreement document, in which the light load was shown as 18.882 KW and the Power load as 156.99 kW.

The main dispute pertains in this case is with regard to the issue whether the appellant is liable to pay any penal charges for the non segregation of Light and Power load?.

On a detailed analysis of the pleadings and the documents produced by both sides it can be seen that the appellant has enhanced his connected load during June 2014 after submitting the required documents. The respondent issued sanction after verification of the documents and the Schematic drawing approved by Electrical Inspector. On a perusal of the regular monthly invoices issued by the respondent, there is no levy of extra charges for the non segregation of light loads. But the respondent raised the same as an arrear bill which shows clear lapses on their part. The argument of the respondent that they are empowered to recover any extra charges from the appellant as per Section 45 of the Electricity Act, 2003, cannot be admitted since this Section is provided only for the genuine cases and should not be used for the piling up of extra charges as arrears on a later date.

Admittedly, there is no inspection conducted in the appellant's premises and no mahazar is seen prepared detailing the irregularities, if any detected regarding the non segregation of power and light circuit. Apart from the allegation that there was no light meter reading in the meter reading statement furnished by the Assistant Engineer, Electrical Section, Kaduthuruthy, the Special Officer (Revenue) issued an order for penalization of the appellant on 24-03-2015 for the period from May 2014 to February 2015. During the personal hearing on 13-05-2015 the appellant submitted the details of cumulative reading of the light meter as 354.8 which were not considered by the Special Officer (Revenue).

On going through the documents it can be seen that after issuing the arrear bill and arising of dispute the respondent inspected the premises only on 16-09-2015. The respondent failed to verify the total connected load in the appellant's premises and also to prepare a site mahazar detailing the equipments and other relevant points if any found on the inspection. If the respondent has taken timely action to verify the above facts in detail, the whole issue could have been settled easily. Here in this case the respondent failed to produce any documents acknowledged by the appellant regarding

the alleged inspection conducted in the appellant's premises and hence raising any extra charges for the non segregation cannot be justified.

Decision

In view of the settled legal position, short assessment issued without observing the mandatory provisions of the Act, is not sustainable. The action of the licensee without complying with the legal formalities amounts to arbitrariness and denial of natural justice. Hence the penal bill issued for Rs. 1,70,005.00 is hereby quashed.

Having concluded and decided as above it is ordered accordingly. The appeal petition is found having some merits and is admitted and is allowed to the extent as ordered. The related order of CGRF in OP No. 1523/2015 dated 08-10-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/172/2015

Delivered to:

1. N.J. James, Managing Director, Neerackal Latex (P) Ltd., Muttuchira P.O., Kottayam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kuravilangad P.O., Kottayam District.

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, Kottarakkara - 691 506.