

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/006/2016
 (Present: V.V. Sathyarajan)
 Dated: 25th April 2016

Appellant : Dr. N.G. Mejoy Sebastine,
 Neduvelil House, SRM Road,
 Pachalam P.O.,
 Kochi – 682 012

Respondent : The Assistant Executive Engineer,
 Electrical Sub Division,
 Ernakulam Central

ORDER

Background of the case:

The appellant is a consumer under Electrical Section, Cheranellore having 4 Nos. of electrical connections having the following consumer Nos. and tariffs.

1. Consumer No. 3376	LT I A	II Floor
2. Consumer No. 3377	LT I A	I Floor
3. Consumer No. 3378	LT VII B	Ground Floor
4. Consumer No. 3379	LT I A	Ground Floor

The connections are registered in the name of Smt. Mema P.G., the appellant's mother-in-law and the appellant is the occupant of the building at present. On 17-09-2015, a team of APTS inspected the premises and detected that the service connections with consumer Nos. 3377 and 3379 issued for domestic purpose are being used for commercial purposes. Based on the above findings the Assistant Engineer, Electrical Section, Cheranellore issued two penal bills dated 19-09-2015 for Rs. 11,872.00 (consumer no. 3379) and Rs. 14,407.00 (consumer no. 3377) which was remitted by the appellant on 25-09-2015.

Aggrieved against this, the appellant filed a complaint before the CGRF (Central Region), Ernakulam. The Forum dismissed the petition vide order No. 91/2015-16 dated 23-1-2016 by holding that the case is not maintainable as the disputed penal bill was issued under Section 126 of the Electricity Act, 2003. Against the decisions of the CGRF, the appellant has approached this Authority with this appeal petition.

Arguments of the appellant:

The appellant stated the following. The 2nd floor of the building having consumer No. 3376 is lying vacant and the appellant is remitting minimum charges as there is no consumption under domestic tariff. He had remitted advance current charges for a period of one year also. Similarly the 1st floor of the building having consumer No. 3377 under domestic tariff was unoccupied till June 2015 the appellant himself started a dental clinic in the said premises. Advance current charges for one year were also remitted for this connection.

In the ground floor, having consumer No. 3378 under LT VII B tariff, a 'professional courier' firm was functioning in a single room. The current charge bills are being remitted by the party regularly. Consumer No. 3379 is provided to three shop rooms with separate shutters in the ground floor of the building. The licensee has allotted domestic tariff (LT I A) to this service and the appellant was remitting the minimum charges to this connection till April 2015, as the shops were unoccupied till 30-04-2015.

The following facts are submitted for kind consideration in this regard.

Two shutters (consumer No. 3379) in the ground floor was rented out as per agreement dated 04-02-2015 to Mrs. Sheeja Jose and a textile shop opened by the party there on 03-05-2015 after completing some furniture works in the shops. In the first floor of the building, the complainant himself started a dental clinic and its full fledged function commenced with effect from 01-06-2015. A verification of consumption of the previous period in respect of the above connections will prove that the premises were lying vacant till 30-04-2015.

At the time of opening of the textile shop and dental clinic, the appellant directly contacted the Section Office for tariff change and obtained application forms Nos. 198811 and 198810 in June 2015 and entrusted with electrical contractor for further follow up action. But due to his inconvenience and laxity, the applications were not submitted in time at the Section Office. On 17-09-2015, a team of APTS inspected the building premises and reported misuse of tariff in the case of connection Nos. 3377 (1st floor) and 3379 (ground floor). On the basis of the site mahazar, the Assistant Engineer issued two penal bills dated 19-09-2015 for Rs. 11,872.00 and Rs. 14,407.00 with disconnection date 26-09-2015.

Now the penal bill for one year is seen issued under Section 126 of Electricity Act, 2003. But respondent has not mentioned in the bill under which section the appellant was penalized. The appellant was not given an opportunity to file an appeal against the provisional bill. The bill dated 19-09-2015 with disconnection date 26-09-2015 served on 25-09-2015 and asked the appellant to remit the amount immediately. The appellant had acknowledged the provisional bill on 25-09-2015. This Authority may kindly examine the copies of the bill acknowledged by the appellant. On threatening the disconnection, the appellant remitted the amount on 25-09-2015 itself.

This is a case of incorrect application of tariff by the licensee. It is the duty and responsibility of the licensee to assign applicable tariff to a consumer. In this case, the

appellant himself approached for the reclassification of consumer category in June 2015 itself. Even though the appellant delayed to submit the application in time, there is provision for suo motu reclassification of consumer category by the licensees. Regulation 97 of Supply Code says "Suo moto reclassification of consumer category by the licensee –

- 1) If it is found that a consumer has been wrongly classified in a particular category or 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 consumer shall be informed of the proposed reclassification through 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 appropriately.
- 4) Arrear or excess charges shall be determined based on the actual period of wrong reclassification and the account of the consumer shall be suitably adjusted.
- 5) If the actual period of 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 whoever is shorter comes under tariff VI F. So the tariff assigned to the connection is not correct.

It may please be noted that the licensee's officers are being inspected the premises and taken meter reading regularly. Since the appellant is remitting minimum charges for the said connections as per the readings, any increase in the consumption and any change in the purpose of supply can be easily ascertained and it is possible for the licensee to take proper action as per the above provisions without harassing a genuine consumer. It is submitted that the appellant personally contacted and informed the Section Office regarding the occupation of the vacant buildings and change of tariff.

The building was lying unoccupied for last several years due incompleteness of construction works and the appellant was remitting minimum electricity charges for all the connections since the date of effect of the connections. This fact can be proved easily by verifying the previous consumption details of the consumer. The ground floor building is not a shopping complex as alleged in the site mahazar. Only one textile shop is functioning there in two shops since 03-05-2015. The remaining one shop is still lying vacant.

Under Regulation 152 of Supply Code, 2014, incorrect application of tariff shall not attract provisions of Section 126 and 135 of the Act. As per Regulation 152 (2) "In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted." The licensee wrongly assigned domestic tariff to the shops having 3 shutters in the ground floor. Though this is not a case comes under Section 126, the appellant was penalized under Section 126. But this fact was not mentioned in the provisional penal bill issued. A proper notice allowing the appellant to

file an appeal was not issued and also sufficient time was not allowed to file appeal. The licensee has also not issued a final bill confirming the provisional bill. So the penalization for one year under Section 126 of the Act is not sustainable and also unjustifiable.

Regarding the service connection No. 3377 relating to dental clinic, the penal bill is seen calculated under VII A tariff. As per tariff order private clinics comes under tariff VI F. So the tariff assigned to the connection No. 3377 is not correct. It may please be noted that the appellant is liable to remit only the applicable tariff in normal rate with effect from 02-05-2015 in the case of Consumer Nos. 3377. Now the appellant had submitted application for regularization of tariff on 23-09-2015, but the licensee has not still regularized the tariff change.

The respondent, being a statutory authority is prohibited from making illegal gains from indulging in unfair trade practices. Considering the above facts, there is no legal sanctity for the collection of excess amount from the appellant and penalizes him without ascertaining the real facts in this case.

Aggrieved with the penalization, the appellant approached with a petition before CGRF, Ernakulam. But the CGRF has not considered the real facts and merits in the case and disposed the case stating that the case of the petitioner comes under the purview of Section 126 of Electricity Act, and hence the petitioner can approach the Kerala State Electricity Appellate Authority.

The order issued by the CGRF is without examining the merits. The CGRF did not even read and understand the said specific pleading of the petitioner. Again in the order CGRF directed to file appeal before the Appellate Authority, which is also a wrong decision. The CGRF without suggesting to file appeal before this Honourable Ombudsman, wrongly suggested to file appeal before the Appellate Authority. Since the appellant was denied the opportunity to raise objections before the Assessing Officer, the orders of the CGRF to approach the appellate authority under Section 127 is not in order and hence unjustifiable.

There is no intention of misuse of tariff as alleged in the site mahazar. The appellant had informed the KSEB the change of tariff in time. Evidence to this fact is the purchase of the application forms by the appellant. Though the appellant had produced documentary evidences to prove regarding the actual change of tariff before the Inspection Squad and CGRF, they not considered the facts. The appellant's previous consumption pattern may also be taken into consideration.

The main contention of the appellant in the petition preferred before the CGRF is the issue did not come under the purview of Section 126. The CGRF has not considered the following points adduced by the appellant in the petition. The procedures to be followed in the case of Section 126 was not adhered by the licensee while issuing the penal bill to the appellant.

- a) A provisional bill dated 16-09-2015 served on the appellant on 25-09-2015 with direction to remit the amount before 26-09-2015. It may be noted that the provisional bill was acknowledged by the appellant on 25-09-2015 only. This can be proved by examining the acknowledged copy available with the respondent.

- b) A proper notice mentioning the Section and offence was not issued to the appellant while serving the provisional bill. (Later a manipulated notice is prepared and produced before the CGRF by the respondent which was not actually served on the appellant. This notice itself contains no office number, date and seal etc.)
- c) The appellant was not given an opportunity to file an objection against the penal bill as provided in the Act and Regulations.
- d) The relevant Section 126 was not written in the provisional bill served on the appellant. Later the respondent manipulated the office copy of the bill by entering Section 126. This can be proved by examining the bill issued to the appellant and office copy produced by the respondent before the CGRF.
- e) A final bill as per the Act was not issued by the concerned Assessing Officer.

For these and other grounds and reasons stated in the foregoing paragraphs and those to be urged, it is humbly prayed the Hon'ble Authority may be pleased to accept the above contentions and allow this appellant by granting the reliefs, or sought for the hereunder, with cost of the appellant.

Nature of reliefs sought

1. To declare that the appellant is liable to pay tariff under normal rate with effect from 03-05-2015 in respect of connection No. 3379 and with effect from 01-06-2015 in respect of connection No. 3377.
2. To cancel the penal bills issued and to assign the correct tariff according to the actual date of occupation.
3. To refund the excess amount collected with interest to the appellant.

Arguments of the respondent:

1. The Consumer Numbers 3376, 3377, 3378 and 3379 stand registered in the name of Smt. Mema. P.G., Parakkat house, Cherannellur under LT I A tariff except consumer No. 3378 which is under LT VII B tariff were effected on 22-03-2013. The above consumers are coming under the jurisdiction of the office of the respondents. Smt. Mema. P.G being the registered consumer, there is no privity of contract between the appellant and the respondents. As such, the appellant is a stranger to the respondents and he has no locus standi to institute this appeal against these respondents.

2. Moreover, it is pertinent to note that the issue raised by the appellant in his appeal is regarding misuse of tariff which was detected by the inspection team during the inspection and assessment was raised therein under Section 126 (2) of the Electricity Act, 2003. As per Sub section 6 (IV) of Section 126 of the Electricity Act, 2003, unauthorized use of electricity means, for the purpose other than for which the usage of electricity was authorized. The case on hand, the appellant unauthorisedly used the domestic tariff for commercial purpose and thereby, it is a clear case of unauthorised use of electricity. Please see that Regulation 7 of Consumer Grievance Redressal Forum & Electricity Ombudsman, the forum shall take up any kind of grievances/complaints as defined in Regulation 2 (1) (f). As per this Regulation, (2)(1) (f) (vii), any other grievance

connected with the supply of electricity by @the licensee except those related to the following:-

- (1) unauthorised use of electricity as provided under section 126 of the Electricity Act 2003.
- (2) offences and penalties as provided under Section 135 to 139 of the Electricity Act 2003 and
- (3) accident in distribution, supply or use of electricity under section 161 of the Electricity Act 2003.

3. The Hon'ble CGRF, Ernakulam was pleased to disposed the complaint by Order dated 23-01-2016 holding that "the case of the petitioner comes under the purview of Section 126 of the Electricity Act, 2003 and hence the appellant can approach the Appellate Authority constituted under Section 127 - of the Electricity Act, 2003". From the above, it is crystal clear that the Electricity Ombudsman lacks jurisdiction to entertain the dispute. This Hon'ble Forum may be pleased to raise the above as preliminary issues and dismiss the appeal on the ground of lack of maintainability However, without prejudice to the above; the following facts are submitted for the kind consideration of this Hon'ble Forum.

1. It is respectfully submitted that LT I A tariffs were assigned to the appellant in respect of the consumer numbers 3376, 3377 and 3379 and LT VII B tariff was assigned to consumer No. 3378. At the time of submitting application for electric connection, purpose of electricity showed as domestic. The office of the respondent inspected the site and it was convinced the same. Thereafter connection was effected under LT I A tariff for the consumers namely 3376, 3377 and 3379. Things being so, an inspection was conducted by the Anti Power Theft Squad, Thrissur unit along with the assistance of the Section Officials in the premise of the consumer Nos. 3377 and 3379 on 17.09.2015.

During the inspection the team detected that the above consumers unauthorisedly connected and using the domestic tariff for commercial purpose in a permanent nature and thereby causing considerable financial loss to the Kerala State Electricity Board. The LT I A tariff was used for running a Textile in the name and style of "LADY LIBAS GLAMOUR WEDS STYLE" in respect of consumer No. 3379 and dental clinic in the name and style of "VALANTHARA DENTAL CLINIC" in respect of consumer No. 3377. Site mahazar has been prepared for both the consumers and got signed and a local person is also witnessed the above site mahazar.

2. It is respectfully submitted that based on the above inspection reports, a provisional invoices dated 19-09-2015 under section 126(1) of the Electricity Act 2003 amounting to Rs.11,872.00 (Rupees Eleven thousand eight hundred and seventy two only) and Rs. 14,407.00 (Rupees Fourteen thousand four hundred and seven only) respectively has been served to the appellant along with a detailed calculation statements showing how the assessments were arrived. The appellant was not seen taken any effort to file objection before the Assessing Authority as stipulated by the statutes. Thereafter, a final assessment dated 25-09-2015 was issued to the appellant confirming the

provisional assessment. The same was served to the appellant along with a letter dated 25-09-2015. It was specifically stated in the letter that in the event of any grievance with regard to the final assessment, he can approach the Appellate Authority under Section 127 of the Electricity Act, 2003. The appellant has remitted both the assessments on 25-09-2015.

4. It may please be noted that as per Section 127(1) of the Electricity Act, 2003, any person aggrieved by a final order made under Section 126 may, within 30 days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fees as may be specified by the state commission, to an appellate authority as may be prescribed. As per Section 127 (2) of the Electricity Supply Act, 2003, no appeal against an order of assessment under Sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal. Here, the appellant has not approached the above Statutory Authority preferred a complaint before this Hon'ble Authority. It may be in order to evading from remitting the required amount and appeal fees. The Apex court in TIN PLATE CO.OF INDIA Ltd. Vs. STATE OF BIHAR has observed that when an alternative and efficacious remedy is open to a person, he should be required to be pursuing that remedy.

5. The averments regarding applications for change of tariff were obtained and the same could not be submitted before the office of the respondent due to the laxity of his electrical contractor is not liable by the respondent. Mere purchase/obtained of an application is not sufficient enough to got change the tariff of a consumer. The same is sanctioned only after the application is submitted with required sufficient documents and information along with the required fees.

6. The averments that non-mentioning of relevant section by which the appellant was penalized is against facts and the same is hereby denied. It may please be noted that the 'provisional assessment under Section 126' was mentioned in the assessment. The appellant was not seen taken any effort to file objection before the Assessing Authority as stipulated by the statutes.

7. The case on hand is a clear example of tariff misuse coming under the purview of Section 126 of the Electricity Act, 2003. Arguments on the contrary are against false and hence hereby denied. An inspection was conducted by the Anti Power Theft Squad, Thrissur unit along with the assistance of the Section Officials in the premise of the consumer Nos. 3377 and 3379 on 17-09-.2015. During the inspection the team detected that the above consumers unauthorisedly connected and using the domestic tariff for commercial purpose in a permanent nature and thereby causing considerable financial loss to the Kerala State Electricity Board. The LT I A tariff was used for running a textile shop in respect of consumer No. 3379 and a dental clinic in respect of consumer No. 3377. The same was evidenced from the site mahazar prepared by the Inspection team. At the time of submitting application for electric connection, purpose of electricity showed as domestic. The office of the respondent inspected the site and convinced the same. Thereafter connection was effected under LT I A tariff for the consumers namely 3376, 3377 and 3379. Therefore the argument that incorrect application of tariff by the licensee is not sustainable and Regulation 152(2) was not applicable in this case. The

misuse of tariff was informed to the appellant by the meter reader while he was taking meter reading. The anomaly noticed by the meter reader was convinced to the appellant as well. The argument that no information was given to this effect is against facts.

8. It is submitted that as per Section 126(5) of the Electricity Act, 2003, "if the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection". In Section 126(6) of the Electricity Act, 2003, It is also stated that "the assessment under the section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5)".

9. It is submitted that consumer No. 3377 was regularized the additional load and converted the single phase connection in to three phase by remitting the required fees and also got changed the tariff to LT VI F. In respect of consumer No. 3379, tariff was changed to LT VII A based on the inspection report. Therefore, the invoices issued to the appellant are based on the inspection conducted and the same was as per the provisions of the Electricity Act, 2003. Because of the above reasons the Hon'ble Forum has no reason to entertain the appeal. The appellant is not eligible for any of the reliefs sought for and the appeal may be dismissed.

Analysis and findings

The Hearing of the case was conducted on 18-04-2016, in my chamber at Edappally. Sri N.D. George represented the appellant's side. Sri Biju Jose, Assistant Executive Engineer, Electrical Sub Division, Central represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

On going through the records it can be seen that the appellant has challenged the penalization for misuse of tariff levied from him as per Section 126. It is admitted that the appellant has obtained applications for the change of tariff in time as per the direction of the Assistant Engineer. The respondent has also admitted that the meter reader noticed the change of tariff. ***As per Regulation 97 (1) of Supply Code, 2014, "if it is found that a consumer has been wrongly classified in a particular category or 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 moto reclassify the consumer under appropriate category". (2) The consumer shall be informed of the proposed reclassification through a notice with a notice period of 30 days to file objections, if any. (3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately. (4) Arrear or excess charges shall be determined based on the actual period of wrong reclassification and the account of the consumer shall be suitably adjusted. (5) If the actual period of 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 whoever is shorter. Here in this case, the respondent had not taken any action as per Regulation 97 of Supply Code 2014.

Against this the respondent has contented that mere purchase/ obtaining of an application is not enough to get changed the tariff of a consumer but the same can be sanctioned only after submitting application along with sufficient documents and the required fees. The respondent has not denied the fact of the purchase of application forms by the appellant. Hence the appellant alone cannot be blamed for not taking timely action to change the tariff. There is only three months delay occurred for the tariff change and in the meantime APTS conducted inspection. As it is conclusively proved that the appellant informed the change of purpose of supply to the respondent, it is found that the appellant has not any bad intention to suppress the facts.

Another argument of the appellant is that there were serious procedure lapses occurred on the part of respondent in charging him under Section 126. According to him, provisional bill dated 19-06-2015 with last date for remittance shown 26-09-2015 with a calculation statement was served on him on 25-09-2015. The appellant has stated that he acknowledged the provisional bill on 25-09-2015 and in that copy the section under which he was penalized was not mentioned. Further, the provisional order describing the reasons and basis of assessment along with detailed calculation has not been issued to him. On a perusal of the documents submitted by the appellant and the respondent, this Authority has noticed serious procedural lapses and manipulation of records by the Assessing Officer.

1. In the provisional assessment invoice produced by the appellant, 'Section 126' is not written. But in the copy of provisional invoice submitted by the respondent, 'Section 126' is seen entered.
2. The respondent failed to produce a copy of the provisional invoice acknowledged by the appellant. Hence the claim of the respondent that the provisional invoice served on the appellant in time cannot be admitted.
3. It shall expressly be mentioned in the order of provisional assessment that the assessee is entitled to file objection, if any, as per Section 126 (3) of the Act and such objections shall be filed within 7 days of receipt of the order of provisional assessment, failing which the provisional assessment will become final by default. It shall also be mentioned that, if consumer do not wish to challenge the provisional assessment, the payment may be made within 7 days as per Section 126(4) of the Act." "Due date and disconnection date in respect of the provisionally assessed amount shall be indicated in the order and invoice. The due date shall be 7 days from the date of service of the order". There is no disconnection date in the provisional invoice issued by the respondent. The respondent has not followed any of the procedures mentioned above.
4. The respondent has produced a final assessment order which is said to have been issued to the appellant. This order is dated 25-09-2015 and not bears any office number and reference of provisional assessment order. The appellant denied the receipt of any such final order and the respondent has not produced the copy acknowledged by the appellant. From the above analysis it can be

concluded that the provisional bill with due date for payment as 26-09-2015 was served on the appellant only on 25-09-2015. The argument of the respondent that he issued a final assessment order dated 25-09-2015 to the appellant is without any documentary evidence such as acknowledgement of the order by the appellant and cannot be accepted.

The appellant also argued that the respondent has wrongly assigned domestic tariff to the shops (consumer no. 3379) in the ground floor which comes under misclassification of tariff. Under Regulation 152 of Supply Code, 2014 incorrect application of tariff shall not attract provisions of Section 126 and 135 of the Act. The contention of respondent that he provided domestic tariff to the shops on the basis of appellant's application which cannot be accepted since it is the duty and responsibility of the respondent to verify the premises and the purpose for which the supply is being used and to assign tariff accordingly.

Further, the appellant argued that the actual date of change of purpose not considered by the Assessing Officer while issuing the assessment bill. The appellant had produced evidences to substantiate his arguments after furnishing necessary documents such as rent agreement of the ground floor and the details of inauguration function of the textile shop in the ground floor (consumer no. 3379). He has produced the bill copies dated 30-5-2015 and 30-6-2015 of the Dental Air compressor and Mobile Suction purchased by the appellant are produced for verification. The consumption pattern of the appellant revealed that he was remitting minimum current charges for the above consumer numbers for the previous period. The respondent has not offered any reply regarding these aspects. Hence the appellant argued that he is eligible for the tariff change for consumer no.3377 with effect from 1-6-2015 under LT VI F tariff instead of the LT VII A tariff assessed by the Assessing Officer.

The respondent has challenged the maintainability of the petition stating that the complainant has no manner of rights to file above complaint before the Ombudsman, as the appellant is not a consumer of electricity. One of the main arguments of the respondent is that the appellant is not the registered consumer and stranger to the respondent. It is pertinent to note that the site mahazar was served to the appellant who is the present occupier of the building. As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a complainant is defined as

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint
- (iv) in case of death of a consumer, his legal heirs or representatives

In the Act a consumer is defined as “any person who is supplied with electricity for his own use by a licensee or the government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the licensee, the government or such other person, as the case may be”. Considering the above definition it is clear that petitioner is a consumer. In this case, the appellant is occupying the building is a fact. These points establish that the appellant’s claim as a consumer of electricity. Hence, the argument of the respondent that the appellant is not a ‘consumer’ is found as not sustainable.

Another version of the respondent is that the Electricity Ombudsman lacks jurisdiction to entertain the dispute since the case of the appellant comes under the purview of section 126 of the Electricity Act, 2003 and hence the appellant can approach the Appellate Authority constituted under Section 127 of the Electricity Act, 2003. Further the respondent contented that as per section 127(1) of the Electricity Act 2003, any person aggrieved by a final order made under Section 126 may, within 30 days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fees as may be specified by the State Commission, to an Appellate Authority as may be prescribed.

On analyzing the facts and circumstances discussed above, it is concluded that the appellant was not given an opportunity to file an objection against the penal bill before the Assessing Officer as provided in the Act and Regulations. Though a final order is shown by the respondent, it is found as fabricated one created to submit before CGRF and Ombudsman. This final order having no office number and no reference regarding provisional assessment order is seen dated 25-09-2015 and the respondent claimed the service of the order before the due date shown in the provisional bill. But the appellant denied the receipt of such a final order. The respondent failed to show the copy of the said order acknowledged by the appellant.

The Apex Court in Executive Engineer & Another Versus M/s Sri Seetaram Rice Mill has laid down that “ **In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126 (3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126 (2) is not appealable.**” In this case it is proved that a final order was not served on the appellant and he was denied an opportunity to raise his objections before the Assessing Officer. Hence the only alternative solution available to the appellant for redressal of his grievance is to approach the CGRF and Ombudsman. Since those aspects discussed above were not considered by the CGRF while dismissing the petition, this Authority is of the opinion that the appeal petition is maintainable before this Authority and the objections of the respondent cannot be sustained. In view of the reasons recorded above, I have no other option but to interfere with the impugned penal bills issued by the Assessing Officer. This is a case of manipulation of records, negligence and irresponsible action on the part of the officers of the licensee which have to be dealt by the licensee.

Decision

It is evident that the assessment will become final only when the Assessing Officer passes the final order after considering the objections and after affording opportunity of personal hearing. Then only the person against whom such assessment is made will become liable for payment of the amount of penalty. But as long as such an option is not exercised or when the person upon whom the provisional assessment is served has chosen to object the same, the assessment cannot be said to be completed or finalized and no liability for payment can be fetched, until final order is issued.

In the case at hand it is evident that even before affording an opportunity to file objections and even before conducting any personal hearing the respondent demanded payment of the amount of penalty provisionally assessed. Such a demand cannot be sustained under law and liable to be quashed. The respondent shall reclassify the tariff under normal rate with effect from 03-05-2015 in respect of consumer No. 3379 and with effect from 01-06-2015 in respect of consumer No. 3377. In this case, the appellant had already remitted the penal charges which may be refunded to him at any rate within a period of 30 days from the date of receipt of this order. It is reported that the respondent had already re-categorised the tariff of consumer nos.3379 and 3377 of the appellant under LT VIIA and LT VI F respectively, this Authority is not intervening further.

Having concluded and decided as above it is ordered accordingly. The appeal petition is found having some merits and is admitted. Order of CGRF No. 91/2015-16 dated 23-1-2016 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/006/2016/_____ Dated:_____

Delivered to:

1. Dr. N.G. Mejoy Sebastine, Neduvelil House, SRM Road, Pachalam P.O., Kochi – 682 012
2. The Assistant Executive Engineer, Electrical Sub Division, Ernakulam Central.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.