

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/016/2016

(Present: V.V. Sathyarajan)

Dated: 17<sup>th</sup> June 2016

Appellant : Sri. Pramod C.K .  
Chellisseyil House,  
Neriyamangalam.

Respondent : The Assistant Executive Engineer  
KSE Board Limited,  
Electrical Sub Division,  
Kothamangalam

**ORDER****Background of the case:**

The appellant is a consumer with consumer No: 1156018003432 under the jurisdiction of Electrical Section, No. II, Kothamangalam. This service connection was effected under LT IV tariff exclusively for industrial purpose with a connected load of 19 kW. The appellant is conducting an oil mill engaged in extraction of oil from Copra and Gingili. On 02-05-2014, APTS, Vazhathoppu conducted an inspection in the appellant's premises and found that no industrial activities except filtering and packing of oil brought from outside were carried out in the unit. Alleging that there is misuse of tariff, the Anti Power Theft Squad, Vazhathoppu prepared a mahazar.

Based on the above findings, the Assistant Engineer, Electrical Section, No. II, K.S.E.B. Kothamangalam issued a provisional bill for an amount Rs. 59,861.00 towards the charge under differential tariff between commercial and industrial. Against the short assessment, the appellant submitted his objection only after the issuance of final bill for an amount Rs. 59,861.00. Since the respondent failed to take any action on this objection the appellant challenged the penal bill before the Hon'ble High Court of Kerala in W.P. (C) No: 14873 of 2014. The Hon'ble High Court disposed the Writ Petition vide its judgment dated 18-06-2014 by directing the respondent to consider the objection of the appellant and pass final orders in the matter after affording an opportunity of personal hearing to the appellant.

Pursuant to the directions contained in the judgment, though the Assessing Officer conducted a personal hearing on 29-11-2014 he issued final order without any change in the assessment only on 26-10-2015 directing the appellant to remit

the entire amount of Rs. 59,861.00. So the appellant submitted a complaint before the Hon'ble CGRF Ernakulam which was dismissed on the grounds that the disputed bill is issued as per Section 126 of the Electricity Act and the Forum has no jurisdiction in the matter, vide order No. CGRF-CR/Comp./103/2015-16 dated 16-02-2016. Aggrieved against the decision of the CGRF, the appellant submitted this appeal petition dated 02-03-2016 before this Authority.

**Arguments of the appellant:**

The appellant submitted his objection to the provisional bill for Rs. 59,861.00 within time stipulated by denying the allegations of the APTS, Vazhathoppu and stated that the activity in the unit of the appellant is only extraction of oil from Copra and Gingili brought by the nearby residents and requested for cancellation of the demand. Without hearing the appellant and without adverting to the facts stated, the respondent mechanically issued final bill demanding payment of Rs. 59,861.00. That final bill is also dated 08-05-2014 served on the petitioner on 05-06-2014. Both the last date for payment and the date for payment without disconnection are shown as 07-06-2014.

The appellant challenged bill before the Hon'ble High Court of Kerala in W.P. (C) No: 14873 of 2014 and the Hon'ble High Court of Kerala as per judgment dated 18-06-2014 disposed of that Writ Petition directing the Assistant Engineer, Electrical Section, No II, Kothamangalam to consider the objection and pass final orders in the matter after affording an opportunity of personal hearing to the appellant. A specific direction was issued in the judgment to consider the sustainability of penal assessment made under Section 126 of the Electricity Act. The enforcement of the demand is kept in abeyance till the finalization of the matter as directed by the Hon'ble High Court of Kerala.

The respondent without passing a final order in the matter, as directed by the Hon'ble High Court, issued a bill dated 26-10-2015 reiterating the demand made by the respondent. A bill was dropped in the appellant's premises on 23-11-2015 i.e. after the last date scheduled for remittance of the bill amount. It is specifically stated in paragraph 8 of the complaint submitted before the Hon'ble Consumer Grievance Redressal Forum that the final order as directed by the Hon'ble High Court of Kerala in judgment is not passed by the respondent before issuing the bill. In the proceedings issued by the respondent, there is no whisper about passing of the final order as directed in the judgment of the Hon'ble High Court of Kerala. The appellant is put to unnecessary harassment because of the issuance of the bill without passing final orders on the objection submitted by the appellant. The sustainability of penal charges is also liable to be considered in the final order as directed by the Hon'ble High Court of Kerala. A consumer is left with no other remedy than to approach the CGRF for the arbitrary and illegal act of the respondent by filing complaint 103 of 2015/16 before the CGRF.

The Hon'ble CGRF without considering the genuine grievances of the appellant and also without taking into consideration of the fact that the respondent has wilfully disobeyed the directions of the Hon'ble High Court of

Kerala, dismissed the complaint holding that the disputed bill is as per Section 126 of the Electricity Act and thus has no jurisdiction in the matter.

The Hon'ble CGRF entered into a finding that the respondent passed the final order on 20-10-2015. The specific averments raised by the appellant in paragraph 8 of the complaint are that an order as directed by the Hon'ble High Court of Kerala in judgment is not passed by the respondents. The respondents also have not stated anything regarding the passing of the order after the hearing conducted on 21-11-2014. The CGRF failed to examine the genuineness of the order dated 20-10-2015 alleged to have been passed by the respondent.

The Hon'ble High Court of Kerala in its judgment dated 18-06-2014 directed the respondent to consider the sustainability of the penal assessment under Section 126 of the Act and pass orders within one month of the receipt of the judgment. Admittedly the Assistant Engineer, Electrical Section, No. II, Kothamangalam conducted the hearing only on 21-11-2014 and final bill issued was dated 26-10-2015. There is no justification for keeping the matter pending for such a long period. The learned CGRF failed to note that the allegation is mistake in applying the tariff and not theft, pilferage or unauthorised use of energy by the consumer. The respondents failed to consider the fact that the only machineries found at the time of inspection was one capping machine, five tubes, four Fans and one computer with printer. Even if the allegations are accepted, the use of those electrical equipment will not consume this much energy. This aspect is also not considered, before passing the bill.

Nature of the reliefs sought from the Ombudsman.

1. To set aside order No. Comp. No. 103/2015-16 dated 16-02-2016 of the CGRF Ernakulam as unsustainable.
2. To set aside the bill dated 26-10-2015 issued by the respondent.
3. To declare that the appellant is not liable for the payment of any additional amount to the respondents by way of penal charges

**Arguments of the respondent:**

The Anti Power Theft Squad (APTS) Vazhathoppu along with the concerned staff of Electrical Section, No II, Kothamangalam conducted a surprise inspection at the premises of consumer No: 1156018003432 on 02-05-2014. At the time of effecting the service connection, electric power was supplied to the appellant for extraction of oil, which is an industrial activity. At the time of inspection it was noted that any industrial activity was not being carried out in the premises and the registered connected load of 19 kW was dismantled without any intimation to the licensee. Industry means the production of finished goods from raw materials and at the time of the inspection none of the machineries was installed in the premises of the existing service connection. The only machine that was present at the time of inspection was a capping machine. And there was no consumption of power for the industrial purpose. The tariff assigned for oil packaging is LT VII A.

Since it was detected that power was being consumed for purpose other than industrial purpose, difference in the cost of electricity in LT IV A tariff and LT VII A tariff was assessed and a provisional bill for Rs 59,861.00 was served to the petitioner on 08-05-2014 as per subsection (2) of Section 126 of Electricity Act, 2003. The petitioner was directed to submit his objections if any against the provisional bill within 7 days from the receipt of the bill. But the petitioner has not responded positively within the stipulated time limit of 7 days i.e. 24-05-2014. In the absence of arguments / objections within the stipulated time from the petitioner, a final bill was served to the consumer as per sub section (5) of Section 126 of Electricity Act, 2003. Hearing can be conducted only on the basis of objections or arguments submitted by the consumer as per provisions of sub section (3) of Section 126 of Electricity Act, 2003. The petitioner submitted the objections only on 26-05-2014.

The Hon'ble Court had ordered to conduct a personal hearing with the appellant as per the objections raised in the petition. Copy of the orders of the Hon'ble High Court was received by the respondent only on 21-11-2014. Consequent to this order, a personal hearing with the petitioner's representative was conducted on 29-11-2014 itself. During the hearing, the representative assured that documents will be submitted in due course to prove his arguments in the personal hearing. Despite repeated requests to the appellant by the respondent to submit the documents if any to prove the arguments regarding the existence of 10 hp motor and the expeller which are the basic needs for (oil extraction) industrial purpose, he has not submitted the same till date.

The respondent has complied with the orders of the Hon'ble High Court with full respect and has conducted the personal hearing on the eighth day of receipt of the orders, but the petitioner failed to submit the required documents to prove his arguments against the inspection bill and misuse of tariff. Delay in serving the revised bill has occurred due to the non-submission of the documents or evidences from the part of the petitioner. On receipt of communication from the respondent, the appellant has requested for further extension of time limit to submit the evidence, which was not submitted to the respondent till date. Objections against the provisional bill submitted by the appellant are not valid, since it was submitted only after the time limit specified as per sub section (4) of Section 126 of electricity act 2003.

The service connection to the appellant No 1156018003432 was effected under LT-IV tariff for industrial purpose and at the time of surprise inspection by the APTS, Vazhathoppu only commercial activity was going on. Machineries essential for industrial purpose with 19 kW connected load were unauthorisedly dismantled by the appellant and connected load at the time of APTS inspection was only 1720W. Misuse of tariff was evident as power was consumed for a commercial purpose. Two times of the normal current charges can be realised as per BO (FB) No. 2518/2013(KSEB/TRAC /S Code/R2/2009) Thiruvananthapuram dated 28-11-2013.

According to the minutes of the hearing the representative of the appellant had assured to submit the documents supporting the arguments about the date of

dismantling of the electric motor of the expeller. In the absence of further evidences the Assessing Officer issued the final orders on 26-10-2015. The disputed matter was kept pending only for the benefit of the appellant to give him extra time for the submission of supporting documents. As per the site mahazar, the connected load is 1720W. Faulty meter was changed on 26-11-2013 and the monthly consumption up to 05/2014 is mentioned below:-

02/12/2013	-	165 Units
01/01/2014	-	101 Units
01/02/2014	-	93 Units
01/03/2014	-	124 Units
01/04/2014	-	112 Units
01/05/2014	-	140 Units

The consumption pattern is found matching with the present connected load 1720 Watts. Being an assessment made under Section 126 of Electricity Act, 2003 the CGRF has rejected the petition of the appellant citing the reason that the Forum has no jurisdiction.

### **Analysis and findings**

The hearing of the case was conducted on 07-06-2016 in my Chamber at Edappally and the appellant's side was represented by Advocate Kiran Peter, and the respondent's side by Sri V.O. George, Assistant Executive Engineer, Electrical Sub Division, Kothamangalam and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellant, the statement of facts of the respondent, perusing 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.

The main contention of the respondent is that the Electricity Ombudsman lacks jurisdiction to entertain the appellant's case since the same 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.

According to the appellant without hearing the complaint and without adverting to the facts stated the Assistant Engineer, No II Section mechanically issued final bill demanding payment of Rs. 59,861.00. Both the due date for payment and the date for disconnection are shown as 07-06-2014. Further, the appellant argued that without passing a final order in the matter as directed by the Hon'ble High Court, the respondent issued a bill dated 26-10-2015 reiterating the demand made by the Assistant Engineer, No II Section, Kothamangalam and bill was dropped in the appellant's premises on 23-11-2015 i.e. after the last date scheduled for remittance of the bill amount.

***The point to be decided in this case is as to whether the appeal petition is maintainable before this Authority per contra when the respondent raises an argument that the assessment is issued as per Section 126 of Electricity Act or not?***

On a close perusal of the records it can be seen that pursuant to an inspection conducted on 02-05-2014 in the appellant's premises where service connection is provided under Consumer No 1156018003432, provisional assessment imposing penalty for an amount of Rs. 59,861.00 was issued as per Section 126 of Electricity Act, 2003 by the Assistant Engineer, Electrical Section, No. II, Kothamangalam, alleging misuse of tariff. Nowhere in the invoice dated 08-05-2014, the Section under which the penal bill issued was seen recorded instead, it is specifically mentioned that it is a provisional bill.

Section 126 of Electricity Act contemplates a comprehensive procedure for finalization of the assessment. ***Under sub section 1 of Section 126, if the assessing officer comes to the conclusion that the consumer or any other person is indulging in unauthorized use of electricity, he should provisionally make as assessment of the electricity charges payable by such person to the best of his judgment. Sub section 2 of Section 126 provides that the provisional assessment should be served upon the person in occupation or possession or in charge of the place in the manner prescribed. Sub section 3 provides that the person upon whom such provisional assessment is served is entitled to file objections.*** It further provides that the Assessing Officer should pass a final order of assessment after affording a reasonable opportunity of hearing to such person.

From the procedure as enumerated above 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. On going through the records, though the inspection conducted on 02-05-2014 the provisional bill is seen issued on 08-05-2014. ***The provisional assessment order describing the reason and the basis of assessment along with invoice / bill and detailed calculation sheet shall be issued to the consumer / occupier immediately after inspection and not later than 3 days from the date of inspection through email or through hand delivery with dated acknowledgement or affixed at the premises in cases where the consumer / occupier refuses to accept the order.***

Due date and disconnection date in respect of the provisionally assessed amount shall be indicated in the order and invoice / bill. The due date shall be 7 days from the date of service of the order and the date of disconnection shall be 15 clear days from the due date except in cases of detection of theft of electricity where disconnection of supply is done immediately. Here in the provisional bill, bill date is shown as 08-05-2014 and due date and date of disconnection shown as the same i.e.15-05-2014. In the final bill also, bill date is shown as 08-05-2014 and due date and date of disconnection shown as the same i.e. 07-06-2014. In

this case the appellant does not file any objection and fails to make payment of the assessed amount within due date, a disconnection notice providing 15 clear days (excluding the date of issue of disconnection notice) shall be issued (excluding cases of theft of electricity) immediately on expiry of 7 days from the date of service or order of assessment and proceeded accordingly. ***If the consumer does not wish to challenge the provisional assessment, the payment may be made within 7 days as per Section 126 (4) of the Act.*** Here in this case, though the appellant did not file any objection and failed to make the payment of assessed amount within the stipulated time, the respondent failed to take any action against the appellant till he approached the Hon'ble High Court with Writ Petition on 18-06-2014. The inaction on the part of the respondent shows clear lapses, negligence and hence cannot be justified.

It is evident that the respondent issued the provisional bill and the final order without observing the procedure elaborated under various sub sections of Section 126 of Electricity Act, 2003. It is the duty and responsibility of the respondent to verify the premises to ascertain the purpose for which the supply is being used and to assign appropriate tariff accordingly. ***Further, Regulation 91(1) of Kerala Electricity Supply Code, 2014 which is in force from 01-04-2014, the licensee can suo moto reclassify the consumer under appropriate category if it is found wrongly classified 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 tariff order of Commission or the category has changed consequent to a revision of tariff order.*** In view of the above factual positions the assessment issued by the respondent cannot be said to be completed / finalized and no liability for payment can be fetched from the appellant as per Section 126. Hence the argument of the respondent that the short assessment issued as per Section 126 of Electricity Act which is not maintainable before this Authority cannot be sustained.

The Hon'ble High Court of Kerala in W.P. (C) No: 14873 of 2014 disposed the Writ Petition vide its judgment dated 18-06-2014 directing the Assistant Engineer, Electrical Section, No II, Kothamangalam to consider the objection and pass final orders in the matter after affording an opportunity of personal hearing within a period of one month from the date of receipt of a copy of the judgement. Accordingly the Assistant Engineer conducted a personal hearing on 20-11-2014 but final order is seen issued only on 26-10-2015 i.e., after 16 months for which the reasons are not forthcoming from the part of the respondent.

It is surprising to note that in spite of specific direction issued by the Hon'ble High Court in its judgment in WP (C) No. 14873 of 2014 to consider all such objections, including the objection with respect to sustainability of the penal assessment under Section 126, this aspect is not considered by the respondent before passing the final order. The provisional bill for Rs. 59,861.00 includes penal charges for a connected load of 19000 Watts. The actual connected load detected at the time of inspection conducted by the APTS is 1720 Watts and this aspect is also not seen considered before issuing the final order. So, this Authority has felt that the penal assessment made on the appellant for 19000 Watts has to be reassessed for the actual connected load of 1720 Watts. All the

findings recorded in the impugned order being against law and are liable to be set aside and hence appeal stands allowed.

### **Decision**

In the above circumstances I am directing the Assistant Engineer, Electrical Section No II, Kothamangalam, to reassess the appellant for the amount of electricity charges short collected by the licensee, if any, under normal tariff in LT VII A for a period of 12 months as per Regulation 152 of Supply Code, 2014. This shall be done at any rate within 15 days from the date of receipt of this order. In view of the above direction the final bill dated 26-10-2015 issued for Rs. 59,861.00 is hereby quashed. The respondent is also directed to regularize the service connection of the appellant if he desires so.

Having concluded and decided as above it is ordered accordingly. The appeal is found having some merits and is allowed. The CGRF order in petition No CGRF-CR/Comp./103/2015-16/618 dated 16-02-2016 is set aside. There is no order as to costs.

**ELECTRICITY OMBUDSMAN**

P/016/2016/ \_\_\_\_\_ Dated: \_\_\_\_\_

Delivered to:

1. Sri. Pramod C.K ., Chellisseriyil House, Neriyaamangalam.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Kothamangalam

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.