

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/088/2018
(Present: A.S. Dasappan)
Dated: 31st January 2019

Appellant : Smt. Vijayalekshmi Amma
Murugappa Body Builders,
Krishnabhavan, Padinjattinkara,
Neeleswaram P.O., Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Kottarakkara,
Kollam

ORDER

Background of the Case:

The appellant is a consumer of electricity bearing Consumer No. 25124 of Electrical Section, Kottarakkara West, in LT IV A tariff. A Surprise inspection was conducted jointly by the officials of APTS, Kollam and Section officials on 17.06.2011 in the premises of the consumer and detected unauthorized connected load (UAL) to the tune of 96713 watts in addition to the registered load of 14742 watts and the appellant was issued a provisional assessment bill for Rs. 2,56,925/- on 22-06-2011. Later on 22-07-2011, final assessment order was issued revising the assessment to Rs. 2,14,209/-.The matter was taken up before the then Appellate Authority, the Deputy Chief Engineer, Electrical Circle, Kottarakkara by the appellant and the assessment was upheld by the Authority. Being aggrieved, the respondent challenged the order of the Appellate Authority before the Hon. High Court of Kerala vide WP (C) No. 5001 of 2012 and the Hon. High Court of Kerala set aside the assessment orders and remanded the case to the Assessing Officer for proceeding afresh. Pursuant to the orders in the writ petition, the Assessing Officer had disposed the case, revising the assessment to Rs.2,14,016/- for the period from 11/2010 to 06/2011. Aggrieved by this, the appellant filed appeal before the Appellate Authority and the Authority set aside the final order of the Assessing Officer and directed the respondent to issue revised assessment in LT IV A tariff on account of 88454 watts UAL, vide order No.55/2016 dated 15-06-2016. Accordingly the demand was revised to Rs.1,21,576/- and the appellant

remitted the entire amount, after making adjustments of the earlier remittances. Meanwhile, on 12.04.2018, the appellant was directed to remit an amount for Rs.1,19,060/- as penal bill for unauthorized use of energy from 07/2011 to 04/2012 for the date of inspection to the date of regularization. Aggrieved against this demand, the appellant filed complaint No.90/2018 before the Consumer Grievance Redressal Forum. The CGRF, Kottakkara, dismissed the petition vide order No.90/2018 dated 05-11-2018.

Aggrieved by the order of the CGRF, the appellant has submitted this appeal petition before this Forum.

Arguments of the appellant:

On perusal of the letter issued by the respondent, the appellant found that the demand of Rs. 1,19,060/- was issued towards penal charges on the mere assumption that the appellant used additional load from 7/2011 to 5/2012.

It is an admitted case of the respondent that they inspected the premises on 7/6/2011 and found unauthorized additional load and initiated proceedings under Section 126 of the Act and issued the penal bill. The appellant challenged the penal assessment before various authorities and finally the Appellate Authority passed the order directing to issue revised demand. Accordingly the respondent issued revised demand, which was remitted by the appellant. Thus the entire proceedings initiated under Section 126 of the Act following the site inspection on 17/6/2011 were closed as admitted by the respondent. Immediately after the above site inspection on 17/6/2011, the appellant removed the unauthorized additional load and applied for enhancement of the load. Accordingly additional load was sanctioned in 5/2012 as admitted by the respondent.

It is noteworthy that the entire proceedings initiated on the inspection of the premises on 17/6/2011 finally ended on remitting the penal charges and there was no further inspection for assessment under section 126 of the Act. Thus the impugned A4 penal demand was issued without finding any unauthorized use of electricity and without following any of the procedures contemplated under Section 126 of the Act, such as site inspection, preparation of Mahazar, provisional assessment, final assessment etc. etc. The respondent simply says that it is a continued penalization. But there is no such provision for continued penalization under any law or regulations. The Honourable High Court of Kerala also held in the judgment in Luqman Ali Muhammed Vs. KSEB (reported in 2014 (2) KLT 833) that for imposition of penalty on the allegation of continued unauthorized usage, the procedure contemplated under Section 126 of the Act is mandatory. As there was no use unauthorized additional load and there was no procedure under Section 126 of the Act, the impugned demand is illegal and unsustainable. The appellant

therefore sent a complaint dated 23/4/2018 to the Honourable KSERC requesting to set aside the demand. The Honourable KSERC then sent a reply dated 23/4/2018, directing the appellant to approach the CGRF for redressing his grievance. The appellant received the above letter only on 2/7/2018, through the respondent.

The specific contention of the appellant regarding the absence of unauthorized use of electricity warranting assessment and the limitation of two years was not examined or answered by the CGRF at all.

The opposite party simply demanded some amount without any basis. It is not a penal assessment under Section 126 of the Act, because there was no site inspection or any other proceedings taken under Section 126 of the Act. It is also not any arrears of electricity charges, since the appellant remitted the monthly bills without any default. The respondent simply issued a demand on assumptions and surmises only to harass the appellant.

In the demand it is simply alleged that it is the amount of the penal bills. It is also not stated as to whether those are the amount of the penal bills issued under section 126 of the Act. To the knowledge of the appellant, no proceedings warranting issue of any penal bills was initiated by the respondent and no such penal bills were issued at any time. In fact the appellant did not use additional load unauthorisedly after inspection.

There was no inspection by the inspecting officials or assessment by the Assessing Officer before issuing the demand, if it was a penal assessment under section 126 of the Act. Hence the demand can never be a penal assessment under Section 126 of the Act. The AE arbitrarily demanded an amount of Rs.1,54,326/- by issuing the bill. This legal position has not been considered by the CGRF at all in their order.

The Assistant Engineer has no authority to assess the penal charges under section 126 of the Act and issue demand, since the same is not assessed by the Assistant Executive Engineer, who is the assessing officer. On this ground also the impugned demand is unsustainable.

The impugned demand does not pertain to any proceedings or assessment under Section 126 of the Act and hence the CGRF and Ombudsman have jurisdiction to entertain the complaint/Appeal. The Honourable KSERC also examined the complaint of the appellant and the report of the respondent and finding demand is not related to any assessment under Section 126 of the Act, directed the appellant to approach the CGRF. Hence this Ombudsman has ample jurisdiction to entertain this complaint on merit, which is filed against the order of the CGRF.

Reliefs requested for:

- i) To call for the records leading to this case and pass an order setting aside demand and order of the CGRF.
- ii) Pass such other orders as this Forum may deem fit and proper in the interest of justice and in the circumstances of the case.

Arguments of the respondent:

As envisaged in section 145 of Electricity Act 2003, even civil court do not have jurisdiction to entertain the matters of disputes in assessment under Section 126 , the Appellate Authority is the competent statutory authority referred to in Section 127.

Moreover as per clause 2(l)(f)(vii)(i) of Kerala State Electricity Regulatory Commission (CGRF & EO) Regulations 2005, all actions initiated under Section 126 of the Indian Electricity Act, 2003 is not maintainable before this Ombudsman. Hence this Forum has no jurisdiction to entertain this complaint as the matter related to section 126 and 135 of Electricity Act 2003. Hence this Ombudsman may be pleased to dismiss the complaint in limine.

The customer was aggrieved against a penal bill for unauthorized usage of energy from 07/2011 to 04/2012 for Rs.1,19,060/- (The earlier demand was Rs. 1,54,326/- but revised as per The Kerala State Electricity Appellate Authority in its order dated 15/06/2016 in Appeal No 55/2016).

The above OP is filed against the issuance of such bill raising the contention that the impugned bill is illegal, unjust an unsustainable.

The Indian Electricity Act 2003 (amendment 2007) section 126(5) stipulates that if the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of energy has taken place. In this case the assessing officer was convinced that the consumer has engaged in the unauthorized use of electricity from 10/2010 onwards since the consumer has submitted a completion report during 09/2010 for a load enhancement of 14742 watts. Hence the penal bill was issued for the period of 9 months from 10/2010 to 06/2011. Also it was revealed that the pulse indicator of the Y and B phases were not working. Based on this a provisional penal assessment bill for Rs 2,56,925/- has been prepared by penalizing the unauthorized load of 97KW as per rules and recovering the short assessment of unrecorded consumption in two phases.

Recovery of short assessment due to non recording of energy in two phases from 10/2010 to 06/2011

1150 units x 2 phases x Rs 3.25 /-	=	Rs 74763/-
Duty	=	Rs 6280/-
	=	Rs 81043/-

Penal fixed charges for the UAL of 97 kW

97 kW x Rs45/- x 9 months x 2 times	=	Rs 78570 /-
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Proportionate Energy charges For UAL

34506 units x 96.712 kW	=	29942 units
111.455 kW	=	29942 units x Rs. 3.25/-
	=	Rs.97312/-

Total = 81043+78750+97312	=	Rs.2,56,925/-
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On further verification of office records, it was revealed that the connected load sanctioned during 09/2010 was 23001 watts instead of 14742 watts. The erroneous entry has been rectified and registered load in the premises assigned as 23001 Watts from 29.09.2010 i.e., the date on which ACD for the additional load was remitted by the consumer. As such the UAL in the premises was recalculated as 88454watts. Accordingly a final bill was served on to the consumer for Rs. 2,14,209/-.

This assessment was upheld by the Deputy Chief Engineer, Electrical Circle, Kottarakkara (the then Appellate Authority).

Aggrieved by this the consumer filed WPC No. 5001 of 2012 before the Honorable High Court and the Honorable High Court vide its Judgment dated 01/03/2012 set aside the assessment order, remanded the case to the assessment officer for fresh proceedings.

The assessing officer after conducting hearing revised the demand to Rs. 2,14,016/- and disposed the case vide proceeding No.ES/KTRW/DB.39/14-15/18-02-2015

Aggrieved by this the consumer filed Appeal No 55/2016 before the Honourable Kerala State Electricity Appellate Authority.

The Kerala State Electricity Appellate Authority in its order dated 15/06/2016 set aside the final assessment order vide proceeding No ES/KTRW/DB 39/14-15/18/02/2015 and also ordered as below.

1. Revised assessment should be done for unauthorized connected load of 88454 watts.

2. Since the reason for unauthorized connected load is existence of welding set and its load is of momentary nature, the consumption on account of UAL should be as follows.

88.454 X 0.5 LF X 2 Hrs X 25 days X 8 Months.

3. No surcharge should be levied during the appeal period.

The KSEB Limited vide B.O.D (D,S&GE)No 2417/2016(LE II/4589/2016) dated Thiruvananthapuram 16.08.2016 decided to comply the order.

After the date of inspection (17/06/2011) the consumer requested for 111.455 KW of power. Hence estimate under OYEC was prepared for constructing 50 metres of 11 kV line and installing one 160 KVA transformer. The total estimate amount is Rs. 4,48,166/-.The consumer requested for installment and was granted 60 installments. The equated monthly amount Rs. 8,972/- .The consumer remitted Rs. 44,817/- (10% of OYEC) on 13/12/2011 and first installment of Rs. 8,972 /- on 16/12/2011. The consumer regularized the connected load as 65365 watts on 07/05/2012.

As per terms and conditions of Supply 2005 Regulation 51 (2) says "The penalty for unauthorized additional load shall be levied till the said additional load is removed or regularized as per rules.

Also as per Terms and Conditions of Supply, 2005 Regulation 14 and 26 the consumer should produce a completion report in Form 3 and test certificate in Form 3, should he wish to extend, alter or renovate his installation.

Here on inspection the total connected load is found as 111455 watts where as his registered load is 23001 watts.

The consumer has not produced completion report in Form 3 or test certificate in Form 3 after the date of inspection to the date of regularization.(from 17/06/2011 to 07/05/2012).

Hence penalization was done from the date of inspection to the date of regularization (from 17/06/2011 to 07/02/2012) for UAL of 88.454 kW as per the direction of Appellate Authority, the details are as follows.

Month	Fixed charge	Energy charge	Total
07-2011	8730	18747	27477
08-2011	8730	2812	11542
09-2011	8730	4016	12746
10-2011	8730	4284	13014

11-2011	8730	4407	13137
12-2011	8730	6915	15645
01-2012	8730	6221	14951
02-2012	8730	5209	13939
03-2012	8730	6060	14790
04-2012	8730	8355	17085
TOTAL	87300	67026	154326

The amount was put into dispute since the consumer approached various forums or courts.

As per the order of Kerala State Electricity Appellate Authority the amount revised as follows.

Calculation

A. Fixed charge = $88.454 \times 45 \times 2 = \text{Rs. } 7960.86$ per month

B. Proportionate energy consumption per month

= Consumption x $(88454 / 111455)$

Month	Fixed charge	Energy Charge	Total
07/2011	7961	3068	11029
08/2011	7961	1976	9937
09/2011	7961	2876	10837
10/2011	7961	3292	11253
11/2011	7961	3393	11354
12/2011	7961	5262	13223
01/2012	7961	4557	12518
02/2012-	7961	3816	11777
03/2012	7961	4586	12547
04/2012	7961	6624	14585
Total	79610	39450	119060

Rs.119060/- (Rupees One lakh nineteen thousand and sixty only.)

As per Rule 126(6a) of Electricity Act 2003 "Unauthorized usage of electricity means not authorized by the concerned person or authority". Here in this case the petitioner has an authorized load of only 23001 watts where as he is using 111455 watts. Hence the petitioner is liable to pay the amount assessed.

The petitioner alleged that the Assistant Engineer has no authority to issue the bill since the present assessing officer is Assistant Executive Engineer. At the time of inspection the assessing officer was Assistant Engineer and the Assistant Executive Engineer is delegated as assessing officer only on 20/10/2017-vide order of the Office of the Director (Distribution & IT), Kerala

State Electricity Board Limited Circular No. D(D&ITyGeneral/2017-18 dated 20/10/2017.

The details of connected load from the date of connection to 07/05/2012 are as follows.

1. The service connection was effected on 19.04.2008 with an initial load of 8259 Watts.
2. Registered load is enhanced to 23001 watts on 29/09/2010.
3. Inspection on 17/06/2011 revealed the total connected load as 111455 watts.
4. After the inspection the connected load is regularized as 65365 watts on 07/05/2012.

The appellant requests to dismiss the complaint.

Analysis and Findings

The hearing of the case was conducted on 18-01-2019 in the office of the CGRF, Kottarakkara. Sri. M. Sabu, Advocate, represented the appellant's side and Sri. G. Soni, Assistant Executive Engineer, Electrical Sub Division, Kottarakkara represented the respondent's side. On perusing the Appeal Petition, the counter of the respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The present appeal petition filed by the appellant is against the continuation of the penalization done by the respondent under Section 126 in the monthly bills issued to the appellant from May 2014 to January 2018.

After hearing both parties, the Petition decreed by the CGRF in brief, was as follows;

“Once inspection is held and demand is also raised, in view of the provisions contained in Reg. 51 of the KSEB Terms and Conditions of Supply 2005 respondents are entitled to continue the penal demand until the unauthorized load is removed or regularized as per rules. It does not need a fresh inspection or assessment as contemplated under Section 126 of the Electricity Act. Therefore the petitioner is liable to pay the penalization amount for the use of unauthorized additional load from the date of inspection to the date of regularization during the period from 17/06/2011 to 7/05/2012. But in the same time it is also noticed that, the respondent has not taken any initiative to disconnect/regularize the unauthorized additional load.”

The main dispute of connecting unauthorized additional load in the premises is tantamount to “unauthorized use of electricity” under Section 126

of Electricity Act, 2003. The APTS inspected the premises of the appellant on 17-06-2011 and detected additional load in the premises. The main allegation is that the appellant was being penalized for 88.454 kW of unauthorized additional load, both for fixed charges and proportionate energy charges amounting to Rs.1,19,060/- towards penal charges on the ground that the appellant used unauthorized additional load from 07/2011 to 05/2012. Hence the issue raised by the appellant is a proven case of penalization under Section 126 of Electricity Act, 2003 and the calculation of the short assessment was done under the provisions of Section 126 (6) of the Electricity Act, 2003. The dispute pertains to the continuance of the penalized amount under Section 126.

The appellant has argued that the impugned demand does not pertain to any proceedings or assessment under Section 126 of the Act and hence the CGRF and Ombudsman have jurisdiction to entertain the complaint/Appeal. Further the appellant contended that the Honourable KSERC also examined the complaint of the appellant and the report of the respondent and found that demand is not related to any assessment under Section 126 of the Act, directed the appellant to approach the CGRF.

Any dispute or complaints pertaining to such matters under Section 126 of the Electricity Act 2003 are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. It is found that the letter dated 23-04-2018 issued by the Secretary, KSERC has not contained any findings that the demand is not related to any assessment under Section 126 of the Act. The Hon High Court has also made it clear that, when there is specific provisions in the Act itself, to hear such cases by designated Appellate Authority, the same are excluded from the purview of CGRF and Ombudsman. As such, I have not gone deep into the merits of other points raised by the appellants in the Petition.

This appeal is not maintainable in law for the reason that the subject matter is beyond the jurisdiction of this Authority. Law has vested the exclusive right to examine the bill on the Assessing Officer under Section 126 and the Appellate Authority under Section 127 that has ample powers to examine whether the continuance of penalization in the monthly bills under Section 126 is justifiable or not. No other authority can transgress into their exclusive domain as held by the Apex Court.

The contention of the appellant is that for raising the penal bills is wrong, for which the Hon High Court of Kerala has taken a position that – *‘when the regulations specifically exclude the jurisdiction of the CGRF on all disputes pertaining to bills raised under Sec.126 of the Act on allegation of unauthorized use the only remedy available to the appellant against such bill is to file an appeal under Section 127 before the statutory authority’*. The said

ruling make it clear that CGRF and Ombudsman are barred from entertaining the related part of the bill raised under section 126 and accept the same.

Decision:

Since in this case, the grievance has arisen out of the detection of unauthorized load and the penal short assessment bill made under Section 126 of the Electricity Act, 2003, it is clear that the petition itself is not maintainable before the CGRF or the Electricity Ombudsman as per the KSERC Regulations. That is any dispute or complaints pertaining to such matters are not maintainable before the CGRF and Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. Hence I decide that the Appeal Petition filed before this Authority by the appellant is not maintainable.

The appellant is free to file an appeal against the subsequent penal assessment bill, under Section 127 of Electricity Act, 2003.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants' stands disposed of with the said decisions. No order on costs.

ELECTRICITY OMBUDSMAN

P/088/2018/ _____ /Dated: _____

Delivered to:

1. Smt. Vijayalekshmi Amma, Murugappa Body Builders, Krishnabhavan, Padinjattinkara, Neeleswaram P.O., Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kottarakkara, Kollam

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.