

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P /195 /2011.

(Present: T P Vivekanandan)

APPELLANT : M/s Power Controls,
Building No. 5/679, M.N.,
Industrial Development Area, Edayar
ERNAKULAM- Pin: 683110

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Aluva Town, Ernakulam- Pin -683101.

ORDER.

Background of the case: -

The Appellant is running an industry at the Industrial Development Area, Edayar. He has availed an electric connection with consumer No 6655 under LT IV-industrial tariff from Electrical Section, Edayar, for the Unit having a connected load of 8 KW. The KSEB inspected the consumer's premise during 7/2006 and had detected unauthorized additional load (UAL) of 15 KW being used there and charged the consumer for the UAL at 1.5 times up to 5/07 and at 2 times thereafter i.e. with effect from 06/2007, under Section 126 of IE Act, 2003. While so, the Regional Audit Officer, KSEB, inspected the office billing records during 6/2010 and found that the consumer was not billed for proportionate energy charges of UAL, as per rules, during the period of 06/07 to 04/08. Hence the consumer was issued a short assessment bill for Rs. 42776/- for recovering the loss occurred due to mistake in billing. The appellant lodged a complaint before the CGRF, Ernakulam, on 27/7/2010 with a request to declare the bill as null and void. The CGRF had dismissed the Petition on the ground that the bill issued by the respondent is in order and the petition is devoid of any merits. Aggrieved by this, the appellant has submitted this Appeal petition before this Authority.

Arguments of the Appellant: -

The main contentions of the Appellant in the Petition are the following;

1. The CGRF have not considered the limitation for payment of electricity bill as per Section 56 (2) of the Act 2003 that the payment of arrears can not be collect after 2 years.
2. As a small scale industry the consumer have already manufactured and sold the products and he cannot collect additional electricity charge from the buyer of the product.

3. The bill is not complying with Electricity Act 2003, because it is prepared as per Section 24 (1) which is irrelevant in this case.
4. The KSEB has admitted the mistake in raising the claim under Section 24 (1) of Act 2003, but did not cancel the bill.
5. A proper site mahazar is a must as per Section 126 and KSEB has admitted that it is not available with them. The respondent has also not complied with the provisions pertaining to Section 126 of the Act 2003.
6. When penal charges are collected in addition to normal charge, it is the duty of the KSEB to inform the consumer or issue a notice in compliance with the Act and Rules.
7. There is no provision in the Act to continue the collection of penal charge after detecting an error without proper intimation. The respondent is bound to regularize the same.
8. The finding of the CGRF that the consumer has some advantage by paying penalty is totally wrong and the calculation for supporting this finding is not furnished.
9. Finally, he argues that the regularization of unauthorized additional load is not only the responsibility of the consumer but rests with KSEB also. The respondent has failed to clarify why the load is not regularized till the installation of a new 100 KVA transformer.

Arguments of the Respondent: -

The respondent denies all the averments and allegations contained in the petition except to the extent he has specifically admitted.

The authorization to conduct inspections at the consumer's premises is an effective instrument available with the officials of KSEB to thwart the menace of unauthorized use of energy. The Asst. Engineer of concerned Sections is the assessing officer in terms of Sec: 126 of Electricity Act 2003. The A.E. can reassess and issue a bill based on the audit reports if there is a mistake in the bill.

The section inspection squad of KSEB had inspected the premises of the consumer during 7/06 and detected unauthorized additional load of 15 KW in place of sanctioned load of 8 KW. The consumer was charged for UAL on fixed charges, up to 5/07 at the rate of 1.5 times and from 6/07 at 2 times and these were all paid by the appellant. The Internal audit wing of KSEB while checking the billing records at office, noticed that the consumer was not billed for the proportionate energy charges of the UAL, for the period 07/2007 to 04/2008, as per rules. Hence a short assessment bill (No. 041558 dated 14/07/2010) for Rs. 42776/- was issued to the consumer for recovering the amount lost by mistake. The consumer is liable to pay the amount due to Board.

The unauthorized additional load is charged under Section 126 (6) of Electricity Act 2003. The bill issued to the consumer was prepared using an old printed format of the then demand notice cum disconnection notice by mistake and it contained the old time rules i.e. under section 24 (1) of Electricity Act. It was rectified later.

Even though UAL was detected on the premises of the consumer, he did not regularize it and instead he preferred to pay the penal charges without any hesitation and thereby enjoyed the excess load. At that time the supply was availed from a 250 KVA transformer. Since it was fully loaded further load expansion was not possible from that transformer. In order to regularize the excess demand of 35 KW, the consumer was required to install a new transformer at his own cost. So he did not make any steps to regularize the UAL.

As per the prevailing rules, one has to pay penal charges both on the fixed charges as well as on the proportionate current charges, if UAL was detected. Hence the appellant is liable to remit the short assessment bill issued to him.

ANALYSIS AND FINDINGS: -

The Hearing of the Case was done on 25.7.2011 and 15.3.2012, in my Chamber at Edappally, Kochi. The appellant's side was represented by the Petitioner, Sri. K.A. Joseph and his Counsel, Sri. Shaji Sebastian and the opposite side by Sri.M.K. Sudev kumar, AEE, Electrical Sub division, Aluva. They have argued the Case on the lines as stated above. On examining the Appeal Petition, the statement of facts of the Respondent, the arguments of the Petitioner and the opposite side, 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.

The consumer does not dispute the fact of the detection of Unauthorized Additional Load (UAL) in his premises in the year 2006 and the payment of penal charges for the same. He was found paying the excess charges for the UAL availed all along the disputed period. The audit inspection revealed that there was error in the preparation of the Bills causing loss to the KSEB. If there is an error or mistake in the Bills prepared, it has to be rectified and set right. The Regulation 24(5) of the Electricity Supply Code, 2005, empowers the Licensees to do the same. It reads as; *"If the licensee establishes that it has under charged the consumer either by review or otherwise, the licensee may recover the amount under charged from the consumer by issuing a Bill..."*. Further, the period of two years as mentioned in section 56 (2) of Electricity Act 2003 would run from the date when such a Bill is raised by the Board against consumption of electrical energy and have become due for payment only after that demand has been raised. In a related case it has been clarified by Hon: High Court that "Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Brihanmumbai Municipal Corporation V Yatish Sharma and others-2007 KHC 3784). For the above two reasons, I think the argument of the appellant that the claim is time barred by section 56 (2) of Electricity Act 2003, is not sustainable.

The case is about the unauthorized load found during inspection and the penal bill issued thereof. The squad has found a total connected load of 23 KW at the appellant's premise during inspection, when his sanctioned load was only 8 KW. Thus there was an unauthorized additional load of 15 KW when the inspection was conducted during 7/06. The consumer is not supposed to connect additional load to the Network of the KSEB without its sanction, otherwise the whole Electrical System may collapse on 'overload' at any time, if allowed to add load by consumers at their wish freely. Hence the need or Rule for bar or restriction imposed on the consumers, in connecting the additional loads without sanction and should continue.

It is also noted that as per the existing Rule for penalization for availing UAL under Section 126 of I E Act, 2003, and other Regulations issued by the Hon: Commission, the consumer is bound to pay the penal charges both on his fixed charge as well as on the proportionate energy charges. The consumer has paid payment on the fixed charges portion only, due to lapse from the part of the respondent by way of omitting the proportionate energy charges from the bill, which came to

light in the Audit checking. Since the consumer has already paid the part payment of the Bill, he is bound to honor the correct bill, if an omission has occurred earlier.

During the first day of hearing the case, the respondent was asked to file the calculation statements of the bills. Consequently in a statement filed before this Forum along with the details of the bill under dispute, the respondent has clarified that the balance amount to be paid by the appellant is only Rs. 12714/-.

During the next hearing conducted on 15/3/2012, the appellant has agreed to settle the case by remitting Rs. 12714/- without interest.

DECISION: -

From the analysis done above and the Conclusions and Findings arrived at, I come to the following decision.

The respondent has a final claim of Rs 12714/-, towards the arrears on the proportionate energy Charges, for the UAL of 15 KW availed by the consumer. Since the appellant has agreed to pay this amount, the only question to be decided is the matter of the Interest chargeable on the pending amount. It is decided that the respondent may issue the bill, with due date having 30 days time given, for making the payment. It is also decided that the Pending amount will not carry any interest during the period of Petition pending before the CGRF and this Forum and up to the due date of the bill now ordered. If the consumer fails to pay the bill by the due date, the respondent may charge interest for the whole belated period as per rules.

Having decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is disposed of as stated. No order on Costs. Dated the 7th of September, 2012.

Electricity Ombudsman.

Ref No. P/ 195/ 2011/ Dated

Forwarded to: -

- 1). M/s Power Controls,
Building No. 5/679, M.N., Industrial Development Area,
Edayar, ERNAKULAM –Pin- 683110
- 2). The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Aluva Town, Ernakulam.

Copy to: -

- 1).The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
- 2).The Secretary,
KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram -4.
- 3). The Chairperson, CGRF,
KSEB, Power House Buildings, Ernakulam, Cochin -18.