

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/164/2010.

(Present T.P. Vivekanandan)

Appellant : Sri.Bibi George Chacko.
Kaimuttil, S-28, Seeveli Nager,
Kaithamukku, Thiruvananthapuram.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Beach, Thiruvananthapuram.

ORDER.

The background Case:-

The appellant, Sri.Bibi George Chacko, is a domestic consumer under Electrical Section, Pettah, Thiruvananthapuram, with consumer No.1729 and the authorized connected load of his connection was 1500 watts. The Section squad inspected the premises of the consumer on 10.04.2010 and found that the premise was being used for commercial activity and not for domestic purpose and the total connected load has increased to 10710 watts. The Assistant Engineer issued a provisional assessment bill for Rs.49,661/-, to the consumer, for unauthorized use of electricity on 13.04.2010, under Section 126 of Electricity Act 2003 and clauses 50 & 57 of KSEB Terms and Conditions of Supply, 2005. The appellant filed objection, before the Assessing officer on 20.04.2010, against the assessment bill. A personal hearing was conducted on 27.04.2010 and final order issued on 29.04.2010 with the bill as confirmed. Aggrieved by this, the appellant submitted petition before the CGRF, Kottarakkara and the Forum dismissed his petition vide order No. of 527/2010 dated 07.08.2010. Being aggrieved by the said order, the appellant has submitted this Appeal Petition.

Argument of the Appellant: -

The appellant submits that, he is a Cinematographer by profession and produces TV Films and upload it to various TV channels. Many of the equipments found on inspection are his working tools, which are kept at his residence, after outdoor work. While so, he was issued a demand notice, for a sum of Rs.49, 661/- on 13.04.2010, by the Assistant Engineer, Electrical Section, Pettah, based on a mahazar prepared by the Sub Engineer (SE). The SE had conducted an inspection along with his two Linemen as a team of the Section squad, on his premise on 10.4.2010. An objection was filed before the AE, the Assessing officer. It was disposed of by order dated 29.04.2010 confirming the provisional bill as the final bill. The appellant's main contention was (a) the illegalities involved in the matter of assessing energy charges under different tariffs LT VII A and LT I A in a single bill. (b) The appellant questions the CGRF admission of the argument of the Licensee that the CGRF does not have the jurisdiction to adjudicate the matter. (c) He argues that as per Clause 2 (f) (vii) (1) of KSERC (CGRF &

Electricity Ombudsman) Regulations 2005, the subject matter is barred under section 126 only. But it is possible under clause 56(2) of KSEB T & C of Supply, 2005, to interfere, but the CGRF ignored the same and decided the matter in favor of KSEB. The CGRF did not give any comment on our pleas based on clause 56(2) referred above. The rules formulated by an agency and the rule approved by the same agency by virtue of law never can be contradictory but should be mutually supporting. It is alleged that the CGRF interpreted the rules for somebody's favor without giving evidence to other rule, thereby defeating the rule of Law and hence natural justice.

The appellant has challenged the Order of provisional assessment and the penal bill on the ground of procedural impropriety, arbitrariness, and bias but were not considered by CGRF. The immediate cause of grievance was the order of provisional assessment and the accompanied Bill made by the AE. How to make a provisional assessment is detailed under Section 126(1) of IE Act, 2003. The inspection and assessment has to be done by the Assessing officer himself. Here the Assessing officer, the AE, has not made an inspection by himself, to verify the commitment of unauthorized use of electricity by the consumer. The AE has relied upon the mahazar, prepared by the Sub Engineer and the Linemen, after inspection for issuing the provisional assessment bill. The Section squad formed by KSEB is not approved by the Commission or Govt. and is not authorized to conduct such an inspection. Hence the Bill is the product of procedural impropriety and arbitrariness and hence null and void.

Another point is that the law under section 126 of Electricity Act 2003 does not authorize the AE, the Assessing officer to issue a demand/bill cum disconnections notice with a threat of disconnection on default of payment for the provisionally assessed amount. The appellant has the right to file an objection within 30 days and to be heard. But the date of disconnection in the issued bill was within 30 days after hearing. Also, the Electricity Act 2003 has not authorized the assessing officer, to issue a final bill with last date of payment within 30 days of appeal period allowed by law. As per the law, the assessing officer may advise the petitioner to do so, but he is at liberty to file appeal before the Appellate Authority, within a period of one month and in that event he shall deposit 50% of the assessed amount and the required Appeal fee. Hence the assessing officer has violated the law.

In India, there is no Act called "Electricity Supply Act, 2003" as mentioned in the bill issued by the assessing officer. Another allegation of the appellant is that the Assistant Engineer has disconnected the service of appellant on 14.05.2010 and this was done with an ulterior motive of extracting illegal pecuniary gain from the appellant. Another pertinent point is that the service was not physically disconnected while the reconnection fee was collected from the appellant by coercion.

The appellant argues that, two demands were raised for one and the same energy consumption, under different tariff for the same period of billing. The consumer denies the allegation of misuse of tariff as alleged by the Assistant Engineer. The illegally constituted Section Squad is least competent to differentiate a film studio with well furnished home and no other supporting evidence other than the mahazar prepared, was there to prove the tariff misuse.

The consumer raised dispute with regard to the authorized load. The petitioner has taken steps to regularize the unauthorized additional load on 14.07.2010 and ready to remit the penal charges up to that date under domestic tariff. The appellant has requested that and since the licensee has failed

in its duty to supply electricity within the specified period, it is liable to pay the penalty described under section 43 (3) of Electricity Act 2003.

According to the appellant, the CGRF has jurisdiction when the distribution licensee does not act in accordance with Section 126 (1) to (6)(a) and its amendment, in the matter of investigation and enforcement of the activities, listed under 126 (6) (b) (1) to (IV) and its amendments. The CGRF have interpreted the concerned rules as straight picked interpretation and never attempted to interpret clause 56 (2) of KSEBoard Terms and Conditions of Supply 2005 in relation to clause (2) (f) (VII) I of KSERC (CGRF & Electricity Ombudsman) regulation 2005. The petition was submitted before the CGRF against the illegal action committed by the assessing officer and declaring such action null and void.

In short, the appellant points that the CGRF has not looked into all the aspects mentioned in his petition, while delivering its orders and as such, any action breaching natural justice, is null and void.

Argument of the Respondent: -

The respondent has denied the averments in the Petition filed by the appellant and is as follows.

On receiving information, the Assistant Engineer has arranged the Section squad to inspect the premise of the appellant on 10.04.2010. The squad prepared a site mahazar based on the inspection. It was found that two rooms in the ground floor were arranged with table and computers similar to that of an office. Another room has been converted into a Studio with Air conditioners and other equipments suitable for in-house vide shooting purpose. It was convinced that the premise was used for commercial activity and not for domestic purpose. On inspection, the total connected load of the premises was found as 10710 watts against the authorized load of 1500 watts. Since misuse of tariff was detected, a provisional assessment bill for Rs.49, 661/- was issued to the consumer on 13.4.2010, under Section 126 of the Electricity act, 2003 and clause 50 & 51 of KSEB Terms and Conditions of Supply, 2005. The final order was issued on 29.04.2010, after a personal hearing conducted on 27. 04. 2010. The complainant did not approach the Appellate Authority, the Deputy Chief Engineer, against the final assessment of the AE, but has preferred to file Petition before the CGRF (South).

As a Case of 'misuse of tariff' was pending with CGRF, against the consumer, he was issued bills regularly for the energy consumed, under both LT VII A tariff and LT IA tariff and asked to remit the amount under LT IA tariff, till the decision of CGRF.

The consumer has admitted the connected load of 6500 watts as against the 10710 watts assessed by the AE. The application for regularization of additional load with connected load of 6500 watts was submitted by the consumer on 14.07.2010 and action on the same was kept pending as the case of unauthorized additional load and misuse of tariff against the consumer was pending in the CGRF.

The respondent argues that the complaint of the consumer before CGRF was dismissed vide order dated 27.08.2010 on the ground of lack of jurisdiction.

The contention of the appellant on the authority of Sub Engineer to inspect is countered by the respondent by reproducing the relevant portion of notification in G.O. (p) No.21/2005/PD dated 16.07.2005. (SRO No. 703/2005). In this case, the Sub-Engineer was holding the charge of Assistant Engineer, who was on leave for two days, at the time of inspection conducted in the premises. The respondent further argues that the assessing officer has complied with all the conditions as provided

under Section 126 of the Electricity Act. The assessment bill was passed after considering the Petition dated 20. 4.10, submitted by the appellant and after affording an opportunity of being heard to him on 27.04.2010. According to the respondent allegation that the complainant denied sufficient time to file the appeal is unfounded and hence denied.

The term Electricity Supply Act 2003 used instead of Electricity Act 2003, was only a clerical error. The KSEB can collect the charges to reconnect the supply on account of disconnection.

Another contention of the respondent is that, it is not disputed by the appellant that, Electricity was used for another purpose for which the consumer has not been authorized. But the consumer is not in a position to prove as to when this commercial activity started in his home or failed to segregate the connected load which was used for a different purpose. The respondent states that the consumer refused to sign the site mahazar prepared by the Board officials on the spot. The claims raised by the appellant quoting various sections of Electricity laws are only to suit his need and submits that the appellant is not entitled to any relief claimed and prays for the dismissal of the Appeal Petition.

Analysis and Findings: -

The Case was posted for Hearing on 18.2.2011, 6.9.2011, 25.4.2012 and 25.9.2012 and on two occasions it was adjourned as per request of the appellant.

Since the appellant has questioned in this case, the validity of 'Inspection by a Sub Engineer' and the concept of the 'Assessing officer' related to inspection and assessment, it was decided to peruse it thoroughly which has caused delay in pronouncing the verdict. On perusing the Petition, its counter statement, the documents filed, arguments raised in the Hearing and considering all the facts and circumstances of the Case, I come to the following Findings and Conclusions leading to the decision.

The appellant argues that the provisional assessment done under Section 126 of IE Act, 2003, is not legally binding as the Sub Engineer who is not the competent authority has conducted the inspection.

The first and foremost question that arises for consideration in this Petition is to decide, whether it is essential that only the Assistant Engineers (AE) of distribution Section (designated Assessing Officer by the Govt.) is authorized to inspect and assess a consumer, under section 126 of IE Act, 2003, for Unauthorized use of Electricity?.

It is an undisputed fact that the local Section AE is the Assessing officer under Section 126. But the moot question to be answered is;

1). Whether the Assistant Engineer himself/herself has to inspect the consumer's premises for making an assessment for any irregularities committed by the consumer under Section 126?

2). Was it not sufficient that his immediate junior, the Sub Engineer, on his behalf and direction, can inspect and report the facts to him, with a site mahazar prepared on the anomalies detected on the inspection, for preparing such an assessment?

3). Whether it is legally correct to make the provisional assessment on the consumer, by the Assistant Engineer under Section 126, if he is convinced and satisfied of the detection of unauthorized use of electricity at the consumer's premise, by the inspection conducted by his Sub Engineer?.

The Section 126 (1) reads as; *"If on an inspection of any place or premises or after inspection of equipments, gadgets, machines, devices found connected or used, after inspection of records maintained by any person, the assessment officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefitted by such use"*.

In the above clause, it is clear that even by the inspection of records maintained by the consumer, the Assessing officer can come to a reasonable conclusion of whether any unauthorized use of electricity has taken place or not. The essence of the Clause, I believe, is that the Assessing officer should come to the conclusion or should be convinced that 'unauthorized use of electricity' has taken place in the premises, rather than his body presence or his own inspection. In such a context, I am of the opinion that an inspection done by the Sub Engineer, on AE's behalf and direction and supported by a site mahazar, and if the same action is convinced by the AE, the Assessing officer, it is legally sufficient to proceed against the consumer, under Section 126, and raise a provisional assessment thereof.

Further, this view is corroborated by the Govt. order vide SRO.No.703/2005. The Govt. has authorized the Local Section Sub engineers, to inspect and take steps, in case of irregularities are committed by the consumer, for booking cases under Section 135 (Theft of Electricity) of IE Act, 2003. The Section 135(2) reads as; *"Any officer of the Licensee or supplier as the case may be , authorized by the State Government may; (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used unauthorizely;....."*

The Govt. order SRO.No.703/2005, reads as;

"In exercise of the powers conferred by sub section (2) of section 135 of the Electricity Act, 2003, (Central Act 36 of 2003), the Government of Kerala hereby authorize the officers of and above the rank of Sub Engineers of KSEB and the officers of and above the rank of Assistant Electrical Inspector

of the Electrical Inspectorate to exercise the powers and perform the function under the said section within their respective jurisdiction”.

It is seen from the above that the Sub Engineers are authorized to inspect and seize records, even in cases of grave offence like ‘theft of electricity’ and then proceed further action by the AE based on the SE’s inspection report. In such a context, it is only proper to treat the inspection by a Sub Engineer as legally correct, under Section 126- unauthorized use of electricity, if the same action is convinced by the Assessing officer (Section AE), to prefer the provisional assessment against the consumer. In this particular case, the respondent has stated that the SE was in charge of the Section office, as the AE has gone on leave and hence I am of the view that, there is nothing illegal or a case of impropriety, in the preparation of provisional assessment, against the consumer by the KSEB.

Secondly, the allegation of the appellant is that the CGRF’s view that the ‘Forum has no jurisdiction to entertain a complaint under section 126 (6) of Electricity Act 2003, unauthorized use of electricity’, is not correct. The appellant questioned this, by pointing out the provision in clause 56 (2) of KSEBoard Terms and Conditions of Supply 2005, which states; “when any differences or dispute arises as to the improper use of energy or any alleged defeat in wiring, filling, works or apparatus or such other matters, the same shall be referred to CGRF and to appeal will lie to the Ombudsman against the order of CGRF”. But, the KSERC (CGRF & Electricity Ombudsman), Regulations, 2005, clearly states under Clause 2(1) (f) (vii) (1) as;

2(1) (f) “Complaints” means any grievance made by a complainant in writing on: -

(vii) any other grievances connected with the supply of electricity by the licensee except those related to the following: -

(1) unauthorized use of electricity as provided under section 126 of the Ac;

The above clause clearly states that the grievances under Section 126 will not come under the purview of CGRF and Ombudsman.

There are Superior court rulings that “if a special provision is made on a certain matter, that matter is excluded from the general provisions. That is, it is one of the cardinal principles of interpretation of Law, that when the wording of one entry is general and another particular, effect should be given to both entries by reading general as including only the residue after excluding the particular”.

In this case, while the Clause 56(2), is a ‘general purpose’ one, the Clause 2(1) (f) (vii)(1), (exempting Section 126-unauthorised use of electricity from the purview of CGRF & EO), is a ‘specific clause’ on

the same matter and when there is a conflict between the two clauses, it has been decided by the Upper Courts of Law that, the 'specific clause' will prevail over the 'general clause'. Hence it is clear that the Findings of the CGRF that the Petition is not maintainable before it is just and correct.

The other point is regarding the total connected load of the premises. The authorized load of the consumer was 1500 watts. But the inspection team found it was 10710 watts. The difference is 9210 watts. An application for regularization of additional load with connected load of 6500 watts was submitted by the consumer before the Assistant Engineer on 14.07.2010. The consumer has admitted the connected load of 6500 watts as against the 10710 watts assessed by KSEBoard. In the above circumstances, the Assistant Engineer may take immediate action for regularization of the additional load as requested by the consumer.

The KSEB argues that the consumer has used the electricity for another purpose, for which he has not been authorized and also connected excess load. The appellant has raised counter arguments. This Forum has not gone into the merits of the case including the provisional assessment bill or other averments raised in the petition as these are part of the Case that falls under Section 126, of IE Act 2003, which is not maintainable before the CGRF and the Electricity Ombudsman.

Decision: -

From the analysis done above and the Findings and Conclusions arrived at, I take the following decisions, on the main questions raised in the Case by the appellant.

The action of the Assistant Engineer in issuing the provisional assessment, under section 126, based on the site mahazar and Inspection report of the Sub Engineer, is found legally in order. This Forum has not gone into the correctness of the Bill issued or into the merit of other valid contentions raised in the Appeal, as the Petition itself is found not maintainable before this Forum, as per Law i.e. as per Clause 2 (1) (f) (vii) (1) of KSERC (CGRF & EO), Regulations, 2005. The decision to this effect taken by the CGRF, Kottarakkara, vide order No. of 527/2010 dated 07.08.2010, on the Petition filed by the appellant, is also found to be in order.

The consumer is reported to have submitted application for regularizing his increased connected load and the same shall be regularized with in 30 days of this Order, after inspection, with back effect given from the month of submission of the Papers for regularization. If any additional documents are required for regularization of load, as per the rules in force, it shall be produced by the consumer. The

additional connected load may be regularized provisionally at the tariff he is now paying the bills, till the present dispute is finalized or settled and may be revised accordingly.

The Appeal Petition is disposed of, as it is found not maintainable before this Forum, but with the directions ordered as stated above.

It is noted that the consumer had submitted objection before the Assessing officer and was also heard in person and issued the final order by the AE. So the consumer has the right to file an Appeal before the Appellate Authority i.e., the Deputy Chief Engineer, under Section 127, but he preferred to file Petition before the CGRF and then the Appeal Petition before this Authority. It is clarified that, the consumer can now avail the same right under Section 127, to file the Appeal petition before the DCE, if he desires so, with in 30 days of this order. Till that time (30 days), no punitive steps shall be resorted to, by the respondent against the consumer, with respect to the present dispute and the connected bill. No order on costs.

Dated the 23rd of November, 2012,

ELECTRICITY OMBUDSMAN.

Ref. No. P/164/2010/ 1466/ Dated 23.11.2012.

Forwarded to:

- (1). Sri. Bibi George Chacko. Kaimuttil, S-28, Seeveli Nager, Kaithamukku, Thiruvananthapuram.
- (2). The Assistant Executive Engineer, Electrical Sub Division, KSEBoard, Beach, Thiruvananthapuram.

Copy to:

- (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vydyuthibhavanam, Pattom, Thiruvananthapura-4
- (3). The Chairperson, Consumer Grievance Redressal Forum, KSEBoard, Vydyuthibhavanam, Kottarakkara.