

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail

APPEAL PETITION NO: P /232 /2011.

(Present: T P Vivekanandan)

APPELLANT : Sri. Nishad M.A.
Director, Malabar Creations (P) Ltd.,
Manjeri, Malappuram,

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Manjeri South, Malappuram Dt.

ORDER.

Background of the case: -

The appellant is an HT consumer, No. 21/4283, under Electrical Section, KSEB, Manjeri South and the sanctioned connected in the premise is 126 KW. While being so, on 31.7.2009, the APTS (KSEB) conducted an inspection in the premise of the consumer and found that the connected load at the premises is 165 KW against the sanctioned load of 126 KW. Out of this 39 KW excess load, 28 KW was unauthorized additional load (UAL) and balance 11 KW, unauthorized extension. Based on the inspection, a provisional assessment amounting to 7, 83,484/- was made for the UAL availed and for the extension for the period from August 2008 to July 2009. Being aggrieved, the appellant filed objection against the assessment, before the Assessing Officer (AO), which was dismissed by him. Then the appellant filed appeal against the decision of AO before the Deputy Chief Engineer, Electrical Circle, Manjeri, which was also dismissed vide order dated 6.10.2010, but the unauthorized additional load was refixed as 18 KW instead of 28 KW and the bill was revised to Rs.6,74,098/- from the original demand of Rs. 7,83,484/-. The consumer remitted this amount without any dispute. Meanwhile another demand notice was issued by the Special Officer (Revenue), KSEB, for the unauthorized extension and additional load for the period from 8/09 to 7/10 for Rs. 6,54,953/-. Aggrieved by this bill, the consumer approached the CGRF with a petition dated 27.11.2010, praying to set aside the bill. 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. Still not satisfied by the decision of CGRF, the appellant has submitted the Appeal petition before this Authority on 1.7.2011.

Argument of the Appellant: -

The appellant has adduced the following arguments in his petition submitted before this Forum.

On 18.11.2010, the appellant received a demand notice from the Special Officer (Revenue) KSEB, vide No: HTB-21/4283 dated 12.11.2010, demanding to remit Rs.6, 54, 953/- as penal charge for the period from 08/2009 to 07/2010. (Ex A2). The above penal charge was assessed for the period from August 2009 to July 2010 for not regularizing the additional load. The penal charge was also levied in the regular bill for the month of September, October and November 2010. (Copy marked as A3, A4 & A5). The appellant have applied for power allocation on 07.09.2009 for availing new and separate LT connection to different establishments so as to regularize the anomalies pointed out by the KSEB officials. But the KSEB have regularized the anomalies by effecting separate LT connections only on 14.10.2010, which is after a gap of one year on the receipt of application for power allocation. It is clear that there is an inordinate delay and deficiency of service occurred on the part of KSEB by blatantly violating time frame stipulated in clause 8 (3) of Kerala Electricity Supply Code 205 and clause 5 (3) of Terms and Conditions of supply 2005. The date of submission of the application for additional power requirement and date of sanctioning of estimate etc. are furnished below.

Date of application for additional power requirement	: 07.09.2009.
The estimate sanctioned by the Assistant Executive Engineer for Installation of 1x160 KVA transformer underneath existing HTLINE}	: 22.03.2010
Date of remittance of estimate amount	: 29.03.2010
Date of completion of transformer installation work	: 27.07.2010
Date of submission of application for LT services connection	: 12.08.2010
Date of receipt of intimation letter for remitting CD, OYEC etc	: 06.10.2010
Date of remittance of CD and OYEC for LT connections	: 07.10.2010
Date of effecting the LT connections	: 14.10.2010

The above details show that, inordinate delay has occurred for processing the power allocation application on the part of KSEB. The estimate for installation of 1 x 160 KVA transformer underneath the existing HT line was prepared and sanctioned by the Assistant Executive Engineer only after 6 months of receipt of the application for power allocation. Copy of the sanction order of the Assistant Executive Engineer is here with marked as Ex-A6. A consumer is not supposed to put any difficulty of financially burden due to the deficiency of service of the KSEB. As per the terms and conditions of supply 2005, clause 5 (3) a "where new substation is to be commissioned for power requirement, the Board shall inspect the premises of the applicant and prepare the cost estimate for the works and intimate the applicant with in one month of receipt of application". In our case the Board has prepared the estimate and sanctioned it only after 6 months on receipt of the application. The Board has not put forward any valid reason for the delay. Also the Board has not given any intimation regarding the delay in processing the power allocation application during the above period. The A E E has stated in the argument note submitted before the Hon CGRF that, as per the prevailing rules at that time, multiple connections could not be given i.e. both HT and LT connections in the same premises. He has not produced any documents or orders to prove his statements. He has produced a copy of clause 15 (i) of Conditions of supply 1990. This document cannot be admitted in evidence, since the Conditions of supply 1990 has been repealed when new

Terms & Conditions of Supply 2005, came into force. Moreover, KSEB had already given multiple connections both HT and LT, having different door Nos. for different establishments, in the same building, under other offices. In this connection the appellant has submitted a copy of letter dated 04.03.2011, issued by the Public Information Officer and Executive Engineer, Electrical Circle, Kozhikode, to Adv. Sunil B. Gopal, as per Information Act, 2005 (Ex A7 & A8). The CGRF authority has not considered this material as part of evidence while delivering the order.

The appellant had remitted the sanctioned estimate amount of Rs. 3, 11, 000/- on 29.03.2010 (Ex-09) towards the charges for installation of 1x160 KVA T'rfr for giving separate LT connections. But the work was completed by the KSEB and obtained sanction for energizing the transformer on 27.07.2010, i.e., 4 months after the remittance of the estimate amount. As per the Terms and Conditions of Supply 2005, clause 5 (3) (C) the time frame for completion of installation and commissioning of 11/0.4 KV substation is only two months.

The appellant submitted application with documents in Electrical Section, Manjeri (S), for getting 4 Nos. new LT connections for different establishments in the building, on 12.08. 2010. But the intimation from KSEB for remitting the Security deposit and OYEC charge for the connections were received only on 06.10.2010. The Board was not able to give any satisfactory reason for the delay caused while arguing the case before CGRF. As per Terms and Conditions of Supply, 2005, clause 5 (1b), the concerned officer of the Board shall inspect the applicant's premises and prepare cost estimates including initial security deposit and notify the applicant with in 7 days from the date of receipt of application. On receipt of the intimation, the appellant had sent demand drafts for CD, special CD and OYEC charge etc to the AE, vide our letter dated 07.10.2010.

The KSEB has thoroughly and miserably failed to adhere to the stipulations in the Kerala Electricity Supply Code 2005 and KSEB Terms and conditions of supply, 2005, in regard to execute the work and release the service connections with in the time frame. The penal bill could have been avoided, if the service connections were effected with in the time stipulated in the T & C of Supply, 2005. There are sufficient and valid grounds to interfere in the order dated 20.06.2011.

On getting the demand notice dated 12.11.2010 of the Special Officer (Revenue), KSEBoard, the appellant had filed a complaint before the Hon CGRF, KSEBoard, Kozhikode on 29.11.2010, under section 42 (5) of the Indian Electricity Act 2003, seeking to set aside the demand notice, which arose only due to deficiency of service on the part of the KSEBoard. The Hon Forum has disposed of the petition without considering the valid documents produced.

The appellant concluded his arguments as follows;

The order of the CGRF is one sided, arbitrary and not based on actual facts. The Hon CGRF has not appreciated the documentary evidence in a proper manner and the order was passed without understanding the real state of facts and the Forum has miserably failed to take into consideration the important pieces of evidence produced by the appellant such as copy of letter issued by the public information officer. The Hon CGRF ought to have found that there was inordinate delay on the part of the Board in regularizing the anomalies. Even after submission of completion report for the LT service connection on 12.08.2010, the Board has recommended for remitting CD, OYEC etc. only on 06.10.2010 and the said delay was not properly explained by the Board.

So also, the Hon CGRF ought to have held that the appellant had remitted the estimate amount of Rs.3, 11, 000/- on 29.03.2010 towards the charge for installation of transformer but the work

was completed on 27.07.2010, after 4 months, though the time period fixed by the rule is only 2 months. There is no, proper or acceptable reasons on the part of the Board to satisfy the delay.

During the Hearing the appellant expressed his willingness to settle the dispute by limiting the penal charges to six months instead of 12 months.

Arguments of Respondent: -

The respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following.

The petitioner was using the additional load for different purposes and different establishments in the same building. This unauthorized additional load (UAL) and unauthorized extension (UAE) was detected on the inspection of APTS and hence penal assessment was made and the petitioner remitted the said amount as per order of the Deputy Chief Engineer.

Further as per section 51 (2) of the Terms and Conditions of Supply, 2005, the penalty for UAL shall be levied until the UAL is removed or regularized as per rules. Since the UAL and UAE was not regularized, the petitioner has no right to continue the usage until, it is got regularized. The UAL was regularized only on 10/2010. Therefore as per clause 51(2), penal charges for the UAL and the UAE was charged for the subsequent period of 8/2009 to 7/2010, amounting to Rs.654953/-, was raised and the demand notice issued to the consumer for the same on 12.11.2010.

The consumer could have removed the UAL and unauthorized extension on detection of the same by the Board, but the consumer continued to avail the energy through it. The consumer was using this unauthorized energy for resale. The LT supply from the HT connection was approved by KSEB for lighting and operation of the 'Malabar Gold' Jewellery shop only. But it was seen that the consumer is providing power supply to others, by extending wire and connecting loads of other agency's shops such as, Hotel Albaik, Nokia, Tata AIG, Vodafone and Vodafone mobile tower.

The consumer has not disputed availing of this unauthorized energy from 08/09 to 10/10. The consumer could have removed the unauthorized additional load and unauthorized extension right away on detection. Instead the consumer continued to avail the unauthorized energy during these months. As such the consumer is bound to remit the penalty imposed as required under section 51 (2) of Terms and Conditions of Supply 2005 to the tune of Rs.654953/-

The appellant applied for allocation of power for separate LT connections in the same building on 07.09.2009. As per Conditions of supply 1990, clause 15 (i), LT and HT connections are not, ordinarily, entitled for more than one service at a premise and Terms and Conditions of supply 2005, of KSEB is silent on this matter. Hence the petitioner was asked to regularize the additional load with the existing HT connection. But the petitioner insisted for getting new LT connections.

The KSEB vide order dated 24.02.2010, accorded sanction to give multiple connections (both HT and LT) in the same building, but subject to certain conditions. Based on this, the application was processed and the estimate for the works was sanctioned on 22.03.2010.

The petitioner's contention, that the Board has prepared the estimate and sanctioned it only after six months on receipt of application, is not true. It is submitted that the delay was due to the fact that, there were no standing orders or rules available in KSEB at that time authorizing officers, for giving HT and LT connections in the same building. Even though the petitioner could regularize the additional load with the existing HT connection, they insisted for getting new LT connections.

But the provision enabling KSEB, for giving multiple HT and LT connections in the same premises arose only on 24.02.2010 (Ext R3).

The petitioner's another contention is that KSEB took 4 months after the remittance of the estimate amount, for completing the work and energizing the transformer. It is submitted that there was shortage of some materials at that time of doing the work. As per the new Board order the applicant has got the option to execute the work of their own, including supply of materials with the supervision of Board Officials. The petitioner did not opt this. Meanwhile, the petitioner was doing the modifications, in his installations for the new connections and the Completion report was submitted only on 12.08.2010. The security deposit and OYEC amount were remitted on 06.10.2010, and the connection was effected on 14.10.2010. No delay has occurred from the side of KSEB in processing the power request application or affecting the service connection. Even though it took 4 months to complete the work of KSEB, it has not affected the petitioner in any way, since they have completed their work only after completing the work of KSEB.

The petitioner's argument that the penalty could have been avoided, if the service connections were effected within the time frame stipulated in the Terms and Conditions of supply, 2005, has no standing. As per clause 5 (5) of Kerala Electricity Supply Code, it states that "the date of receipt of completed application shall be treated as the date of receipt of application. Here, in this case the petitioner has submitted his application with completion report only 12.08.2010.

The petitioner has submitted a copy of the letter No.PIO/ECK/2010-11/4957 dated 04.03.2011 received from the Public Information Officer, KSEB, Kozhikode. It is submitted that this document contains only information furnished by the PIO, Electrical Circle Kozhikode and this cannot be treated as a valid document since it is not supported by any Board orders or rules.

For the above reasons, the petitioner's demand, to set aside the bill, is not justifiable since the UAL and UAE were continuing in the premise and is being used by the consumer without its regularization. There was no delay or deficiency of service from the side of KSEB for processing the application for regularizing the additional load. It is humbly prayed that the petition may be dismissed with cost to opposite parties.

Analysis and Findings: -

The hearing of the Case was done on 24.2.2012 and 28.6.2012, in my Chamber at Edappally, Kochi, and the appellant was represented by the Learned Advocate, Sri. Sunil B. Gopal, and the respondent by the Assistant Executive Engineer, Electrical Sub division, Manjeri (S), Smt. Jayasree T S, and they have argued the case, mainly on the lines stated above.

On examining the Petition filed by the appellant, the statement of facts of the Respondent and 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 final decisions thereof.

The main allegations raised by the appellant in the petition are (i) there is deficiency of service occurred on the part KSEB in giving the new LT service connections to the consumer on time and (ii) the appellant was penalized for unauthorized additional load and unauthorized extension, for the period from 8/2009 to 7/2010, without understanding the real facts of the case.

The consumer has not disputed the usage of unauthorized additional load (UAL) for the period from 8/09 to 10/10. The APTS has found a total connected load of 165 KW at the appellant's site

during inspection, when the sanctioned load was only 126 KW. It is noted that, there was an UAL (unauthorized additional load) of 28 KW and an UAE (unauthorized extension) of 11 KW, when the inspection was conducted on 31.7.2009. The appellant was served with a penal bill for the same offence, fixing the period of availing the UAL and UAE for the last one year prior to the detection date i.e. for the period of 8/2008 to 7/2009. The Deputy Chief Engineer, Manjeri, on filing appeal petition before him, has revised the UAL as 18 KW instead of 28 KW, and accordingly the penal bill was got reduced and the said amount was remitted by the appellant on 13/11/2010.

Meanwhile, the appellant placed application for power allocation, by remitting the application fee and processing fee on 7/9/2009, for taking new LT connections. While so, the appellant was served with another demand notice for Rs. 6, 54,953/-, being the continued penal charge for using the UAL and UAE for the period from 8/2009 to 7/2010. The argument of the consumer against the bill is that they have requested for additional power on 7.9.09 itself and had the respondent issued the new LT connections in time, then there would not be any UAL at the consumer's end and imposition of penalty. But in this case, the intimation to remit the cost of works required for giving the new connection was received only on 22.3.2010 and the same remitted on 29.3.2010.

Even if there is lapse on the side of the respondent, the consumer is not supposed to connect additional load to the KSEB Network with out it's sanction. If there is no restriction and consumers start connecting additional load freely, as per their requirement, then there is the chance that the Electric supply System may 'fail or break down', on 'overload' at any point of time. Such type of arbitrariness is not expected in a civilized society and unnecessary interruption of power supply should not happen and a reliable power supply is every consumer's aim. Hence the restriction imposed on the consumers, in connecting additional loads without sanction and it should prevail. In this case the UAL, supposed to be availed at least from 8/2008 was regularized only in 10/2010.

The main averment of the consumer is, the delay to give the new LT connection requested and for which necessary amount was also paid, has paved the way for continued penalization for the period from 8/09 to 10/10. As per Clause 6 of the Supply Code; 'Duty of the Licensee to supply electricity' which reads; (1) the Licensee shall provide electricity connection to the *owner or occupier of any premises requiring supply as per the time frame under clause 8 subject to the payment of required fee, charges and security and satisfying the conditions stipulated in the approved 'Terms and Conditions of supply' of the Licensee by such owner or occupier of the premises:*

Provided that, the Licensee shall not be responsible for the delay, if any, in extending supply, if the same is on account of delay in getting statutory clearances, right of way, land acquisition, or the delay in consumer's obligation to provide necessary clearances, or payment of required cost of works as per clause 7 and security deposit as per clause 13, or for any other similar reasons beyond the reasonable control of the Licensee. In all such cases the Licensee shall take all reasonable steps to avoid delay."

In this case, though the application was received on 7.9.2009, the estimate was sanctioned by the respondent only on 22.3.2010 and the same remitted by the consumer on 29/3/2010. There after KSEB took 4 months to complete the transformer installation work. The respondent has relied upon the clause 15 (i) Conditions of Supply 1990, which debars the multiple connections in a premise, for the delay in collecting the estimate cost of work. The respondent has produced a copy of the relevant portion clause 15 (i) which reads; "i) *LT and HT consumers are not ordinarily*

entitled for more than one service at a premise unless supply points of different voltages for special loads connected there, in which cases the Board/Inspector (in the case of HT) will analyse the problem in detail and after ensuring that there is no likelihood of any mix up of different services, may sanction such services”.

The Conditions of Electric Supply, 1990, have been repealed when the new, KSEB Terms and Conditions of supply, 2005, came into force. Hence the argument of the respondent, referring a repealed clause, has no relevance in this case. Further the respondent argues that, the Supply Code 2005, is silent on this matter. But it is not clear, what action has been taken by them to get the clarification on this matter, from the higher authorities. The respondent submits that the appellant was asked to regularize the additional load with the existing HT connection, but the consumer insisted for new LT connections. The consumer has the option, to avail his new electric connection either in LT or HT, of course, subject to its eligibility according to the quantum of load requested for. It is not correct to compel the consumer to go for HT service connection when he opts for a LT service connection and is also eligible for the same. But the respondent can direct the consumer to remove the UAL and UAE, if the same are found detrimental to the KSEB system. But KSEB has not raised such an argument here. Hence I feel that it is not justifiable to penalize a consumer, for the delay occurred on the part of KSEB, in effecting the new connections in time, so as to regularize the unauthorized additional load availed (UAL & UAE) by him.

DECISION: -

From the detailed analysis done and the Findings and conclusions arrived at, I take the following decision.

The appellant was found using unauthorized additional load (UAL) and unauthorized extension (UAE) and was penalized for the irregularity committed and remitted the same. The next step is either to remove the UAL or regularize the UAL as per rules. The consumer opted for regularizing the load by taking new LT connections. Accordingly, the consumer applied for new connections in 9/2009. It is said that, due to lack of clarity in the rules for providing multiple service connections (both HT and LT) in the same building premises, the respondents got delayed the registration of new service connections and collection of estimated cost, from the appellant. It is a delay on the part of the respondent only for which the consumer should not be penalized unnecessarily. Had the Respondents registered the service connections in time and carried out the works promptly, the appellant could have received the electric supply for the new connections, at the most, within six months of registration. It is not justifiable to penalize a consumer when he has acted as per rules, for regularizing the UAL availed by him. Hence I decide that the disputed penal bill shall be limited and revised to six months, from the date of filing application for new connections, the maximum period allowable for releasing the new LT connections, after completing the ‘Works of installation of Transformer under the HT Line’. Therefore the disputed bill, raised for the period 8/2009 to 7/2010, shall be revised, limiting the period of penalization from 8/2009 to 2/2010 only. But, the consumer is bound to pay the fixed charges for the UAL and the UAE availed, total 28 KW load, at normal tariff rate (not penal rate), from 3/2010 to 10/2010, as he had continuously availed the additional load, till regularization in 10/2010. That is to say, the consumer has to pay the regular monthly bills from 3/2010 onwards, including the UAL and UAE, for the fixed charges.

Hence the respondents is directed to revise the penal bill dated 12.11.2010 for Rs. 6, 54, 953/-, limiting the period of assessment from 8/2009 to 2/2010 only (both inclusive), for the continued use of UAL and UAE by the consumer. But as stated above, only the fixed charges for 29 KW load (UAL of 18 KW and UAE of 11 KW, totaling to 29 KW) availed, may also be levied, up to 10/2010.

No penal charges need be payable by the consumer, for the said anomaly, after 2/2010. The penal charges, if any, collected for the months of September, October and November 2010, as alleged by the appellant, shall also be refunded, if it is true.

The consumer need not pay any interest for the amount, during the Petition pending period before the CGRF and this Authority. The consumer shall be allowed 30 days time (due date of the revised bill) to make the payment. Having decided as above, it is ordered, accordingly. The Appeal Petition filed by the appellant is found having some merit and is allowed to the extent ordered. No order on costs.

Dated the 10th of January, 2013,

Electricity Ombudsman.

Ref. No. P/ 232/ 2011/ 1525/ Dated 10.01.2013.

Forwarded to

1. Sri. Nishad M A,
Director, Malabar Creations (P) Ltd.,
Manjeri, Malappuram,

2.The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Manjeri South, Malappuram Dt.

Copy to: -

(1). The Secretary, Kerala state Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.

(2). The Secretary, KSEBoard,
Vydyuthibhavanam, KSEBoard, Pattom, Thiruvananthapuram-4

(3). The Chairperson, Consumer Grievances Redressal Forum,
KSEBoard, Vudyuthibhavanam, Gandhi Road, Kozhikode.