

THE STATE ELECTRICITY OMBUDSMAN
Pallikkavil Building, Mamangalam-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.com

APPEAL PETITION NO. P/265/2012.

(Present: T.P. Vivekanandan)

Appellant : Sri. Subhash. T,
Director, Malayalam Community Channel,
Adoor, Pathanamthitta Dt.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Adoor, Pathanamthitta Dt.

ORDER.

Background of the Case: -

On 9.9.2009, the KSEB conducted a surprise inspection at the premise of the consumer No.22875, given under LT VII A-commercial tariff and detected unauthorized load of 8211 watts being connected in addition to the authorized load of 600 watts. Hence the consumer was served with a provisional assessment for Rs.2, 38, 027/- along with a notice dated 19.9.09, by the Asst. Engineer, assessing the unauthorized use of electricity at twice the normal rate under section 126 of Electricity Act 2003. The consumer being aggrieved, filed an objection dated 23.9.2009 against the penal bill, before the AE wherein the consumer had stated that he had applied well in advance, for permanent additional load alongwith conversion single phase into three phase supply, for the purpose of running a 'Cable TV' service. It is alleged by the appellant that the Sub Engineer had made inspections after receipt of the application for additional load and his instructions of any rectification were being carried out promptly and during this period, the surprise inspection was arranged by the KSEB and detected the same load intended for adding to the system.

After hearing the objections of the consumer, the Asst. Engineer passed the final order, by reducing the penal bill slightly. But the consumer was not satisfied with the final order and the revised bill and hence filed an appeal under Section 127 of Electricity Act, 2003, before the Dy. Chief Engineer, which was disposed of by him, by upholding the decision of the Asst. Engineer. Still being aggrieved with the decision of the Dy. Chief Engineer, the petitioner filed a complaint before the CGRF, Kottarakkara. The CGRF refused to entertain the Petition for want of jurisdiction and hence dismissed the Petition without entering into merits of the Case. Not satisfied by the decision of CGRF, the appellant has filed the Appeal Petition before this Forum.

Arguments of the Appellant: -

- 1). The appellant is the complainant in OP. No. 679/2011 filed before the CGRF, Kottarakkara. He is the occupier of the premise with consumer No. 22875 of Electrical Section, Adoor. He is operating a cable TV network under the name and style, 'Malayalam Community channel' in a rental building owned by Smt. Accamma Mathew, under whose name the electricity connection stands registered. Earlier, his cable TV operation network was functioning in a nearby separate building.
- 2). During the month of 3 /2008, the appellant made preparation to shift the operation to the said new premise with consumer No. 22875. As he was in need of additional load of 8 KW in the new premise, he obtained the application from KSEB office on paying Rs.25/- as the cost of the application booklet on 31.03.2008. The copy of cash receipt dated 31.3.2008 is marked as Annex-1. He submitted the application for conversion to 3 phase and enhancement of the load, to the Assistant Engineer (AE) on 02.07.2008, remitting Rs.10/- towards application fee. A copy of the cash receipt dated 2.7.2008 is marked as Annex-2. The AE told him that a Sub Engineer would be deputed to his site for inspection. Accordingly, a Sub Engineer (SE) visited the premise four times and the appellant rectified the defects and deficiencies pointed out by the SE and finally being satisfied in all respects, the SE asked him to come over to the Electrical Section Office for getting the formal sanction. Accordingly the petitioner went over to the Electrical section Office and was told that he can use the additional load applied for and the three phase connection will be allowed soon.
- 3). While so on 09.09.2009, the KSEB squad with the Sub-Engineer of the Electrical Section visited the premise and prepared a mahazar, showing the electrical appliances and unconnected plugs available there. A copy of the mahazar is marked as Annex-3. Thereafter on 19.9.2009, the Assistant Engineer, who never visited the premise while preparing the mahazar or thereafter, issued a letter alleging the unauthorized use of electricity of 8 KW by him and for which, they raised a demand of Rs.2,38,027/-, under section 126 of the Electricity Act, against him. The copy of the letter dated 19.09. 2009 and bill dated 16.09. 2009 are marked as Annxe-4.
- 4). The appellant filed objection dated 23.09.2009 against the bill. A copy of the objection dated 23.09.2009, is marked as Annex- 5. In this the appellant has denied the allegation of use of unauthorized load and has established that the load used was perfectly authorized by the licensee. The AE on the basis of Annxe- 5 objection, called the petitioner for a hearing and he appeared for the hearing and tendered a statement answering clearly all the questions put forth by the AE to him. A copy of the minutes of hearing is marked as Annxe- 6, which clearly establishes that the petitioner used the extra load only after permitting use of the same by Board Officials. However, the AE who is the Assessing Officer, issued a final order, reducing the bill slightly to Rs.2, 17, 261/- and issued to him along with the calculation sheet. A copy of the final order dated 26.06.2010 with the bill and calculation sheet are marked as Annxe-7.
- 5). Against the Annxe-7 order, he filed an appeal under section 127, to the Appellate Authority, the Deputy Chief Engineer and also remitted 50% of the Bill amount of Rs.1,08,644/- as per cash receipt dated 28.02.2011 for filing appeal, marked as Annxe-8. It is submitted that though the Deputy Chief Engineer of KSEB is not at all a competent authority to entertain the appeal, for want of jurisdiction

under the Appeal of Appellate Authority Rules, he filed the appeal, just because of the proposal and guidance of the AE. A copy of the appeal filed by the petitioner dated 3.8.2010 is marked as Annxe- 9. 6). The Dy. Chief Engineer heard the petitioner on 19.03.2011 at his office. A true copy of the minutes of the hearing showing the deposition of the Appellant is marked as annex- 10. Though the petitioner adduced evidence of not using any unauthorized additional load by him, the Dy Chief Engineer simply disposed the appeal, vide order dated 3.10.2011, confirming the assessment. A true copy of the order of Appellate dated 3.10.2011 is marked as Annex- 11. While disposing, the Dy. Chief Engineer did not make any attempt to refer the relevant provisions of the Act or Regulations in the matter of supply of electricity. He simply disposed the appeal with out application of mind and without the objective consideration of the relevant provisions.

7). Though the premises of the petitioner was inspected and Annex- 3 mahazar was prepared on 09.09.2009, there occurred undue delay on the part of Assessing Officer as well as Appellate Authority in concluding their proceedings, which is gross violation of the statutory rules governing the matter.

8). The AE after disposal of the appeal by the Dy. CE, has issued a revised bill for Rs. 2, 98, 399/- as per letter dated 29.10.2011. A copy of the letter dated 29.10.2011 is marked as Annex-12.

9). Being aggrieved by the Bill, the petitioner approached the CGRF, Kottarakkara by filing complaint No.679/2011 dated 28.11.2011. A true copy of complaint dated 28.11.2011 numbered as 679/2011 is marked as Annex- 13. The Hon Forum admitted the complaint and the opposite parties also filed their version by letter dated 15.12.2011, before the Forum, marked as Annex- 14.

10). The Hon Forum heard and disposed the compliant as per order dated 30.12.2011, finding that the forum has no jurisdiction to entertain the compliant, the subject matter being an assessment made under Section 126 of the Act. At the same time it is directed to file appeal before Ombudsman.

11). The Annex- 4, the provisional Assessment order, annexure- 5, the final assessment order and the annex- 11 appellate order are quite illegal, unjust, arbitrary and hence void and liable to be set aside.

12).As per the notification, SRO No.229/2005 issued by the Govt: of Kerala, the Assistant Engineer of the concerned Electrical Section is the assessing officer, under section 126 of the Electricity Act, 2003. Under section 126(1) of the Act, the assessment can be made only after visiting the premise by the Assessing Officer, who is also the Assistant Engineer of the concerned section. The Assistant Engineer, Electrical Section, Adoor, who is the Assessing Officer, has never visited the premise, as part of the assessment made under section 126 of the Act and as such, Annex- 5 & 6 assessment orders are illegal and unsustainable. Had the AE visited the spot and perused the connected documents, he could have convinced of the facts, that the load used by the appellant was the permitted load only.

13). Under the Appeal to the Appellant Authority rules, 2004, the appellate authority under section 127 shall not be a person directly related to the affairs of the territorial jurisdiction of the licensee. In this case annex -11, the Appellate Order was passed by the Deputy Chief Engineer, who is a directly connected Officer with the affairs of the licensee. In fact he is an employee of the licensee KSEB itself. As such, the Appellate order Annex -11, is passed without jurisdiction and hence unsustainable.

14). As admitted by the opposite party, the petitioner had applied for enhancement of his 'connected load' by remitting Rs.25/-towards the cost of the application booklet as per annex- 1 cash receipt on

31.03.2008 and submitted it by paying Rs.10/- towards application fee on 22.07.2008, as per annex- 2 receipt. Thus the petitioner had submitted completed application on 22.07.2008 to Electrical section. Under Reg.5 of Supply code and also under Reg-3 of the Terms and Conditions of Supply, the KSEB has to inform the applicant all deficiencies within 7 days of the receipt of the application, in writing, and after rectifying the deficiencies, supply shall be provided with in one month after receipt of the application failing which it is bound to pay a penalty up to Rs.1000/- per each day of delay. In order to escape from the payment of penalty, the KSEB made illegal assessment under section 126 of the Act on the ground that the appellant did not submit the application in time. The appellant has submitted the completed application on 22.7.2008 as evidenced by annex- 2, cash receipt and he used the extra load only thereafter, that too with the permission of the officials of the Board at the Section office.

15). In order to escape from their gross negligence in effecting supply in time and consequent penalty they insisted to submit an application for a second time. Even assuming without admitting that the load was used without permission, it was only after submitting application on 22. 7.08, as is evident from Annex-2. More over, the opposite party has no case that there was system constrains by the use of 'additional load' and so the permission was only a formality. On this ground also there is no basis for penal assessment, especially in view of the fact that the petitioner had paid the entire charges for what ever energy used by him, through regular bills, during the period of the alleged unauthorized use of electricity. On this ground also the penal assessment was unwarranted.

16). The annex- 6 & 10, the minutes of the hearing amply proves that the use of load was only with the permission of the opposite party after getting application on 02.07.2008. Sri. A Podiyan, the Dy. Chief Engineer who heard the appeal of the petitioner was fully aware and convinced of the fact that there was no unauthorized use of electricity. But before passing orders, he vacated office by transfer. It is noteworthy that his successor simply passed Annex -11 order, without hearing the appellant. As order was passed by the person who did not hear the petitioner, it is unsustainable and bad in law.

17). There is inordinate delay on the part of the opposite party in regularizing the load applied for. There is also inordinate delay on the part of the Assessing Officer for making the provisional as well as final assessment. Again there is undue delay in disposing the appeal, by the Deputy Chief Engineer. The petitioner is not at all liable to pay interest for the petition pending period before various Fora.

18).The CGRF erred in dismissing the complaint alleging that it has no jurisdiction to entertain the complaint. As there was no unauthorized use of electricity and the dispute was with regard to a Bill for electricity charges, the CGRF ought to have entertained the complaint and disposed of the same on merits. Hence this is a fit case liable to be remanded to the CGRF for fresh disposal. In any view, the impugned assessment is per-se illegal, unjust, unsustainable and liable to be set aside.

Reliefs sought for are: -

- 1).To declare that there was no unauthorized use of electricity by the appellant and hence the penal assessment is illegal and unsustainable and set aside the same.
- 2).To pass an order directing the respondents to refund the 50% of the assessed amount remitted by the appellant as per the annexure-8 cash receipt.
- 3). To pass an order remanding the case back to the CGRF South for fresh disposal on merits.

4).To pass an order allowing cost to the appellant payable by the respondents.

5).To grant such other reliefs that this Hon Ombudsman deems fit and proper.

Arguments of the 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.

1).There is no objection existing in the ownership of the Cons:No. 22875 or the purpose for which this connection is effected and the energy used by the consumer.

2).The appellant had remitted only Rs.25/- as cost of book let and Rs.10/-as application fee during the month for enhancement of load to 8 KW from the existing 600 watts and also for conversion from 1-phase to 3- phase. But the consumer made several months delay in producing the necessary Wiring completion report and connected papers for obtaining sanction for additional load. But during this period the consumer had used unauthorized load of 8 kW for running his Cable TV Network. The consumer has regularized the connected load (8350 watts) only on 22.12.2009.

3).On 09.09.2009, The Division squad of Pandalam Sub Division, in the leadership of an Assistant Exe. Engineer inspected the premise and detected unauthorized load of 8 KW. The details of load are shown clearly in the site mahazar prepared at the time of inspection. There is no need to visit the site by the Assistant Engineer, under his jurisdiction for issuing penal bill to the consumer, as per mahazar prepared by the Division squad under the guidance of an Assistant Executive Engineer.

4).As per the site mahazar prepared by the inspection squad, it is evident that the consumer had used unauthorized load of 8 kW. The Manager, Sri. Thomas, who was present at the time of inspection, had received a copy of the mahazar agreeing the findings of the inspection team. In this circumstance the consumer can not deny the findings of this squad.

5). A provisional assessment for Rs.2, 38, 027/- was issued to the consumer on 16.09.2009. And after completing the hearing, the Assistant Engineer, , Adoor, released a proceeding in this regard on 26.06.2010(Ext-3) and issued the revised final bill amounting to Rs.2, 17, 261/- on 13.07.2010 (Ext-2).

6).After remitting an amount of Rs.1, 08, 644/-, being the 50% of the penal bill served, the appellant has filed Appeal petition before the Deputy Chief Engineer, Pathanamthitta, for further relief under section 127 of Electricity Act, 2003. The Dy. Chief Engineer, after hearing the party issued the order upholding the orders of the Assistant Engineer. A copy of this order is attached as Exhibit-4.

7). As per the order of the Dy. Chief Engineer, the AE issued a bill amounting to Rs. 2, 39, 574/- (Ext-5) as the balance pending amount after deducting the amount, the consumer has already remitted in this office. The AE also served a letter to the consumer showing the whole details of the consumer's pending arrears on 29.10.2011 and the consumer has received it on 31.10.2011 (Ext-6). Since the consumer had used 8 KW unauthorized load, he is liable to pay the bill amount.

8). Aggrieved by this, the consumer approached the CGRF, Kottarakkara and the Forum disposed it, as it comes under section 127 of Electricity Act, 2003, which has no maintainability before the CGRF.

Analysis and Findings: -

The first Hearing of the Case was posted on 27.07.2012, and only the respondent was present and the appellant was absent, without assigning any reason. The second hearing was done on 30.1.2013,

in my chamber at Edappally and was attended by both sides. Sri T Subash, the appellant and Sri. R. Prasad, the Asst. Exe. Engineer, Electrical Sub Division, Adoor, were present, representing either side. The appellant pleaded to grant him one more chance of Hearing, to produce further documents and for presenting more arguments, which was allowed. But the appellant failed to attend the 3rd hearing scheduled for 9.4.2013 and only the Respondent was present. Further, the Appellant did not submit any reason for the absence in the hearing, except that he intimated the Respondent, that he will not be able to attend the Hearing on that day.

On examining the Petition and argument notes filed by the Appellant, the statement of facts of the Respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

In the Hearing done on 30.1.2013, the appellant pleaded to fix the Load connected to UPS as 3 KVA limited to the capacity of the UPS, feeding power to the equipments connected to it, instead of taking the sum of individual loads. In the site Mahazar, it is seen specifically recorded that, the Modulator load of (12 Volt x 2 Amps) x 7 = 4 Set and the Receiver load of (230 V x 500 mA) of 65 Nos. is found using through a UPS of 3 KVA capacity rating. In such a case, the maximum load that can be catered at a time is limited to 3 KVA, say $3 \times 0.9 = 2.7$ KW load. The other loads found during inspection, have a total rating to 2574 watts, thus the total connected load as per site mahazar is equal to 5.274 KW, rounded to 6 KW, and deducting the sanctioned load of 600 watts (say 1KW), the unauthorized additional load (UAL) is found as $(6 - 1) = 5$ KW only and not 8 KW, as assessed by KSEB.

The argument of the appellant that, KSEB has permitted him to use the additional load installed as a part of his request for enhancing the connected load, is difficult to believe. Without paying the fees like, additional Security Deposit, the estimate cost for conversion to 3-phase and estimate charges for connecting the additional load up to 10 KW load (as approved by the Hon Commission), Test fee etc., by the consumer, the process of regularization of additional load will not be over. The appellant has not a contention, that he has paid the said fees, for connecting the additional load except the AF. The appellant argues that he purchased the application booklet in 3/08 for conversion to 3-phase and for enhancing his 'connected load' but he has submitted the Completion report of Wiring (in the Booklet) only in 7/2008, i.e. after a gap of more than 3 months, which is normally a long time needed for wiring 8 kW load and its equipment erection work.

More over, the energy consumption pattern details of the appellant, prior to and after the inspection conducted on 9.9.2009, are reported as follows.

Month/YearConsumption.Month/YearConsumptionMonth/YearConsumption

6/2008	-	0 units	4/2009	-	4844 units	2/2011	-	3459 units
8/2008	-	3480 units	6/2009	-	5130 units	4/2011	-	4563 units
10/2008	-	4833 units	8/2009	-	5321 units	6/2011	-	4666 units
12/2008	-	4112 units	10/2009	-	5547 units	8/2011	-	6172 units
2/2009	-	4781 units	12/2009	-	5345 units	10/2011	-	5544 units

4/2009	-	4844 units	2/2010	-	3846 units	12/2011	-	5241 units
6/2009	-	5130 units	4/2010	-	6525 units	2/2012	-	5447 units
8/2009	-	5321 units	6/2010	-	5146 units	4/2012	-	6107 units
10/2009	-	5547 units	8/2010	-	3236 units	6/2012	-	1845 units
12/2009	-	5345 units	10/2010	-	3459 units	8/2012	-	1631 units
			12/2010	-	3165 units	10/2012	-	1713 units

The consumer had a connected load of 600 watts i.e. 0.6 KW, while renting out the building with the electric connection, to the appellant. If this total load is put to use for 24 hours of the day and for 60 days per bi-month, the probable monthly consumption would be;

$$(0.6 \text{ KW} \times 24 \text{ Hrs} \times 60 \text{ days}) = 864 \text{ units per bi-month.}$$

But his average energy consumption from 8/2008 onwards is found as above 4000 units per bimonth. Hence it is clear that the connected load of the consumer was not 0.6 KW during the disputed period, but was more than that, at least from 8/2008 onwards, when Meter started recording high energy consumption.

Now, had the connected load been at 6 KW, and worked throughout the day and month, then the corresponding consumption would be 8640 units. But working with, the whole load for 24 hours per day continuously and for 60 days of a bi-month seldom occurs. To account for such cases, 'Diversity factor', which takes into accounts that all the equipments are not used simultaneously and the 'Load Factor' which accounts for the average load used per day, are introduced for making a reasonable assessment. Normally, a maximum of 50 to 60% of the total load is put to use in the case of a Cable TV system and the corresponding energy consumption will be around 4500 to 5500 units per bimonth (in the case of a consumer having 6 KW as connected load). The energy consumption pattern of the consumer listed above indicates that he was using the additional load at least from the month of 8/08 onwards, as it was certain that the appellant cannot consume such a high quantum of electricity with out connecting extra load than his sanctioned load of 0.6 KW.

The appellant argues that he has submitted application for the additional load, by enhancing his connected load in 7/2008, after completing all wiring works, which appears to be true. But he has not remitted the fees required to regularise the additional load availed. Otherwise he should not have used the additional load till it is sanctioned and regularised by KSEB. But here it is proved that the consumer was enjoying the additional load at least with effect from 8/2008 onwards. The appellant has the contention that it was permitted by the Adoor Section Officials, which is not proved. In such a case, the availing of additional load can be treated as an 'unauthorized additional load' (UAL) only.

Since the appellant has questioned in this case, the validity of 'Inspection by a Squad' and not by the AE himself, the concept of the 'Assessing officer' related to inspection and assessment, was required to be perused thoroughly which has caused delay in pronouncing the verdict. The appellant argues

that the provisional assessment done under Section 126 of IE Act, 2003, is not legally binding as the Assistant Engineer who is the Assessing Officer has not 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?. 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 other Officers of the Licensee?.

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 an officer on AE's behalf 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.

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, even 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 as per Law, by the concerned AE based on the SE's inspection report. In such a context, it is only proper to treat the inspection by an Asst. Exe. Engineer as legally correct, under Section 126, the unauthorized use of electricity, if the same action is fully convinced by the Assessing officer (Section AE), to prefer the

provisional assessment against the consumer. 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 AE.

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. 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 Act;

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

From the site mahazar, the total connected load found during inspection done on 9.9.2009, is assessed as 6 KW and the UAL as 5 KW only, instead of 8 KW.

The action of the Assistant Engineer in issuing the provisional assessment, under section 126, based on the site mahazar and Inspection report of the Division squad after being fully convinced of the irregularities detected there, is found to be 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.

But I find some merit in the contentions of the appellant that;

- (i) the Modulator and Receiver Load may be limited to UPS capacity.
- (ii) No electricity duty is payable by the consumer towards the penal bills.
- (iii) Interest or surcharge need not be levied on the penal bill amount, during the period, while the objection filed was pending before the Asst Engineer and then before the Deputy Chief Engineer as they took undue delay to dispose the Petitions filed.
- (iv) Similarly the Petition and its Appeal pending period before the CGRF and this Authority, respectively, shall also be excluded for the levy of surcharge or interest.
- (v) In short, the interest or surcharge need not be levied till the revised bill is issued as per the order issued by the AE as per this order, since the Case is remanded to the AE itself.

With these directions ordered, the Case is remanded to the Assistant Engineer, Electrical Section, Adoor, for arranging a fresh hearing with notice to the appellant and may decide as per Law. But the Assistant Engineer has to consider the points highlighted by this Forum, before taking a final decision.

Having concluded and decided as above, the Appeal Petition filed by Sri. T Subash, is disposed of accordingly, as it is found not maintainable before this Forum, but with the directions ordered as above.

It is noted that the consumer has the right to file an Appeal before the Appellate Authority i.e., the Deputy Chief Engineer, under Section 127, again against the fresh order of AE, Adoor. No further amount need be remitted, as already 50% of the penal bill has been remitted by the appellant, for filing an Appeal before the Dy. CE. It is made clear that the AE and the Dy. CE can take independent decisions as they think proper after considering the points listed out by this Authority. No order on costs.

Dated the 26th of April, 2013,

ELECTRICITY OMBUDSMAN.

Ref. No. P/265/2012/1708/ Dated 26.04.2013.

Forwarded to : 1). Sri. Subhash. T,
Director, Malayalam Community Channel,
Adoor, Pathanamthitta Dt.

: 2). The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Adoor, Pathanamthitta Dt.

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.