

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/287/2012.

(Present: T.P. Vivekanandan)

Appellant : Smt. Sheeda Dharmaseelan,  
M/s. Hotel Green Palace,  
Cliff Top, Near Helipad, Varkala P O. -Pin- 695 141.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard, Varkala P O.

ORDER.

Background of the Case:

The appellant is consumer No.13658 and the connection is used for running the Firm named 'Hotel Green Palace' under Electrical Section, Varkala, with a connected load of 7959 watts (8 KW) at the time of taking connection. While being so, the APTS of KSEB has conducted an inspection on the premise of the consumer on 04.10.2005 and detected an unauthorized additional load (UAL) of 9 KW, being connected to KSEB's system without its sanction. For the same the Assistant Engineer (AE) issued a penal bill for Rs. 19,200/- along with a notice dated 25.11.2005, directing to submit application for regularization of the UAL found. The entire penal sum was paid by the appellant. The consumer continued to pay the penal charges regularly, for the UAL availed, in the subsequent months. The penalty was limited to the Fixed charges portion only all these period.

While so, the Audit party noticed that the consumer was not billed properly and hence needs to be billed for the proportionate energy charges also (in addition to fixed charges), for the period, 15.6.2007 onwards, the date from which the corresponding penal rule was amended. Thus a bill for a sum of Rs.3,41,164/-, with a letter was issued to the appellant on 05.3.2012, towards the recovery of energy charges left out in the penal bills raised for the UAL of 9 KW availed for the period, 15.6.2007 to 12/09. Aggrieved by the bill, the appellant filed an objection before the AE, the Assessing Officer, on 14.3.2012 and also filed complaint before the Asst. Exe. Engineer on 4.4.2012. The appellant alleges that since he did not receive any reply from the AE or AEE, he approached the CGRF on 9.4.2012 which was admitted as OP No. 727/2012. The CGRF dismissed the Petition since it found the petition is devoid of merits. Aggrieved by the decision of CGRF dated 2.5.2012, the appellant has filed this Appeal petition.

Arguments of the Appellant. 1). The appellant is consumer no: 13658 of Electrical Section, Varkala, under LT VII A tariff and is doing Hotel business approved by Tourism Department and is eligible

for Electricity Subsidy. The appellant got electricity connection on 5.11.2003 for a connected load of 7959 watts (8KW) and has been paying the bills issued by the respondent from time to time without any default. While so, the APTS of KSEB conducted an inspection on 04.10.2005 and detected unauthorized additional load (UAL) of 9 KW. The AE issued a notice dated 25.11.2005 directing to submit application for regularization of the additional load of 9 KW. A copy the notice is marked as Annex- A1. The AE also issued a penal bill for Rs.19200/- for the UAL connected and the same has been paid.

2).The appellant applied for regularization of the additional load in 11/2006. The KSEB officials visited the premise and thereafter the additional load was regularized and enhanced the fixed charges and issued bills from December 2006. A copy of the bill for a fixed charge of Rs.2150/- for 12/2006 noting the fixed charges as Rs.800+1350 is produced as Annex - A2. Thus KSEB has been realizing fixed charge of Rs.2150/- instead of Rs.1700/- per month. The subsequent bills were also of the same fixed charges. Finding excess of fixed charges in the monthly bills, the appellant did approach the AE with a complaint requesting to re-fix the fixed charges as for 17 KW only, after the regularization of the additional load and requested for refund of the excess amount realized. The AE however re-fixed the fixed charges to Rs.1700/- in 02/2009, but did not refund the excess amount realized. A copy of the bill dated 06.02.2009 fixing the connected load as 1700 watts and fixing the fixed charges as Rs.1700/- for 17 KW of connected load is produced as Annex- A3. It is to be noted that the entire monthly bills from 2/2009 onwards has been issued for a fixed charge of Rs.1700/-, for the connected load of 17 KW. A copy of the bill dated 03.02.2012, is marked as - A4.

3). In the meantime, KSEB issued a provisional invoice dated 05.3.2012 for Rs.3, 41,164/- alleging penal charges for the UAL of 9 KW for the period from 7/2007 to 12/2009-(Annex- A5). On getting the bill the appellant approached the 1<sup>st</sup> respondent. It was told that the bill is an assessment of penalty under section 126 of the Electricity Act and the appellant is liable to pay the bill. When the appellant pointed out that there was no site inspection as required under the Act and the issue of provisional assessment order or final assessment order as provided in the Act or Regulations, the AE replied that, bill is issued based up on an Audit report. But a copy of the audit report was not issued. The copy of the audit report, obtained under RTI Act, is produced as Annex- A6.

4). On getting the bill, the appellant filed a written objection to the AE stating that the appellant has been paying for the regularized load of 17 KW from 12/ 2006 and hence the said bill is not in order and liable to be cancelled. A copy of the letter dated 14.3.2012 is marked as Annex-A7. Finding no reply or any response from the AE, the appellant sent a compliant dated 04.04.2012, to the Asst.Exe.Engineer. A true copy of the above letter is produced as-Annex A-8.

5). Finding no response to the complaint either from the AE or AEE, the appellant filed a Petition before the CGRF (South), Kottarakkara and got registered as OP NO.727/2012. A copy of the same is produced as Annex A-9. The respondent filed its version dated 30.4.2012 and is marked as - A10. The Hon CGRF heard the parties and passed a non speaking order on 02.05.2012 (Annex A-11).

6).The CGRF without calling for the relevant records relating to the complaint during the period and without appreciation of the relevant facts and circumstances of the case, has simply dismissed

the case holding that the complaint is devoid of merits. The CGRF did not even care to appreciate the fact that the impugned bill was issued alleging assessment of penalty under section 126 of the Act, without following any of the mandatory requirements.

7).The Forum failed to note that the appellant had regularized the additional load during 12/2006 and bills for the regularized total load of 17 KW have been paid to the opposite party. The Forum also failed to note that, based up on the complaint of the appellant, the respondent had corrected the mistake by issuing the bills for fixed charges of Rs. 1700/- for the enhanced load of 17 KW from 2/2009 onwards. The Forum ought to have found that, no penalty has to be realized at least from 2/2009, which is the date on which even according to respondent the load was regularized. In any view of the matter, the penal assessment is to be made for the period only up to 2/2009.

8). It is submitted that no electricity duty is payable for the penal assessment, which is a settled matter. But KSEB wrongly included an amount of Rs.29275/- toward duty in the assessment as seen in their version. This amount is liable to be cancelled.

9).According to the respondent, the impugned bill is an assessment of penalty under section 126 of the Electricity Act. If so, the mandatory requirements provided under section 126 of the Act has to be followed, but in this case no site inspection has been made by the AE before issuing the bill. No provisional assessment or final assessment order was issued in-spite of objection. Hence the impugned bill is vitiated by serious procedural lapses. Hence the bill is liable to be quashed.

10).On merit also, the impugned demand is unsustainable. The APTS inspected the premises on 04.10.2005. Finding unauthorized load of 9 KW, the AE issued a penal bill of Rs.19200/- which was duly paid by the appellant. The AE issued Annex A-1 notice directing to submit application for regularization of the additional load. In this notice, it was specifically stated that supply would be disconnected if the load was not regularized. Hence in order to avoid disconnection of supply, the appellant has applied for regularization of the UAL in 11/2006. Thereafter no assessment or penal bills were issued by the KSEB. However, in the bills from 12/2006 to 1/2009, KSEB has realized a fixed charge of Rs.2150/- (800+1350), as against the actual fixed charge of Rs.1700/-, thereby realizing an excess sum of Rs.450/- per month. The total excess amount so realized from appellant comes to Rs.11700/- i.e. (Rs450×26). This amount is liable to be refunded by KSEB. The appellant made complaint to the AE requesting for refund of the amount. But the AE did not refund, though he rectified the mistake by fixing the actual fixed charges to Rs.1700/- per month from 2/2009. Hence the respondent cannot issue any penal charges alleging any UAL from 2/2009.

11).While relying on audit report, the Forum failed to note that even in the audit report, there was a direction to ascertain whether the UAL has been removed or regularized. The respondent without examining the regularization of the additional load, simply issued impugned bill, which has been upheld by the Forum, without application of mind.

12).In its version, KSEB has stated that the penal charges ought to have been calculated at two times of the tariff rate from 15.06.2007 onwards, whereas only 1.5 times has been reckoned and so the appellant is liable to pay the amount. But no penalty is payable from 11/2006, when the load was regularized. Moreover no assessment was made in this case under Section 126 of the Act.

13).In any view of the matter the penal assessment is to be made for the period up to 2/2009 only.

Argument of the Respondent: -

1).The appellant was remitting the regular current charges promptly and while so, the APTS had inspected the premises of consumer No.13658 during 10/05 and detected 9 KW unauthorized additional load. The Assistant Engineer has issued a notice to the consumer directing to submit application for regularization of the UAL of 9 KW. A penal bill amounting to Rs.19200/- was issued to the appellant and the whole amount was paid in 4 monthly instalments. The connected load of the party, including this 9 KW UAL, was 17 KW. But the appellant did not submit the application for regularizing the UAL of 9 KW in 11/2006 or any time. The party has not produced any evidence, of application fees paid for the same. KSEB has not collected any additional cash deposit as per rules, for regularisation of additional load. The fixed charges for 8 KW (sanctioned load) at normal rate and 9 KW UAL at 1.5 times the rate i.e.  $(8 \text{ KW} \times \text{Rs.}100 + 9 \text{ KW} \times 1.5 \text{ times} \times \text{Rs.}100 = \text{Rs.}2150)$  was being charged from the appellant. The penalization for the 9 KW UAL was continued since the appellant failed to disconnect or regularize the UAL availed.

2). The AE has not re-fixed the fixed charges at Rs.1700/- with effect from 2/09. But by mistake, KSEB omitted to continue the penalization from 2/2009 onwards and due to this, the fixed charges realized from the consumer was only Rs.1700/-, instead of Rs.2150/- with effect from 2/2009.

3).A provisional invoice amounting to Rs.341164/-, along with a notice was issued to the appellant on 05.03.2012, for the short assessment of penal chargers for the UAL of 9 KW, pertaining to the period 7/2007 to 12/2009. This bill was prepared based on the Audit report. The bill, notice and audit report may be marked as exhibit R1, R2 and R3 respectively.

4).It is true that the appellant had submitted an objection before the AE on 14.03.2012 and the AE at the time of filing objection itself informed the appellant that the unauthorized load of 9 KW has not been regularized till date and directed to initiate action for regularizing the same urgently. But the appellant approached the Hon CGRF, Kottarakkara and filed petition on 09.04.2012. The party has not filed any evidence of regularization of 9 KW UAL, like fees or additional cash deposit there.

6).The appellant had lodged a complaint dated 04.04.2012 and the respondent has explained about the bill and instructed to regularize the UAL. But the appellant failed to take any action.

7).The appellant filed Petition N. OP 727/12 before the Hon CGRF and the Forum has issued order dated 02.05.2012, holding that "the complaint is devoid of merit" and accordingly dismissed it.

8).The respondent has not yet approved or regularized the UAL of 9 KW, but by mistake the penal charges were discontinued from the regular monthly bills with effect from 2/2009. The penal bill for the UAL availed will be continued till regularization or disconnection of the same and report.

9).The audit party of KSEB has included electricity duty as per rule. As per the KSEB Circular dated 14.6.2010 of the Secretary, the electricity duty for penal charges can be exempted only with effect from 16.04.2010 onwards. The copy of the circular dated 16.04.2010 may be marked as exhibit R4. Hence the appellant is liable to pay the electricity duty.

Considering the above facts the Hon State Electricity Ombudsman may please direct the appellant to remit the short assessment bill on penal charges for Rs.3, 41, 164/- with surcharge.

Analysis and Findings: -

The Hearing of the Case was conducted on 31.10.2012 in my chamber at Edappally, and Mr. K.P. Rajeevan, learned Advocate for the appellant and Mr. V Vijayakumar, Asst. Exe. Engineer, Electrical Sub Division, Varkala, represented the Appellant's and Respondent's side respectively. On perusing the Petition of the Appellant, the counter statement of the Respondent, examining the documents and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions, leading to the decisions thereof.

The APTS has conducted a surprise inspection in the consumer's premise on 4.10.2005 and had detected, 9KW electrical Load being connected with KSEB system without its approval. Consequent to this, the consumer was penalized as per rules and it was paid. But the unauthorized additional load (UAL of 9KW) was not removed from the premise or regularized with KSEB system. Instead, the consumer continued to enjoy the UAL by paying the penal charges for the same, from the date of detection in 10/2005 up to 2/2009.

As per rules, when the UAL is detected, it is the duty of KSEB to issue a provisional assessment for the offence with a notice to the consumer, asking to remove the additional load immediately and report facts or submit papers to regularize the UAL within a reasonable time. The rule 51 of KSEB Terms and Conditions of Supply, 2005, states that the UAL should be got regularized by the consumer within a period of 3 months on placing application to the Asst. Exe. Engineer and by paying the required fees like additional security deposit and other charges. In case the consumer neglects the notice, the KSEB can take steps to disconnect the Service connection, if the UAL is found detrimental to the KSEB system. The KSEB states that no disconnection steps were initiated as the consumer preferred to enjoy the UAL by remitting the penal charges and KSEB admitted it.

The consumer does not dispute the fact of connecting 9 KW load, without Board's sanction. The main contention of the appellant is that he had regularized the excess load of 9KW in 11/2006. But KSEB denies the consumer's claim and further argues that it has neither received any 'Installation Wiring completion report' of the UAL, for regularizing it nor the consumer has paid any fees for the same, at Electrical Section, Varkala. The consumer also failed to produce any documentary proof of having paid the required fees. A notice dated 25.11.2005 of the AE was seen served on the consumer asking the party for regularization of UAL and it is not disputed by the appellant.

The Audit party has observed that the penal Fixed Charges has been booked in the bills of the consumer (for using UAL of 9 KW) since 7/2007, but the proportionate energy charges were not claimed in the same bills, issued for the period of 7/2007 to 12/2009 and hence has to be claimed as per rules. Now the dispute is, over the short assessment bill dated 5.3.2012 for Rs.3,41,164/-, consequent to the said Audit report. The respondent states that proportionate energy charges were omitted by mistake, while preparing the penal bills of the consumer, for the period of 7/2007 to 12/2009. It is argued that as per the provisions of IE Act, 2003, amended with effect from 15.6.2007, the penalty for UAL availed, was made at two times the applicable tariff, which means both on Fixed charges and energy charges (EC) based on the consumption, proportionate to the UAL

connected. Based on the audit observation, the KSEB made the reassessment bill and issued to the consumer to recover the revenue loss occurred to KSEB.

*The first question to be decided is, 'whether the rules permit the Licensee to penalize the consumer, till the period of regularization of the unauthorized additional load (UAL)?.*

The procedure to be followed in cases of UAL is detailed under Regulation 51 of KSEB T & C of Supply, 2005, which reads; *"Where a LT consumer exceeds the connected load and/or resorts to UAL and if the connected load exceeds 100KVA, the UAL shall be disconnected by the consumer within 24 hours of detection of the unauthorized load by the Board's officers or take action to regularize the UAL. If he fails to disconnect the UAL within the time stipulated, the power supply to the premise shall be disconnected after the expiry of 24 h..."*. Further, Regulation 51 (4) says *"In case of Low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding UAL, the procedure stated in clause 50 (1) shall be applicable. The UAL should be got regularized by the consumer within a period of 3 months on application to the Asst. Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Asst. Exe. Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit"*. This clause clearly states the steps to be initiated after the detection of UAL in the premises of the consumer and also make it clear that the KSEB can raise the penal bills, for the UAL connected, till the time the UAL is removed or regularized.

The respondent relied upon Section 24 (5) of the Electricity Supply code 2005, to make the short assessment bill claims and argues that no limitation is envisaged under this section. The argument of the appellant regarding the Limitation of the bill period of two years, as stated in section 56 (2) of the IE Act 2003, would run from the date when such a bill is raised against consumption of electrical energy and would 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. The 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). In our case, the short assessment bill was dated 5.3.2012 and I am of the view that the argument of appellant that the claim is time barred under Section 56 (2) of Electricity Act, 2003, is not sustainable.

The appellant has claimed that she had regularized the UAL in 11/2006, but failed to produce any documentary evidence to suggest, he has paid the fees like, additional Security Deposit, estimated cost for connecting additional load, Test fee etc. to KSEB, for regularization of additional load. The appellant does not have a contention that she paid the required fees for regularizing the UAL of 9 KW. Further, the KSEB has collected penal fixed charges from the consumer continuously, from 10/ 2005 till 01/2009 @ Rs.2150/- and thereafter collected Rs. 1700/- as fixed charge for 17 KW. The Board has admitted that it was a mistake in discontinuing the penalization after 1/2009 onwards and it occurred due to oversight. The respondent has not complied with the direction of

the Audit party to ascertain whether the consumer's UAL has been removed or regularized. From the above facts, it is revealed that the respondent has not followed the correct procedures in penalizing its consumer. The principles of natural justice imply to maintain procedural fairness from KSEB side as well. Hence the idea for continued penalization of the party after 2/2009 is not found admissible, without a fresh site inspection and preparation of mahazar, noting the anomalies if any, found.

In this case, the KSEB continued with the penalization and collection of the same till 01/2009, by including in the regular monthly bills. It is noted that the KSEB was levying the penal charges at 1 ½ times, on the 'Fixed charges of UAL' only, as it was the prevailing rule till 15.06. 2007, when it was amended to two times the Tariff rate, on both Fixed and Energy charges, as the tariff is composed on the 'two part tariff' principle. For imposing the penalty on energy charges the total energy is apportioned in proportion to the additional load detected and penalty is imposed for that part of energy which is assumed to be consumed on the portion of UAL connected. The Hon Commission while disposing the Petition No.DP/75/2009 has held that; "the difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty."

The consumer had obtained the electric connection on 5.11.2003 and the Meter readings noted down in the Register subsequently for a few months are listed below. (The MR from 11/2003 to 3/2004 is not furnished by KSEB).

<u>Month /year</u>	<u>Meter reading</u>	<u>Month /year</u>	<u>Meter reading</u>
04/2004	4333	02/2005	12224
06/2004	5849	04/2005	15447
08/2004	6690	06/2005	17495
10/2004	7960	08/2005	18476
12/2004	9900	10/2005	20247

The average energy consumption of the consumer, for the last one year period, prior to detection of UAL of 9KW in 10/2005, i.e. during the period 10/2004 to 10/2005, when the consumer was supposed to be using excess load than the sanctioned load was;  $(20247 - 7960)/12 = 1024$  units per month. Similarly, the average energy Consumption during the period, just prior to adding the UAL, say, for the period of 6 months from 4/2004 to 10/2004 =  $(7960 - 4333)/6 = 605$  units per month.

Therefore the difference between the two, is the proportionate increase in consumption due to the availing of UAL of 9 KW i.e.  $(1024 - 605) = 419$  units per month.

DECISION: -

From the analysis done and the findings and conclusions arrived at, which are detailed above, I take the following decisions.

The appellant was found on inspection done in 10/2005, as having connected an additional Electrical load of 9 KW as unauthorized additional load, in addition to her sanctioned load of 8 KW. This UAL was not removed from the KSEB system nor was it regularized. But the UAL of 9 KW was seen enjoyed by

the consumer by paying a part of the penal charges (fixed charges only) till 2/2009. The appellant's argument that she regularized the UAL, subsequent to inspection, in 11/2006 is not proved and no document was produced suggesting payment of fees and ACD, as required by rules for regularization of additional load. Hence the consumer is bound to pay the penal charges (as per clause 51 of KSEB T & C of Supply, 2005), for connecting UAL till it is regularized. But the consumer was seen paying the penal charges for the UAL up to 2/2009 only. Hence the short assessment bill raised against the consumer shall be limited up to 2/2009 and the respondent shall revise the said bill as follows;

(i) The fixed charges for 9KW UAL shall be levied, at two times the tariff rate, from 15.6.2007 to 2/2009. The respondent shall verify the amount already collected for this period and only the difference is payable by the consumer on this account.

(ii) The proportionate energy, for the UAL of 9 KW, for the period from 7/2007 to 2/2009 (20 months), is determined as (419 units X 20 months) = 8380 units, based on the decision of the Hon Commission in the Petition No. DP/75/2009, referred above. The corresponding energy charges for this proportionate energy of 8380 units is also found payable by the consumer.

(iii) No electricity duty is payable by the consumer for the penal charges levied.

The respondent is directed to revise the penal bill issued as stated above and the consumer shall be given 30 days' time (Due date of Bill) to make the payment. No further penalization shall be continued after 2/2009. But the consumer has to either regularize the UAL of 9 KW or remove the same forthwith and intimate the respondent the present connected load, by filing a report through a Licensed wiring Contractor and remit the required fees (if required), within 30 days of the receipt of this order. In case the consumer does not submit the Papers as above, the respondent may inspect the premise and proceed with actions as per Law, if the irregularities are seen continuing there.

Having concluded and decided as above, it is ordered accordingly. The appeal Petition filed by the appellant is allowed to the extent it is ordered. The related CGRF order dated 2.5.2012 in OP No. 727/2012 of CGRF, Kottarakkara, is set aside. No order on costs. Dated the 15<sup>th</sup> of May, 2013.

Electricity Ombudsman.

Ref. No. P/ 287/ 2012/ 1750/ Dated 15.05.2013.

- Forwarded to
- 1). Smt. Sheeda Dharmaseelan,  
M/S.Hotel Green Palace,Cliff Top, Near Helipad, Varkala-695 141.
  - 2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard, Varkala-695 141.
- Copy to:
- (1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
  - (2). The Secretary, KSEBoard,  
Vydyuthibhavanam, Pattom, Thiruvananthapura-4
  - (3). The Chairperson, Consumer Grievance Redressal Forum, KSEB, Kottarakkara.