

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/305/2012.

(Present: T.P. Vivekanandan)

Appellant : 1). Sri. Joseph VP,
Mattethara, Koorkakalayil,
Illickal, Thiruvapu,
Kiliroor North P O, Kottayam Dt.
2). Sri. Insan,
Koorkakalayil, Illickal,
Kiliroor North P O, Kottayam Dt.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Gandhi Nagar, Kottayam.

ORDER.

Back ground of the case: -

The 2nd appellant is consumer No.9037 of Electrical Section, Kumarakom, and was under LTVII A (commercial) tariff up to 10/2008, as he was running a provisional store in a shop, as the tenant of the 1st appellant. In year 2008, by mistake the tariff was changed to industrial LT IV, a lower tariff, by KSEB and the party remained in the same till 2/2012 and has paid the bills accordingly all these disputed period. While being so, the mistake was traced out and rectified the same, thus the tariff was reverted to LT VIIA again with effect from 3/2012 and KSEB issued a short assessment bill for Rs.39,556/- on 2.5.2012, for the recovery of revenue loss (difference in tariff rate) occurred to KSEB during the period of 11/2008 to 2/2012. The consumer is also of the view that his eligible tariff was LT VII A –commercial and not LTIV-industrial. The KSEB says that the previous bills are to be revised accordingly. The appellant version is that he has paid all the bills issued to him without default and hence the fault, if any, is on the KSEB's side and he being a small businessman is unable to pay such a large amount in one time payment. He filed petition before CGRF, Kottarakara, vide OP No. 774/2012 which was dismissed by order dated 28.07.2012 and being aggrieved by it, he has filed the Appeal Petition before this authority.

Argument of the Appellant : -

The 1st appellant is the owner and consumer of KSEB with No. 9037 under LT IV Tariff. The 2nd appellant is the tenant of the premise and is conducting a provisional store there for the last four years. All the bills issued to him were paid without default and the meter reader visits the premise regularly for taking the meter readings. While so, KSEB issued a short assessment bill for Rs. 39556/- on 2.5.2012 pertaining to the period 11/2008 to 2/2012, for the reason that the Audit pointed out that the consumer belonged to LT VIIA tariff and not to LT IV. Since KSEB

declined to accept the monthly bill of 6/2012 for the reason that he has not remitted the arrear bill raised against him, his electricity dues piled up and fears it may lead to disconnection. It is alleged by the appellant that KSEB has threatened him with disconnection of supply and as a petty businessman; the appellant was unable to pay such a huge amount. The party contends that all the bills, under LTIV tariff issued to him, were not due to his fault and so he is not liable to pay the short assessment bill. The appellant sought to quash the impugned bill.

The respondent filed a version, that the appellant is consuming energy for commercial use from 11/2006 onwards, from the industrial -LTIV tariff connection allotted to the 1st appellant. By mistake the consumer was billed under LT IV from 11/2008 to 2/2012 and the lapse of the concerned official is admitted by KSEB. This mistake was identified in 2/2012 and accordingly the bill was made under LT VII A tariff and a short assessment bill amounting to Rs.39556/-, for the period of 11/2008 to 2/2012 was issued to him. The bill issued is as per rules and KSEB has the right to realize the sum due from the consumer sustained due to the wrong fixing of tariff.

The CGRF heard the appellants and the respondent on 28.07.2012. Though the Forum was convinced about the illegality, the Forum upheld the bill and directed the appellants to pay the amount in installments vide order dated 09.08.2012 which is highly discriminatory, arbitrary and illegal. In order to wreck vengeance, the Board officials issued another bill on 07.07.2012 and disconnected the electric connection also. Hence he prefer this appeal on the following;

- 1). Under the provision of Electricity Act and the regulations relating to supply of electrical energy, the appellants are not liable to make payment of any amount beyond the period of 6 months preceeding from the last day of consumption or the disconnection of the service. Hence the short assessment made by KSEB is in violation of the Electricity Act and Rules.
- 2).The total consumption of energy of the appellants during the period from 11/08 to 2/2012 is less than the total energy allotted to him during the above period. But the Board is not giving any consideration to that on the basis that unused quota of energy of a particular month is not permitted to be carried over to the next month. This has caused serious prejudice to appellant. He was never intimated the quota of electricity fixed for his consumption during the period in question. Though the above fact was highlighted by the appellant in the petition, the forum has not at all adverted to that, while passing the impugned order. In fact at the time of hearing, the respondent was not able to show any material to disprove the contention of the appellant that no notice or information was given to him fixing his monthly quota or tariff applicable to them.
- 3).The calculation made in the impugned bill and the amount arrived at therein as the liability of the appellant, is having the effect of penalizing the appellant twice for the same cause of action. The demand made as per impugned bill dated 05.06.2012 is irrational and arbitrary and was issued demanding charges for the supply of electrical energy during 11/08 to 2/12. For the very same period there was payment done by the appellants, as per the amount demanded in the bills, which contained normal rate for the energy consumed. The department was satisfied for the demand and the payment based on the bills. Now the demand is made by way of short assessment. There is no provision in the Electricity Act and Rules framed there under to make such a demand as if there is escaped assessment and liability for payment based on the said bill. The action of the respondents in this regard is totally without jurisdiction and void.

4).The KSEB being a statutory body is expected to be fair and reasonable in its dealings with the consumers and the public. But quite contrary to the expectation we have passed, annexure A1 bill and the impugned order in an arbitrary and discriminatory manner, which has caused serious prejudice to the appellants.

In fact, the appellants are being penalized for the negligence and laches occurred on the part of the officers concerned of KSEB. The bills issued till date were nomenclature as LT IV instead of VII A tariff which is serious mistake on the part of the officials.

There is no provision in the Electricity Act & Rules which enables the respondents to realize charge for the consumption of energy beyond six months.

To declare that the short assessment bill and the consequential demand made by the licensee, the KSEBoard is illegal and unauthorized as there is no negligence on the part of the appellants to pay any charge for electricity.

During Hearing on 27.3.2013, the appellant expressed willingness to pay in 25 installments.

Argument of the Respondent: -

The appellants have approached this Forum against the order dated 10.09.2012 of CGRF, Kottarakkara in OP No.788/2012 and OP No.774/2012 dated 29.07.2012. All averments in the appeal are denied except those which are specifically admitted hereunder.

1).The appeal is bad for non-jointer of necessary parties since, no principal officer of Licensee, the KSEB, has been made a party to the proceedings. On this ground alone the appeal is liable to be dismissed and it is prayed accordingly.

2). Considering the nature of activity going on in the premises, the consumer No.9037 of Electrical Section, Kumarakom, comes under LT VII A tariff and energy charges were collected accordingly up to 10/2008. But from 11/2008, by mistake the said service connection was billed under LT IV tariff, a category having lesser rate per unit consumed. The mistake was traced in 2/2012 and immediately, the connection was converted into LT VIIA tariff. For the under billing occurred during the intervening period, a bill for Rs.39556/- was prepared and served. The said amount is the difference in tariff rate only and the CGRF rightly found the bill as sustainable and disposed the complaint. The appellants are also fully convinced of the fact that they have remitted a lesser amount than what ought to have been paid because of the purpose for which the energy is consumed as in the case of similar consumers, have approached the Forum purely on an experimental basis and hence the disposal made by the said Forum is perfectly valid on legal grounds. Even though inadvertently, the mistake happened on the part of KSEB, it has benefited the appellants. The appellants who were bound to remit the amount earlier, is now required to remit the same belatedly and that also without any interest included. Furthermore, the Hon CGRF is pleased to grant 10 monthly installments. Also it is settled position in law that if there is a mistake in the categorization or there is an under billing, It is always open to KSEB the Distribution Licensee to rectify their mistake and to demand proper charges due from the consumer. Therefore, it can be seen that the findings of the CGRF is perfectly in order and hence the appellant is bound to honor the bill.

3).The averment of the appellant is that, it is to wreck vengeance, another bill for Rs.27, 011/-, which was issued is not correct and hence denied. The premises of service connection No: 9037 was inspected on 06.07.2012 by the Assessing officer as per section 126 (6) of Electricity Act,

2003 i.e. the Assistant Engineer, Electrical Section, Kumarakom. It was found that the consumer has enhanced the connected load unauthorisely. Thereon the AE reached the conclusion that the consumer is indulging in unauthorized use of electricity and accordingly was provisionally assessed for the same, under section 126 (1) of the said Act and served the demand. In these circumstances, the remedy available to the consumer is to file objection against the provisional assessment before the assessing officer. He is also having every right to prefer appeal before the appellate authority under section 127, once the final order is passed by the AE. Further, the Hon'ble Supreme Court was pleased to conclude as follows.

'Whether the consumer commits the breach of the terms of the Agreement, regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be "in blame and under liability" with the ambit and scope of Sec. 126 of the IE Act, 2003. The expression "unauthorized use of electricity" means as appearing in Sec.126 of 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under explanation (b) (iv) to section 126 of the 2003 Act.

In the light of the facts submitted above, it can be seen that none of the grounds raised by the appellant are sustainable either under law or on facts. The alleged grounds like, (i) that the appellant had consumed less energy than the total energy allotted to him and the Board has not considered the said aspect, (ii) that the appellants never intimated the quota of electricity ; etc. are all utter falsehood having no relation whatsoever with reality. As submitted above, because of the under-billing the appellant has gained and not the licensee. In the circumstance, the appellant is not entitled to the reliefs prayed for. This Hon Forum is humbly requested to dismiss the appeal recording the above submitted facts.

Analysis and Findings: -

The Hearing of the case was conducted in my chamber at Edappally, Kochi on 27.03.2013. Sri. Insan, the 2nd appellant and his counsel, Sri. UR Harshakumar represented for the appellant and for the opposite side, Sri. George Joseph, AEE, Gandhinagar has appeared. On perusing the Appeal Petition, the counter of the Respondent, the documents submitted 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 2nd appellant does not dispute the fact that he is running a provisional store and as such the applicable tariff to Shop (business activity) is commercial tariff only. He is a tenant of the shop and his main contention is that he paid all the bills issued by KSEB and hence even if there is a wrong fixation of tariff, it was not due to his fault and as such he is not liable to pay any short assessment bill preferred on wrong fixation of tariff, a mistake that was detected later. This argument cannot be accepted, as mistakes and omissions are likely to happen sometimes in every sphere of life and if it is established that it has occurred, it has to be set right. Whether the beneficiary is the Licensee or the consumer, justice has to prevail. As per clause 24(5) of Electricity Supply code; "if the Licensee establishes that it has under charged the consumer either by review or otherwise, the Licensee may recover the amount under charged from the consumer by issuing a bill". Hence it is clear that, there is nothing illegal or arbitrary, in the

action of respondent in claiming an 'under charged' amount from a consumer, by preferring a short assessment bill to recover the same.

Similarly, the claim of bar on Limitation under Section 56(2) of IE Act, 2003, is not applicable here, as the bill was prepared in 5/2012 and then only the sum became first 'due' and as such the bar of limitation starts from that date only (unless it is not shown continuously in the subsequent bills issued, incorporating the amount as arrears pending).

Decision :-

From the analysis done and the findings arrived at, which is detailed above, I take the following decision.

The consumer does not dispute the fact, that his eligible tariff was LT VII A- commercial, during the disputed period of 11/2008 to 2/2012. It was a mistake from the side of KSEB which is also agreed by the appellant. If it was proved that there was a genuine case of 'under charging' of the consumer, the Licensee is empowered to claim the same as per Clause 24(5) of Electricity Supply Code, 2005. Moreover, the consumer has agreed in the Hearing to pay the bill in installments, as he is a small business man, which seems to me as reasonable and justifiable.

The action of the respondent to raise the short assessment bill for Rs. 39, 566/-, pertaining to the period 11/2008 to 2/2012, towards the undercharged amount from the consumer owing to wrong fixation of tariff, is decided as maintainable and hence payable by the consumer. The Party shall be allowed 20 installments to pay the disputed bill amount. No interest or surcharge is payable by the consumer during the Petition pending period before the CGRF and this Forum and up to 30th day of this order, which is taken as the revised 'Due date' of the bill. The Party (consumer) has to pay the 1st installment before the 'due date' and all the subsequent installments will carry interest from the 'due date' to the day of payment. The respondent is directed to issue, an installment allotment proceedings to the appellant, specifying the revised due date and the installment dates, as per this order.

The order in Petition No. OP No. 774/2012 dated 28.7. 2012 of CGRF, Kottarakkara is upheld except the number of installments allowed and the applicable interest for the said installments.

The appellant's complaint against the penal bill raised subsequent to the surprise inspection of his premise and detection of unauthorized additional load (UAL) under Section 126 of IE Act is beyond the scope of this Forum. Any complaint on such matters (charges booked under Sec. 126 of IE Act, 2003) are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1) (f)(vii)(1) of the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. The Hon High Court has also made it clear that, when there is specific provisions in the Act itself, to hear such Cases by designated Appellate Authority (the Deputy Chief Engineer), the same are excluded from the purview of Ombudsman. Hence I decide that the Appeal Petition filed before this Forum on the specific case against the penal bill of Rs. 27011/-, filed by the appellant in the same Petition is not maintainable.

The order of CGRF, Kottarakkara, in OP No. 788/2012 dated 24th August, 2012, is therefore upheld by this Authority. However, the respondent may issue suitable installments, say up to 20 installments in this case also, if requested by the appellant.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is allowed to the extent ordered and stands disposed of. No order on costs.
Dated the 21st of May, 2013,

Electricity Ombudsman

Ref. No. P/ 305/ 2012/ Dated

Forwarded to: : 1). Sri. Joseph VP,
Mattethara, Koorkakalayil,
Illickal, Thiruvarpu, Kiliroor North P O, Kottayam Dt.
: 2). Sri. Insan,
Koorkakalayil, Illickal, Kiliroor North P O, Kottayam Dt.
: 3). The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Gandhi Nagar, Kottayam.

Copy to: 1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB,
Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power house Bldg, Cemetery mukku, Ernakulum-682 018.