

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/ 301/ 2012.

(Present: T.P. Vivekanandan)

Appellant : Sri.Biju T Nair,
Indus Towers Ltd, Vankarath Towers,
8th Floor, NH Bypass, Palarivattom, KOCHI-682 024.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Sulthanbatheri, Wayanad (DT).

ORDER.

Background of the Case: -

The appellant is electricity consumer No. 15212 under Electrical Section, Meenangadi and the sanctioned connected load was 23 KW under LT VIIA tariff. The appellant submitted application for additional load of 11 KW on 9.2.2010 and paid Rs.3, 10,500/- for it on 24.6.2011, towards the cost of installing a new 100 KVA transformer. While so, the APTS of KSEB conducted an inspection in the premises on 07.12.2011 and detected 9 KW unauthorized additional load. Hence the consumer was issued a penal bill amounting to Rs.1,36,608/-, charging for the previous 12 months. Aggrieved by the bill, the consumer filed a petition dated 14.12.2011 before the Assistant Engineer. The main contention was, the party has paid Rs.310500/- as OYEC, for installing a T'rfr and associated works on 24.6.2011 and the work was reported as completed in 12/2011 and additional load was wired for inspection for giving completion report. Hence the additional load was connected only in Dec. 2011. The AE issued the final order on 31.12.2011 confirming the provisional bill as the consumer failed to attend the hearing scheduled on 30.12.2011.

Thereupon the party filed an appeal under Section 127 of Electricity Act, which was disposed of, by the Dy. Chief Engineer, Electrical Circle, Kalpetta, by upholding the decision of the AE, on the ground that the appeal is time barred. Being not satisfied with the decision of the Deputy Chief Engineer, the petitioner filed a complaint before the CGRF. The CGRF refused to entertain the Petition for want of jurisdiction and accordingly the complaint was dismissed. Still aggrieved by the decision of CGRF, the appellant has submitted this Appeal petition before this Forum.

Argument of the Appellant:

- 1). The appellant had given application for additional load of 11 KW for consumer No: 15212 as a part of expansion from the existing load of 23 KW under Electrical Section, Meenangadi, on 09.02.2011. After the inspection by the Assistant Engineer (AE) in their premises and line, given demand note for Rs.310500/- for installing a 100 KVA transformer after constructing required 11 KV line, and the same was remitted on 24.06.2011.
- 2). The Board had not intimated regarding the completion of the work. On contacting the AE over phone on 4th Dec. 2011, it was directed to give completion reports of wiring done. Subsequently the consumer submitted the completion report on 12.12.2011. But on 07.12.2011, the APTS had inspected the premise and detected 9 KW excess load and a penal bill was issued for Rs.136608/- assessing for the previous twelve months. The appellant had connected the additional load only on 04.12.2011 for submitting the completion report which was submitted to AE on 12.12.2011.
- 3). The appellant has filed a petition before the AE who had given a letter to appear for hearing on 30.12.2011. By the same the appellant had informed inconvenience to appear for hearing on that date and requested to fix another convenient date but not given a chance. Also the AE did not give any final order, so the appellant could not file objection before Dy. Chief Engineer. Even though the appellant had remitted 50% of the amount (Rs.68304/-) on 20.01.2012, and submitted an appeal petition on 27.1.2012, it was not accepted due to unknown reasons. Thus he has sent the appeal to Dy. Chief Engineer by post, which was rejected since the date has expired.
- 4). Subsequently the appellant submitted a petition to CGRF which was dismissed as the case is related to section 126 of Indian Electricity Act 2003, which does not come under their jurisdiction, without considering any facts highlighted in the application.

So the appellant submits the following grievances before the Hon Forum praying reliefs as;

- (i) As the appellant had connected the additional load only on 04.12.2011, penalizing for 12 months is against natural justice and requests the Hon Forum to give necessary direction to revise the penal bill for one month only
- (ii) There is no sudden increase in consumption due to connecting up this load.
- (iii) The AE has inspected the site on 15.03.2011 for giving PA. At that time no additional load was connected and the same is known to AE, otherwise he would have penalized us. From this alone, it can be understood that the period of assessment is made, without any base.

Argument of the Respondent:

- 1). The respondents deny all the allegations and averments in the petition except those that are expressly admitted hereunder. No revenue recovery initiated against the petitioner as alleged.
- 2). The petitioner had availed an electricity connection under LT VII A tariff vide Con. No: 15212. While so, they applied for an additional load of 11 KW on 9.02.2010. Since no power can be given from the existing transformer, a demand notice was issued for installing a new transformer with conversion of existing single phase line. The petitioner paid Rs.310500/- towards the said demand notice on 24.06.2011. The work as above was completed during Sept. 2011. Thereafter the party failed to submit the 'test report' of the Installation wiring, to grant additional load as required by

him. While so, the APTS made an inspection in the premises on 07.12.2011 and found 9 KW UAL and a provisional bill was issued under section 126 of the Electricity Act on 09.12.2011.

3).The petitioner has no sanction to connect such additional load as he failed to submit the test report. Therefore the connecting of the additional load is unauthorized. Thereafter on 12.12.2011 the consumer regularized his 'connected load' by submitting test report together with inspection fee. The petitioner paid required OYEC on 23.12.2011 and hence he is not entitled for any reliefs.

4). The Petitioner filed objection to provisional assessment and he was asked to attend personal hearing on 24.12.2011. But he abstained from the same and hence the provisional assessment became final. The contra averments in the petition are cooked up for the purpose of the case.

5). The consumption pattern of the consumer after 23.12.2011 and before 23.12.2011 also proves that the period of assessment is correct.

6). During the process of allocation of additional power it is not compulsorily required to inspect the premises of the consumer, but only after the submission of the completion report.

7). The consumer submitted the 'completion report' only on 12.12.2011 i.e. three days after the APTS inspection conducted on the site. The provisional bill was issued for the UAL availed. The additional load was sanctioned only on 23.12.2011 only and the PA process was over before that.

8). The respondent submits that the Hon Electricity Ombudsman has no jurisdiction to entertain the above case. Regulation 2(f)(vii)(1) of the KSERC (CGRF and Electricity Ombudsman) Regulations 2005 is clear to this aspect. This position was upheld by the Hon High Court of Kerala in WA No.52 of 2011 as reported in 2011 (1) KHC page 457.

9). The respondent requests to dismiss the appeal of the petitioner.

Analysis and Findings: -

The Hearing of the Case was done on 19.3.2013 in my chamber at Edappally and both parties were present. The appellant was represented by Sri. Marceline Paul and Anson Antony and the opposite side by Sri. Paulachan V O, the AEE of Electrical Sub Division, Sulthan Bathery. They have argued the case on the lines stated above. On perusing the Petition, the counter statement of the respondent, the documents attached and considering all the facts and circumstances of the case, I come to the following findings leading to the decisions.

The following issues have been raised by the appellant in this appeal:

(i)The additional load has been connected only on 4/12/2011 and hence penalizing for 12 months is against natural justice. (ii). Due to this additional load, there was no increase in consumption.

The appellant challenges the period of penalization for 12 months and according to him the UAL was connected only on 4/12/2011, as a part of wiring of the installation, to submit the papers to KSEB. To substantiate this argument, he has produced the details of consumption during 2010, 2011 and 2012 which is as follows.

| | | |
|----------------|---------------|---------------|
| 01/2010 – 3370 | 1/2011 – 4280 | 1/2012 – 4386 |
| 02/2010 – 4790 | 2/2011 – 3963 | 2/2012 – 4352 |
| 03/2010 – 4343 | 3/2011 – 3864 | 3/2012 – 3868 |
| 04/2010 – 4598 | 4/2011 – 4586 | 4/2012 – 4561 |

| | | |
|------------------------|--|------------------------|
| 05/2010 – 3830 | 5/2011 – 4350 | 5/2012 – 4582 |
| 06/2010 – 3813 | 6/2011 – 4566 | 6/2012 – 4080 |
| 07/2010 – 4960 - | 7/2011 – 4454 | 7/2012 – 4960 |
| 08/2010 – 4474 | 8/2011 – 4175 | 8/2012 – 5180 |
| 09/2010 – 4511 | 9/2011 – 4684 | <u>9/2012 – 4774</u> |
| 10/2010 – 4032 | 10/2011 – 3535 | Average = 4526.7 units |
| 11/2010 – 4854 | 11/2011 – 4289 | |
| <u>12/2010 – 4150</u> | <u>12/2011 – 4051</u> – APTS inspection. | |
| Average = 4310.4 units | Average = 4233.0 units | |

The Penal charges provisionally assessed for previous 12 months of 1/2011 to 12/2011.

The energy consumption pattern of the consumer, for the period 1/2010 to 9/2012, does not show any appreciable rise in energy use, all through out the period. During the year 2010, the average energy consumption per month was 4310 units and for the year 2011, it was 4233 units and for the first 9 months of the year 2012, it was found as 4527 units. Hence it is confirmed that, there is consistency in energy consumed by the appellant and their contention of, connecting redundancy of load was to meet any sudden failure of equipment, cannot be ruled out. Therefore the argument of the respondent that the energy consumption pattern of the consumer proves that he has added excess load, at least for the previous 12 months of APTS inspection and has increased the energy consumption, is not found any merit and hence not sustainable.

(iii).The AE inspected the site on 15.3.2011 for giving PA and no additional load was found at that time, otherwise the penalization should have been recommended by the AE at that time. Regarding this contention, the respondent has not denied or admitted the statement, but only given an explanation stating no such inspection is required before completion of the work.

(iv).The appellant was penalized under Section 126 of the Electricity Act 2003. The respondent contended that the CGRF and the Ombudsman has no jurisdiction to entertain cases comes under section 126, as per Regulation 2(f)(vii)(1) of the KSERC(CGRF &EO) 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.

In this case the appellant has raised some important points on denial of natural justice by not allowing a hearing to the petitioner by the assessing officer and then by the appellate authority. Since the party has not turned up for hearing due to some inconveniences, the assessing officer confirmed the provisional assessment bill, in the next day itself. This does not appear to me as correct. Similarly, the appellate authority, the Deputy Chief Engineer rejected the appeal since it was time barred. But here also, this was done without giving an opportunity of the consumer being heard to explain such cause for delay for filing appeal petition, even though half of the penal sum was remitted by the consumer in time, as per rules. It is also alleged that the Dy.CE (Appellate Authority) did not accept the petition and hence the consumer was forced to send it by Post.

The Section 126 (3) gives the details of procedures to be followed on provisional assessment order, which reads as follows;

“126(3) The person, on whom an order has been served under sub section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after according a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person”. Moreover, it is the responsibility of the respondent to mention in the final bill the right of the consumer for preferring an appeal under section 127 of IE Act. Section 127(3) envisages the right of the consumer for providing a reasonable opportunity of hearing before disposal of the case, which reads as follows.

Sec. 127(3) *“The appellate authority referred to in sub section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant”.*

In a similar case, the Division bench of the Hon High Court of WB, reported in 2009 KHC 4166: 2009(2) has held that the party deserves an opportunity for hearing, even if it is a case of delay.

Hence, I feel that there was a procedural lapse on the part of AE, Meenangadi (Assessing officer) in not giving a 2nd chance of hearing the objection filed by the consumer when he requested for an adjournment of Hearing and also by the Dy. CE, in rejecting the Appeal Petition without giving an opportunity to the consumer being heard.

DECISION: -

The Order of Member (Distribution) of KSEB, dated 07.02.2011, produced as document by the appellant is applicable to all identical cases and is not limited to any particular group of consumers. The appellant has remitted the required estimate cost of amount, for installing a Transformer to cater his demand of additional load in 6/2011. As per Electricity Supply Code, 2005, Regulation 8 (2) (c) & (3) (c) -Time frame for providing supply, the Board has to finish the work with in a period of maximum two months i.e. 2 months for the completion of a 11/0.4 KV Substation (Transformer) and 30 days for the LT line works, when the works are done simultaneously or say 3 months if the works are done in sequence. Here the respondent does not explain why no notice of completion of the work was issued to consumer, if it was completed in Sept. 2011, and had they issued a notice, they could have demanded Minimum/ Fixed charges after the prescribed period of 60 days, if the party delays to take the supply, after intimating the completion of work, as per Reg. 10(2) of the Supply Code. In the present case, the respondent has to complete all the works needed to give additional load to party at least by 9/2011. Hence the consumer cannot be billed for the UAL, if any, at least from 9/2011 onwards, as per KSEB's order itself, referred above, which is applicable to the appellant as well.

Any complaint on 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 Ele. Ombudsman) Regulations, 2005. Hence this Appeal Petition is not maintainable before this Forum.

But, I am of the firm opinion that the Asst. Engineer (Assessing Officer) should have given one more chance of hearing the consumer, as he has informed the AE in writing his inconvenience to attend on that date. Even if the party did not attend the hearing without assigning any reason, it is justifiable to give one more chance of hearing, after making sure that the 2nd notice was served on the consumer. The AE did not give a 2nd chance of hearing, even after requested by the appellant, cannot be accepted and I feel the action of the AE was not proper. Similarly, the Dy. CE (Appellate authority) had rejected an Appeal Petition filed by the consumer on the simple reason that it is time barred. It is noted that the consumer has remitted half the sum as required by the Law to prefer an appeal on 20.01.2012, i.e. within the appeal time period and is said to have submitted the Appeal Petition directly on 27.01.2012, but was not entertained and hence sent it by Post.

I consider that both the Assessing officer and the appellate authority has made procedural lapses by denying an opportunity of the consumer being heard, which cannot be justified. Therefore, I am remanding the case to the Assistant Engineer, Meenangadi (Assessing officer), who has to issue fresh notice to the appellant and has to hear and dispose the case, as per law, within one month of this order. Till that date, no coercive action shall be taken by the respondent against the consumer, based on the bill amount under dispute in this Case.

The consumer shall also be eligible for filing an appeal Petition before the appellate authority (concerned Dy. CE), on the final order of the AE, if he desires so. The consumer need not pay any interest for the penal bill amount, for the Petition pending period before the CGRF and this Forum.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is disposed of as it is remanded to the Assessing officer (Asst.Engineer, Meenangadi) for a fresh Hearing and disposal. No order on costs. Dated the 29th of May, 2013,

Electricity Ombudsman

Ref. No. P/ 301/2012/ 1768/ Dated 29.05.2013.

Forwarded to

- 1). Sri. Biju T Nair,
Indus Towers Ltd, Vankarath Towers, 8th Floor, NH Bypass,
Palarivattom, KOCHI-682 024.
- 2). The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Sulthan Batheri, Wayanad (DT).

Copy to: -

- (1). The Secretary, Kerala state Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom,
Thiruvananthapuram-4
- (3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Vidyuthibhavanam, Gandhi Road, Kozhikode.