

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/342/2013

(Present T P Vivekanandan)

APPELLANT : Mr. Raveendran G,
M/s Hotel Sree Aryas,
Bakery Junction, Kottayam

RESPONDENT : The Assistant Executive Engineer
Electrical Sub division, KSEB,
Kottayam Central

ORDER

BACKGROUND OF THE CASE: -

The appellant is commercial consumers vide Cons. No.6536 under Electrical Section, Kottayam Central. The sanctioned load of his electric connection is 15KW under LT VII A tariff. While so, on 23.5.2009, the premise was inspected by KSEB officials and found the connected load is 16 KW against the sanctioned load 15 KW. It was also found that the energy consumption in one phase is not recording in the meter. On the basis of the site mahazar prepared a short assessment provisional dated 27.5.2009 for Rs. 1, 63, 802/- was issued to the consumer. Against this short assessment bill the consumer filed objection before the assessing officer who disposed the petition by enhancing the bill amount to Rs.1,83,493, vide his proceedings dated 13.06.2012. The assessing officer also directed the consumer to file appeal before the Asst. Exe. Engineer and he rejected the appeal filed by the consumer, since the statutory authority to hear the appeal petition against the final order of the assessing officer, under Sec.127 of the Electricity Act is the Deputy Chief Engineer, concerned. Aggrieved by this, the consumer filed petition before the CGRF, Kottarakkara instead of filing appeal before Dy. Chief Engineer concerned. The CGRF disposed the petition, with the following observations in the order in Petition No. 833/2012 dated 3.12.2012.

“In view of the above serious procedural irregularities, and also the continued culpable latches and negligence on the part of concerned officials of the Board, before a final adjudication of the issue involved in this case, it has become necessary, to have the matter, enquired in detail by

appropriate authority of the Board. For this purpose, the entire file along with a copy of this order shall be forwarded to the Secretary, KSEB for necessary action.

Still aggrieved by the decision of CGRF, the appellant has submitted this Appeal petition.

Arguments of the Appellant: -

The appellant has not submitted any specific arguments in his appeal petition, but only sought the following reliefs. He submits that the order of CGRF was a direction to Secretary, KSEB for an enquiry by the authorities of KSEB and there was a direction to the respondent the Asst. Engineer for forwarding the file to the Secretary KSEB. At present the consumer is not interested in any proceedings against KSEB. He is interested in relieving him from all coercive steps from KSEB permanently. Hence requests to issue direction to KSEB and CGRF to close the file and cancel all proceedings in above referred petition.

Arguments of the Respondent: -

- (1). The respondent denies the allegation of the consumer that the provisional bill dated 27.5.2012 was issued without observing the procedures for assessment of unauthorized additional load (UAL) contained in the Kerala Electricity (Provisional Assessment Order) Rule, 2005. The consumer filed an objection before the Asst. Engineer. Subsequently the disputed meter had been tested at TMR, Pallom on 14.9.2009 and as per the test report the B phase of the meter is not recording energy.
- (2). The respondent has admitted that the direction issued in the proceedings dated 13/6/2012 of the Asst. Engineer to file appeal before the AEE was wrong. As per the proceedings, the total bill amount was enhanced to Rs.183493/- i.e, Rs.167793/- as the new short assessment and Rs. 15700/- as penal charges. It is admitted that while calculating the provisional bill an inadvertent mistake has been occurred in computing the proportionate energy charges and also omitted the electricity duty by mistake. This caused the enhancement of final bill amount than the provisional bill.
- (3). As directed by the CGRF, Kottarakkara, in its order in OP No.883/12, the entire file with copy of the order was sent to the Secretary, KSEB on 14.1.2013 and the orders on this is yet to receive. Since it is already made clear in the order that the consumer can approach the Forum again, there is no cause of action to file this petition before this Forum against the Licensee.

Analysis and Findings: -

The hearing of the Case was done on 17.7.2013 & 21.8.2013 in my chamber at Edappally, Kochi. The appellant was absent on 17.7.2013 but has placed request for adjournment to another date over phone. Sri Shaji Sebastian has represented for the appellant and Sri. James George, the Asst. Exe. Engineer, Electrical Sub Division, Kottayam has appeared for the opposite side on 21.8.2013. On examining the Petition, the counter statement of the Respondent, the documents attached, the arguments raised in the hearing and considering the facts and circumstances of the case, this Forum

comes to the following findings and conclusions leading to the decisions, thereof.

The KSEB officials have conducted a surprise inspection in the premises of the consumer on 23.5.2009 and detected 1 KW unauthorized additional load (UAL) and also found that the Meter is not recording energy consumption in one phase. Hence to recover the revenue loss, the party was issued a short assessment bill; (i) assessing the energy escaped from billing on account of non recording of energy in one phase and (ii) to recover penal charges for availing 1 KW extra load under Sec.126.

1.0 The first point is the penal bill raised for the UAL of 1 KW.

1.1 The Clause 51(4) of KSEB T & C of Supply, 2005, reads as follows;

“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 unauthorized additional load, the procedure mentioned in clause 50 (1) shall be applicable”.

Essentially it means that, only if the consumer has exceeded his connected load by 10% than the sanctioned load, then he is liable to be penalized under Sec.126-unauthorized use of electricity, of the Electricity Act, 2003. In this case the sanctioned connected load of the consumer is 15 KW and the unauthorized additional load detected by the inspection team is 1 KW, which does not exceed the 10% of the connected load. Hence, there is no need to book the consumer under Sec.126 of EA 2003 for availing UAL of 1 KW.

1.2 Further, the Clause 51(4) of KSEB T & C of Supply, 2005,) stipulates that when the UAL is detected, the KSEB has to issue a provisional assessment for the anomaly, along with a notice to the consumer, asking to remove the UAL availed or to regularize the same within a reasonable time. If the party opts for regularizing the UAL, then it should be regularized within a period of 3 months on application to the AEE and on paying additional security deposit and other charges as per rules. It is the duty of KSEB to disconnect the service, if not regularized, provided the UAL is found detriment to KSEB's System. Moreover, consumer has to pay the penal charges till the UAL is regularized.

1.3 The appellant has not disputed the fact of UAL detected in his premise and it was regularized on 18.7.2009 by submitting the papers and paying the fees. The appellant was seen penalized for the use of UAL (unauthorized additional load) for the period from 5/08 to 4/09 and since Section 126 of the Electricity Act will not fall under the purview of the CGRF and Electricity Ombudsman, this part is beyond the scope of this Forum and hence this Forum is not entering into its merits. However it is desired that the Assessing officer or the Appellate Authority, as the case may be, may look into Clause 51(4) of KSEB T & C of Supply, 2005, before finally deciding on the issue, as below 10% difference in connected load variation does not, normally, warrant penalization.

2.0 The second issue of raising the short assessment bill during Meter faulty period.

2.1. The provisional short assessment bill issued to the consumer contains an amount, to recover the unrecorded portion of energy due to B-phase fault of the Meter, from 5/08 to 5/09. The procedure

adopted by the Board in issuing a single bill; (i) under Section 126 of the Electricity Act 2003, to realize the penal charges for unauthorized use of electricity and (ii) to recover the charges of the energy escaped from billing due to meter faultiness, does not seem to me as proper, since the Appellate Authority are different. For the Cases coming under Sec. 126 of Electricity Act, 2003, the Dy. Chief Engineer is the designated appellate authority and is debarred from the purview of CGRF and Electricity Ombudsman. But the disputes involving the Meter faultiness and its billing can be raised before the CGRF and the Ombudsman. Hence in this Case, this Forum has decided to look into the Meter fault reassessment portion of the disputed bill excluding the UAL portion.

1.4. The Recorded energy consumption details of the consumer from 5/2006 to 10/2010 is as below;

<u>Month</u>	<u>Energy Consumed</u>	<u>Month</u>	<u>Energy Consumed</u>	<u>Month</u>	<u>Energy Consumed</u>	<u>Month</u>	<u>Energy Consumed</u>
06.05.2006	3187	05.05.2007	3129	05.05.2008	3453	29.04.2009	3171
01.06.2006	3803	02.06.2007	4544	05.06.2008	4176	24.05.2009	Meter Change
01.07.2006	-D/L	03.07.2007	3009	05.07.2008	3361	29.06.2009	2775
01.08.2006	7558/2	02.08.2007	4402	05.08.2008	2833	05.08.2009	3470
31.08.2006	3968	03.09.2007	3122	06.09.2008	3713	31.08.2009	2564
30.09.2006	3662	03.10.2007	3458	06.10.2008	3070	11.10.2009	3024
31.10.2006	3628	05.11.2007	4313	04.11.2008	2866	30.10.2010	2994
30.11.2006	3587	05.12.2007	3674	09.12.2008	2900		
08.01.2007	4784	05.01.2008	4044	04.01.2009	2739		
01.02.2007	RNF	05.02.2008	3418	30.01.2009	2347		
02.03.2007	6228/2	05.03.2008	4459	03.03.2009	3712		
03.04.2007	4539	05.04.2008	3788	31.03.2009	3009		

From the Table above, it is calculated as follows;

(a) The average energy consumption from 5/2006 to 5/2008 (25 months) = 3750 units per month.

In this case the Meter is considered as working in good condition by KSEB.

(b). The average energy consumption from 5/2008 to 4/2009 (12 months) = 3158 units per month.

In this period, KSEB suspects the Meter as faulty (B- phase not recording).

The average short fall in consumption = (3750 – 3158) = 592 units per month.

1.0 Regarding the short assessment bill issued for the meter faulty period, it is noted that the faulty meter of the consumer was changed on 24.5.2009. During hearing, the party argues that the average energy consumption before and after the meter change is almost same. But the Meter Test done at the TMR Lab, Kottayam, confirmed that 1-phase (out of 3) of the Meter was not recording energy in the Meter. From the Meter Reading Table given above it is noted that, the previous 25 month's

average consumption, before the suspected meter fault period i.e. during 5/2006 to 5/2008, is found as 3750 units per month. And the average consumption recorded during the suspected meter faulty period i.e. during 5/2008 to 4/2009 (12 months) was found as 3158 units per month. It is seen that there was a reduction of $(3750 - 3158) = 592$ units per month during this period and this is due to the meter fault, which was detected during KSEB's inspection and later confirmed at the Test of the Meter at Lab. Hence the fact of fault in one phase of the meter is established. The consumer has not disputed the Mahazar prepared during inspection or the Meter test done at the TMR Lab.

DECISION: -

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

(i). The CGRF has heard the parties and pronounced an order on 03.12.2012 in OP No. 833/2012, leaving it to the Secretary, KSEB to enquire into the matter as it found serious lapses on the side of KSEB officials, warranting Board Secretary's intervention, which it considers, is as per Law. As per Reg. 22 (b) of the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, the consumer can approach the Ombudsman, even if the dispute is not decided, with in the time limit of 2 months and the manner specified in the Regulations. Being so, even if the CGRF has failed to answer the questions raised before it, it does not have much significance in this case, as the appeal is filed against the CGRF's order at the upper Forum (Ombudsman). Any decision of the lower court, if aggrieved, can be challenged at the upper Forum. Hence, I am taking decisions as noted below.

(ii). It would be inappropriate for the CGRF and this Forum to make a decision, in view of the fact that a Complaint filed by the appellant falling under Sec.126 of Electricity Act, 2003, are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1)(f)(vii) (1) of KSERC (CGRF and EO) Regulations, 2005. The Hon High Court of Kerala has also made it clear that, when there is specific provisions in the Act itself, to hear such Cases by designated Appellate Authority, the same are excluded from the purview of CGRF. Therefore this Forum does not go into the deep of this dispute regarding the availing of unauthorized additional load (UAL), which falls under Sec.126 of Electricity Act, 2003 and is not taking any decision on the penal bill raised against the UAL availed by the consumer. However, the Assessing Officer is directed to review the penal bill raised for the UAL of 1 KW, by taking into consideration the clause 51(4) of KSEB T & C of Supply, which prevents the penalization for availing less than 10% variation in connected Load, with in 60 days of this order, with an opportunity given to consumer for hearing him.

(iii) Regarding the Meter faulty period reassessment, I notice that in the case of Hotels, most of the electrical devices/equipment in use are single phase operated type and hence, if one phase of energy

meter is found as not recording, it cannot be said that one third energy as being lost in recording. Though the Load is connected in balanced condition in all the 3 phases, it does not mean that the usage of load will also be in balanced manner. Hence the assessment done by KSEB as 50% of the recorded reading is decided as not reasonable in this case.

But, I find appreciable difference in the quantum of energy recorded in the Meter on the energy consumed by the party, prior to the meter faulty period and during the alleged meter faulty period. That is to say, the appellant was seen having recorded an average energy consumption of 3750 units before the Meter faulty period (5/2006 to 5/2008) and that during the meter faulty period (5/2008 to 4/2009) was 3158 units. Hence I decide that the short fall in recording due to fault in one phase of the meter as $(3750 - 3158) = 592$ units per month and accordingly the total short fall in the meter recordings, due to one phase fault is determined as $(592 \text{ units} \times 12 \text{ months}) = 7104$ units, instead of 18949 units assessed by Respondent. Hence I decide that the consumer need be reassessed for 7104 units only for the meter faulty period and the consumer is found liable to pay the same.

The Respondent is directed to revise the bill accordingly with 30 days time given (due date) for making payment. The consumer is eligible up to 12 installments, if requested for, and respondent shall allow the same. No interest is payable by the consumer during the appeal pending period and up to the due date of the revised bill ordered now. The installments, if any allotted, will carry interest from the due date of the revised bill, to the day of its payment, at the ruling rates in KSEB.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is found having merits and is allowed to the extent ordered. The related CGRF's order vide, in OP No. 833/2012 dated 03.12.2012 of the CGRF, Kottarakkara, is set aside.

No order on costs. Dated the 9th of December, 2013.

Electricity Ombudsman.

Ref. No. P / 342 / 2013 / 2099 / Dated 09.12.2013.

Forwarded to : (1). Mr. Raveendran G.
M/s Hotel Sree Aryas, Bakery Junction, Kottayam
: (2). The Assistant Executive Engineer
Electrical Sub division Kottayam Central, KSEB, Kottayam.

Copy to: (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
(2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4
(3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vydyuthibhavanam, Kottarakkara.