

## THE STATE ELECTRICITY OMBUDSMAN

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### APPEAL PETITION NO. P/341/2013.

(Present: T.P. Vivekanandan)

Appellant : Sri.Biju.T.Nair.

M/S. Indus Towers Ltd, 8<sup>th</sup> Floor, Vangarath Towers,  
Palarivattom, Kochi-24.

Respondent : The Assistant Executive Engineer.

Electrical Sub Division, KSEBoard,  
Vytila, Ernakulum.

### ORDER.

#### Background of the Case: -

The appellant is Cons. No. 27256 under Electrical Section, Thrikkakara and the service is given for Mobile Tower usage having commercial tariff. The sanctioned connected load of the consumer was 6 KW and later it was enhanced to 45 KW, as per the request of the Manager, Bharathy Airtel, Ltd. The appellant is a telecom service provider, which manages the telecom infrastructure (mobile tower) of M/s Airtel, M/s Idea Cellular and M/s Vodafone. While so, an inspection conducted by the APTS of the KSEB in the premises of the consumer on 7.6.2010, had detected unauthorized additional load (UAL) of 25 KW. Consequently, the consumer was issued with 3 Nos. of short assessment bills amounting to Rs. 543753/-, Rs.225732/-, and Rs.449253/- respectively, towards the penal assessments for the UAL and the short assessment for meter faulty period. Being aggrieved, the appellant filed petition before the CGRF, Ernakulum on 25.10.2012 and the Forum disposed the petition vide order No. CGRF-CR/Comp.92/2012-13 dated 21/12/12, as follows:

*(a). Petitioner's complaint in respect of the assessment amounting to Rs. 5,43,753/- is without merit and hence dismissed. No interest during the petition period before this Forum.*

*(b). Bill dated 01/10/12 for Rs. 4,49,253/-. Petitioner's meter faulty period to be reassessed for a period of 12 months prior to the meter replacement. Revised bill to be issued within two weeks of receipt of this order. No interest during the petition pending period before this Forum.*

*(c). Petitioner's complaint in respect of assessment amounting to Rs. 2,25,732/- is found to be without merit and hence dismissed. No interest during the petition pending period before this forum.*

Still not satisfied by the decision of the CGRF on (a) and (c) above, the appellant has filed the Appeal petition before this Forum.

**Arguments of the Appellant: -**

(1). The appellant is a telecom infrastructure service provider which manages the Telecom services of M/S.Airtel, M/S.Idea Cellular and M/S.Vodafone as well, as per business arrangements. The subject order is impugned for the appellant regarding the findings of CGRF with respect to bill dated 04.10.2012 for Rs.543753/- and bill dated 01.10.2012 for Rs.225732/-. The demand on one of the bills were on the basis of alleged unauthorized load and the next bill was for alleged short remittance comprising penalty on alleged unauthorized additional load (UAL).

(2). It is submitted that both the bills were issued by the Board without authority as the remittances as per the demand note issued by the Board had been satisfied by the appellant within time and even after more than 6 months as well, the Board has not provided additional load. Appellant preferred a petition before the Member (Distribution) who in turn had specifically ordered that the lapse of the licensee to complete the work and release the connection within a month after receiving the required amount from the applicant, as per section 8 (3) (c) of Electricity Supply Code, 2005.

(3). The above order had been issued by the Board in the wake of complaints by the appellant about improper penalization even after remittance of amount within time by the applicant. Though 9 sites were referred therein as an example, the relief sought was general in nature. Tagging the said order to sites referred as examples alone is malafide on the part of the respondent. The order of the CGRF is apparently incorrect. The CGRF found that the direction issued by Member (Distribution) cannot be treated as a General order and on that basis even after finding that there is lapse on the part of the Board, dismissed the case alleged by the appellant against the impugned bills. At any rate the excess load, if any existed cannot be termed as unauthorized, since the sharing of infrastructure, the basis alleged in the report of the Board for imposing penalty, had been approved by the Board itself. The said position had been concluded by various courts as well. The order is illegal and improper.

(4). Even without the direction of Member, section 8 (3) of Electricity Supply Code 2005 is conclusive. Imposition of penalty is an extreme measure where wrongs are committed by consumers. In a case where the Board itself had committed an omission with glaring magnitude, consumption of additional load by the consumer cannot be subjected to penalty. The Appellant is a Telecom service provider and is an essential service. The unfounded apprehension about damaging the system of KSEBoard by consumption of additional load by appellant is totally misplaced. These aspects were found in favor of the appellant by the Member (Distribution). Therefore imposition of penalty which is extreme step should have been deprecated and set at naught by CGRF in harmony with order of Member (Dist.).

(5). The order of the Member (Dist.) is apparently general in nature. The same is a direction setting the principle applicable in the matter of imposition of penalty. The same lays down the principle and cannot be confined to limited scope and reduced its value, as the same is declaring a genuine principle. The finding of CGRF against the above is highly illegal and incorrect.

(6). The legal position and orders of the Board clearly find the sharing of infrastructure as legal. Sharing of infrastructure has been alleged as reason for additional load. The same as per legal principles cannot be termed as unauthorized and cannot be subjected to penalty as well.

(7). The remittance of amounts by the appellant within time had been admitted and further it was admitted that there were lapses by the Board. The consistent follow up and request for additional load were clearly available on record itself. Avoiding all these aspects the CGRF upheld the imposition of penalty. The same is discriminatory and apparent illegality.

(8). When CGRF itself had found the lapses of respondent, instead of making a passing comment that appellant could demand compensation for delay in work completion as per Supply Code is a further illegality committed by CGRF. Though Forum did not appreciate the grievance of the appellant, it could have ordered the compensation. This further makes the order unsustainable.

**Nature of relief sought for: -**

(i). Set aside the impugned order in complaint No. CGRF-CR/Comp.92/2012-13 dated 21-12-12 to the extent the same is impugned against the appellant.

**Arguments of the Respondent:**

(1). The APTS of KSEB had inspected the premise of the consumer on 07.6.2010 and noted that there was an additional load of 25 KW in the premises. Consequently a penal bill of Rs. 5, 43, 753/-, was served to the consumer for the unauthorized additional load (UAL). The petitioner had remitted the

amount for LE- OYEC for installing a transformer for enhancing the Power demand but the petitioner has no right to install and use the additional load without enhancing the capacity of the transformer. The judgment of Hon Supreme Court in case no: CA- 6508 of 2003, dated 19.8.2003 between Bhilai Rerollers and others Vs Madhya Pradesh Electricity Board, in which it has mentioned the following “Therefore, the respondent –Board is entitled to raise the demand under challenge since such right has been specifically provided for and is part of the conditions for supply and particularly when such drawal of extra load in excess of the *contracted load is bound to throw out of gear the entire supply system undermining its efficiency, efficacy not only causing stress on the installation of the Board but considerably affect other consumers who will experience voltage fluctuations*”. This establishes the right of KSEBoard to penalize the consumer for connecting unauthorized additional load.

(2). The letter of the Member (Distribution) dated 07.02.2011, referred in the petition is pertaining to 9 other sites and is not applicable to this consumer. The said order cannot be generalized for all such cases. As per the prevailing rules a consumer cannot install additional load without the permission of licensee. The payment of LE-OYEC amount cannot be treated as a permit to install the additional load. Hence the penal bill issued is in order and legally binding.

(3). Another bill of Rs.225732/- was also served to the consumer. This bill pertains to the short remittance of current charges for the month of January 11 and March 2011. The balance to be remitted Rs.225732+ surcharge up to 11.10.2012 of Rs.63300/- hence total of Rs.289032/-.

(4). The petitioner have excluded the penal UAL charge while remitting the current charges. The KSEB can penalize the consumer until they regularize the load as pr section 126 of Electricity Act. The party is bound to pay the penal charge for UAL until they regularize the load.

(5). Considering all the above points it is clear that the bills issued by KSEB for unauthorized additional load is legally binding and hence the respondent requests the dismissal of the Petition with direction to the appellant to pay the penal bill.

**Analysis and Findings: -**

The hearing of the Case was done on 21.08.2013, in my Chamber at Edappally, Kochi and the appellant was represented by Sri. Anwar CK, Advocate, and the respondent by Smt. Telsy George, the Asst. Exe. Engineer, Electrical Sub division, Vytilla and they have argued the case, mainly on the lines stated above. On examining the Petition filed by the appellant, the statement of facts of the

Respondent and perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

(1). The appellant was penalized under Sec. 126 of Electricity Act, 2003, for connecting extra load than the sanctioned load. That is to say, consumer had availed 25 KW of unauthorized additional load (UAL), which was detected during the APTS inspection done on 7.6.2010. The appellant had already paid the estimated cost (OYEC charges) for availing the additional load on 22.1.2010, for the work of installing one 100 KVA transformer for obtaining additional load of 39 KW in his premises. There was a long delay from the respondent to complete the works and energize the transformer.

(2). The Clause 8 (1) to (10) of the Electricity Supply Code, 2005, specifies a time frame for providing supply of electricity. Under sub clause 8 (3) (c), if the work involved the installation of 11/0.4 KV (Sub Station) alone, the Licensee has to complete the works and release connection within 2 months after receipt of required amount from the applicant. In this case at hand, it is stated that the Licensee has failed to complete the works and release the connection within two months. Even though there was lapse on the side of the respondent, the consumer is not supposed to connect additional load to the System of KSEB with out its sanction, otherwise there is chance that the whole Electric Supply System may collapse on 'overload' at any time, if consumers resorted to adding extra load indiscriminately. Hence the restriction on the consumers in connecting the additional loads without sanction and have to be continued and abided by the consumers for maintaining the reliability and stability of Electric Supply system.

(3). The Direction given by the Member (Dist.) of KSEB, dated 7.2.2011, produced as document by the appellant is applicable to all identical cases and is not limited to any particular group of consumers, as it is seen addressed to all the Distribution Chief Engineers of KSEB. If a Licensee wants to issue some clarifications or guide lines to its officers, it can do so. But the CGRF and Ombudsman can rely only on the Electricity Act, 2003, and the Electricity Supply Code, 2005 and other Orders or Regulations issued by the Hon Commission (KSERC) for that matter. The orders issued by the Licensee like Member (Dist) are limited with in their organization and the consumer cannot demand it to be enforceable through the Forum. The consumer can approach the CGRF to get implemented the provisions in the EA, 2003, or the Rules and Regulations issued by the Hon Electricity Regulatory Commission only. The consumer cannot ask the CGRF or EO to uphold the decision or orders issued by the Licensee's Officials.

(4).The procedure to be followed in cases of detection of UAL is detailed under clause 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 100 KVA the UAL shall be disconnected by the consumer with in 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 with in the time stipulated, the power supply to the premise shall be disconnected after the expiry of 24 hrs.....”.

(5). Further, clause 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. Executive 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 specifies the steps or procedure to be followed after detection of UAL in the premises of the consumer. It is clear that the Licensee can raise the penal bills against the consumer, for the UAL connected, till the time the UAL is removed or regularized.

(6). Where a consumer has used excess load than sanctioned, it is violation of the T & C of supply, and it would fall under Sec. 126 of the 2003 Act. The Assessing officer has to pass provisional assessment and has to hear objections if any and has to pass final order of assessment, in cases of unauthorized use of electricity. Any dispute or complaints pertaining to such matters are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSEB (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 same are excluded from the purview of Ombudsman.

(7). In case of violation under Sec.126 of the Act, for imposing penalty on the energy charges, the practice is that the total energy consumed is apportioned in proportion to the additional load availed and penalty is imposed for that part of energy which is assumed to be consumed on the portion of UAL connected. But 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". Hence I feel that the appellant need be assessed for the proportionate energy charges using this method only.

DECISION: -

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

(i). The appellant was seen to have remitted the estimate cost, for installing a Transformer, to cater his Power demand (additional load) on 22. 01.2010. As per Electricity Supply Code, 2005, Regulation 8 (2) (c) & (3) (c) –the time frame for providing electric 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 i.e. for the installation of Transformer. Since the work includes the construction of 40 meters of 11 KV OH Line, the time frame allowed, as per rules, is 4 months per KM of Line, which has to be allowed.

(ii). In the present case, the respondent has to complete all the works needed to give additional load to party at least with in 4 months, i.e. by the end of 5/2010. Even if the work is delayed beyond this period, the consumer is not supposed to connect extra load, without the sanction of the Licensee. In case, if the consumer is found connected excess load than the sanctioned load, he is liable to pay the penal charges. The appellant cannot depend on the direction of Member (Dist.) of the licensee to escape from the penalization, because such directions are the internal matters of the Licensee only and cannot be raised before the Forum, as Licensee's ruling is not binding on the CGRF or this Forum.

(iii). Any complaint 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 KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. Here the appellant is seen charged under Sec. 126-Unauthorised use of Electricity. Hence this Appeal Petition is not maintainable before this Forum.

(iv). However, I find that the penal bill raised by the Respondent is against the method ordered by the Hon Commission in DP/75/ 2009, which is produced above. Accordingly, on verifying the bill it is seen that the consumer was billed for  $(74516 \text{ units} \times 25/31) = 60093$  units towards proportionate energy charges. But the average energy consumption (bimonthly) during this period is noted as  $74516 \text{ units} /6 = 12419$  units and the corresponding average, before the disputed period was reported to be 7780 units per bi-month. Hence the 'difference in consumption' due to the availing of 25 KW UAL is found as  $(12419 - 7780) = 4639$  units per bi-month and for one year, it is  $(4639 \times 6) = 27834$  units. Thus the

appellant need be penalised for 27834 units only instead of 60093 units assessed earlier towards the proportionate energy charges. Hence I feel that the appellant shall be reassessed the proportionate energy charges, for this much quantum of energy only, for availing UAL of 25 KW. That is the disputed bills dated 4.10. 2012 for Rs. 5, 43, 753 and the bill of 1/2011 and 3/2011 for Rs. 2,25,732, has to be revised accordingly.

(v). Therefore, I am remanding the case to the Assistant Engineer, Trikkakkara, the Assessing officer, who has to revise bills as suggested above. Further, I direct that the Asst. Engineer (Assessing Officer) should give a chance of hearing the consumer on the revised bill and dispose the case, as per law, within two months of this order. Till that date, no coercive action shall be taken by the KSEB against the consumer, based on the pending penal bill under dispute in this Case. The consumer is also be eligible for filing 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. The interest, if any, will accrue only from the due date of the revised penal bill to the actual date of payment.

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, Trikkakkara) for issuing revised bills as directed. No order on costs. Dated the 24<sup>th</sup> December, 2013,

Electricity Ombudsman.

Ref. No. P/ 341 / 2013 / 2122 / Dated 26.12.2013.

Forwarded to                   1). Sri. Biju T Nair, Indus Towers Ltd,  
  Vankarath Towers, 8<sup>th</sup> Floor, NH Bypass, Palarivattom, KOCHI-682 024.  
2). The Assistant Executive Engineer,  
  Electrical Sub Division, KSEBoard, Vyttila, Ernakulam.

Copy to: -                   (1). The Secretary, Kerala state Electricity Regulatory Commission,  
  KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.  
  (2). The Secretary, KSEBoard,  
  Vydyuthibhavanam, Pattom, Thiruvananthapuram-4 .  
  (3). The Chairperson, Consumer Grievance Redressal Forum, KSEB,  
  Power House Buildings, Kombara, Ernakulam, Cochin. Pin - 682018.