

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/345/2013.

(Present: T.P. Vivekanandan)

APPELLANT : M/s Industrial Engineering Corporation,
Plot No.50, Major Industrial Estate,
South Kalamaserry, Ernakulam- 683109.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board, Kalamaserry, Ernakulam.

ORDER.

Background of the case: -

M/s Industrial Engineering Corporation is a HT industrial consumer with No. HT 7/3988 under Electrical Section, Kalamassery, having a connected load of 386.566 KW, with a contract demand of 100 KVA. While so, a surprise inspection was conducted by the officials of KSEB on 10.9.2012, at the company and detected unauthorized additional load of 110 KVA being used by the party. A site mahazar was prepared by the Assistant Engineer, Kalamassery and its copy was issued to Sri. Biju K. Nair, Managing Partner, who was present during the inspection. Based on the findings of inspection, a provisional bill for Rs. 879878/- was issued to the Firm on, 29.09.2012. Aggrieved by the bill, the consumer filed a Complaint before the CGRF, Ernakulum in 10/2012 and the Forum disposed the same vide Order No. CGRF-CR/Comp/2012-13 dated 03.12.2012. Not satisfied by the decision of CGRF, the appellatant has filed this Appeal Petition.

Argument of the Appellant: -

The appellatant has raised the following arguments in his Appeal Petition filed before this Forum.

- (1). The CGRF had directed the respondent to issue a revised provisional assessment on observing necessary standards. Without considering the direction of the CGRF, the Asst. Engineer has issued the same bill without even calculating the total load as per site mahazar.
- (2). If the load is calculated as per site mahazar, it is within the limit of the approved drawing and sanctioned load which is 386.566 KW. As per the Board order, as explained in CGRF petition stand by load will not be considered in total load.
- (3). The CGRF has not considered the Clause 43 (4) of CEA regulation. Similarly the permission to use 30% additional load in third zone is also not considered.
- (4).The statement filed by the respondent is totally false and misleading. There is no unauthorized or prejudicial use of electricity in the premises. The Site mahazar submitted by respondent admits

that it was energized as per clause 43 (4) of CEA Safety Regulation with the approval/order of Electrical Inspectorate No.2011/EIP dated 06.05.2009. As per clause 31 of CEA Regulation the Inspection by supplier is not a requirement for energizing the load. This was done by legislation to avoid duplication of same work and to give more time to the supplier for concentrating in their job of developing and maintaining an efficient co-ordinate and economical distribution system complying with section 42 of the Act.

(5). The Kerala State Electricity Regulatory Commission (CGRF and Ombudsman) Regulation 2005 is very clear and specific, clause 2 (1) (f) (iii) authorize CGRF to have jurisdiction over charging of price in excess i.e. matters related with tariff. Clause 2 (1) (f) (vii) again generalize the authority of CGRF by extending jurisdiction to any other grievance with which CGRF can check the compliant whether it is related to section 126,135 to 139 and 161 of the Act. It is quite normal and natural for CGRF to have authority to check whether it is related to section 126, 135 to 139 and 161 of the Act, because only in this particular Regulation this restriction is mentioned. The assessing officer is not granted the authority for sorting the compliant. If it is so it will be a severe injustice, because it will give him an opportunity to manipulate and have unlimited control over a poor consumer.

(6). As in the present case and other similar cases, if assessing officer is designed as a person with full authority to define premises, extension, Tariff etc. and to decide up on its sanctity, a lot of consumers will become 'scapegoat' of the concerned officer. Most of the time authorized officer will be a person of lowest rank either a new inexperienced person or a promote without integrity. Hence appeal is within the jurisdiction of Hon CGRF and Ombudsman, to confirm the applicability of unauthorized use.

(7). Other than a calculation statement (provisional) along with a letter (Encl-2), no provisional bill is given. Without provisional bill no action can be initiated against the consumer. As per the letter (Encl.2) 'Provisional assessment is for additional load detected'. No details of load with calculation are given. No proof is given that even if additional load is there it is unauthorized. As per specific and special requirement of CEA safety Regulation with effect from '20th September 2010' clause 43 (4) Inspectorate Approval is sufficient for energize additional load i.e. HT consumer premises.

(8). Even as per the latest tariff order, exceeding the maximum demand than the contract demand is permissible up to 30% in 3rd zone and in all other zones by paying 50% more charges. The party can have excess Maximum demand. Once the maximum demand is exceeded and penal payment made for the same the consumer cannot be penalized because the consumer has already paid for the additional load as per rules and for same mistakes nobody can be punished more than once.

(9). The tabulation of the connected load is as follows as per the Site Mahzar.

1	Seem Welding machine	- 100 KVA ×1	= 100.00 KVA
2	Seem Welding Machine	- 70 KVA×1	= 70.00 KVA
3	Spot Welding	- 30 KVA ×1	= 30.00 KVA
4	Spot Welding	- 10 KV ×2	= <u>20.00 KVA</u>
	TOTAL		= <u>220.00 KVA</u>
	Other loads		= 199.37 KW
	Converting 220 KVA to KW, 220× 0.9		= 198.00 KW
	Total Connected load in KW		= 198 KW+199.37 KW = <u>397.37 KW.</u>

Considering all above facts, the amount to be remitted even if additional load is availed will be Nil.

Further, during the Hearing the appellant raised the following contentions.

- (a). There is no allegation of unauthorized load in the site mahazar dated 10.09.2012, since the Welding machine is used by a change over switch. The Board has issued orders permitting Load using change over switch. There is admission that 70KVA Welding machine is stand by.
- (b). The provisional assessment has not been made nor hearing conducted.
- (c). Whatever indicated on the meter as excess load has been penalized and paid and there is no need for further penalization. The load calculation should be given to the party.
- (d). Where there is contract demand, the same shall be treated as connected load.
- (e) The Electrical Inspectorate assures the quality of Electrical machineries connected.
- (f). The appellant is eligible for refund of excess paid towards demand charges of contract demand.
- (g). KSERC order in DP 75/2012 should be considered.

Reliefs sought for:-

- i) To give an interim direction to the Board not to disconnect the supply.
- ii) To direct AE rework out the load and also consider CEA Regulations while considering and fixing the liability.

Arguments of the Respondent: -

- (1). The appellant is the HT industrial connection Consumer No. HT 7/ 3988, provided to M/s IEC, in the Industrial estate, Kalamasserry, having a sanctioned connected load of 386.566 KW.
- (2). The consumer had given the load details at Electrical Inspectorate, Ernakulum, in which the connected load is shown as 539.42 KVA which is evident that an additional Load of 110 KVA is connected by the consumer. Accordingly a bill was issued to the consumer as per Sec. 126 of Electricity Act, 2003.
- (3). Even though the consumer had obtained sanction from Electrical Inspectorate, the additional load has not been regularized in KSEB.
- (4). As per the clauses No. 14 (a) & (b) of the Agreement executed by the consumer with KSEB prior approval should be obtained for alteration, addition or transfer in writing before doing the work. When no such approval in writing is obtained, the KSEB shall be entitled to cut off supply and also reserve to charge penalty as per Terms and Conditions of supply.
- (5). The respondent submits that all the arguments of the appellant are baseless and the consumer is liable to pay the bill.
- (6). The respondent has issued letter dated 15.02.2013 to approach the Assessing Officer (AO) to file his objections with in 7 days. But the party has not approached the Asst. Engineer (AO) so far.
- (7). There was UAL in the premises and action was taken under section 126 of Electricity Act.

Analysis and Findings: -

The Hearing of the Case was done on 21.8.2013 and 5.12.2013, in my chamber at Edappally, and Mr. Biju K. Nair, Managing partner and Mr. Shaji Sebastian appeared for the appellant side and Mr. A Anwer, Assistant Exe. Engineer, Electrical Sub Division, Kalamasserry and Mr. Santhosh Kumar I P, Senior Asst., Electrical Section, Kalamaserry, have represented for the Respondent. On examining the Petition and argument notes filed by the Appellant, the statement of facts of the Respondent, perusing the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

(1.0). The appellant has raised the main argument during hearing that, there is no allegation of unauthorized load in the mahazar prepared on 10.9.2012 and secondly there is clear admission in it that 70 KVA welding machine is used as standby as it is provided with a change over switch.

(1.1). The rules regarding exemption from the 'Connected Load' calculation, the 'stand by units' provided with 'change over switches', installed in the consumer premises, is not specified by the Hon Commission. However, the Licensee KSEB, is seen to have directed its Officers to ensure certain conditions, so as to accommodate the 'stand by units' in the premises of consumers, like providing change over switch, get prior approval of the concerned Executive Engineer etc, so as to exclude them from computing the connected load of a consumer, vide its order dated 18.8.2011, while issuing additional guide lines for effecting electric service connections to its consumers.

(1.2). If a Licensee wants to issue some clarifications or guide lines to its officers, it can do so. The Licensee has to ensure the same guideline is in full conformity to the existing provisions of the Ele. Act, 2003, the Rules and Regulations made thereunder by the Hon KSERC. The CGRF and Ele. 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, 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 Electricity Regulatory Commission only. The consumer cannot ask the CGRF or EO to uphold the decision or orders issued by the Licensee. In such cases, it is the officers of the Licensee themselves to decide whether it has to obey its own orders or not.

(1.3). Another contention of the appellant is that the Electrical Inspectorate has ensured quality of electrical machinery and once it is approved by them it can be connected to KSEB's network and there is no role for the licensee in this regard. This is a misleading argument and the Licensee and the Electrical Inspector operates in their own fields. The Licensee has to confirm that the Electrical Load can be connected to its system and can consume energy as it is with in its System capacity limit. The Licensee has to verify whether any additional strengthening of Lines or enhancement of Transformer/ Substation capacity is required to cater that Power demand. Whereas, the Electrical Inspector is more concerned with the safety standards and the protection provided to the Electric scheme submitted by the applicant for power. The sanction of Electrical Inspector is a prerequisite for connecting loads in a HT consumer premise and the Licensee must be ready to accept it, then only the consumer can use it. This has been specifically mentioned under clause 26 of KSEB T & C of Supply, 2005. On the other hand, if the consumers are permitted to freely connect their Load, it will lead to total collapse of the Electric Distribution System at any time, which is not envisaged.

(1.4). Another submission of the appellant is that the KSERC order in DP 75/2012 has not been adhered to by the respondent while preparing the penal bill. It is the method proposed by the Hon Commission and has to be followed by the Licensee, till it is reversed.

(1.5). The respondent has issued a letter dated 15.2.2013 to approach the Assessing officer to file objections, if any. The consumer has to file his objections before the Assessing Officer, the Asst. Engineer and has to wait for the final order and has to act if he is still aggrieved. But the consumer has approached the CGRF and later this Forum with an appeal petition, which I feel is not good.

(1.6). The KSEB has conducted a surprise inspection in the consumer's premises on 10.9.2012 and alleges to have detected 110 KVA of unauthorized additional load (UAL) and accordingly penal assessment was made against the consumer. As per rules, when the UAL is detected, it is the responsibility of the KSEB to issue a provisional assessment for the offence, with a notice to the consumer, asking to remove the additional load or to regularize the same within a reasonable time. The clause 51(5) of KSEB T & C of Supply, 2005, says that the unauthorized load should be got disconnected by the consumer within 24 hours or take action to regularize the same, as per rules. It is the responsibility of the respondent to disconnect the Electric connection, after issuing notice, if not abided by the consumer within this period.

Decision: -

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

(i). The contention of the appellants that they have obtained permission from Electrical Inspector and is sufficient to connect up additional load in his premise (HT consumer), is misconceived and is against the rules. The same contention is not maintainable, as the consumer's power demand is met from the Licensee's distribution System. The sanction of the Electrical Inspector as per Rule CEA 43 (4), is a only a basic pre-requisite for energizing any new HT equipment, which is required for ensuring safety and related scheme design standards. The Inspector oversees the safety aspect of the HT installation, from electric accident prevention and protection point of view and ensures that latest Electrical standards are observed in the Wiring circuits and in the works of Equipment installation. The Licensee's Power system constraints are not considered by such authority. The Licensee, who provides the electricity, has to consider the supply system constraints, like the capacity of the Electric Lines, Transformer and the Substation, which feeds the supply.

(ii). The mere fact that the appellant had obtained sanction from the Electrical Inspector to energize the load cannot and does not nullify clause 14 (b) of HT Agreement and hence does not automatically entitle the party to connect load or add extra load to the system. As per clause 14(b) of the agreement, the party cannot connect any new machines to the KSEB system without prior written consent from the Agreement Authority. The consumer is also required to submit application and obtain sanction before effecting any alteration, as per clause 26 of KSEB T & C of supply, 2005. The agreement authority has to consider the technical feasibility of the Lines and Network before sanctioning Power. The respondents are bound to safeguard their (KSEB) own system from its breakdown.

(iii). Since it is specifically written in the mahazar that the two numbers of 100 KVA, Seam Welding machines, were connected through a 'change over switch', it is certain that only one machine can be put to use at a time. In such a condition, there is no possibility of that load (UAL), becoming detrimental to the KSEB's system. Hence, I feel it is better to give notice to the consumer to adhere to the rules and if not abided, then go for the penalization of load connected as 'standby'.

(iv). The respondent has alleged unauthorized additional load in the premises of the consumer and action was taken against him under Section 126 of Electricity Act, 2003. 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 EO) Regulations, 2005. Hence this Appeal Petition is not maintainable before this Forum.

(v). 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 below;

“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. But, here it is noted that the bill prepared on the proportionate energy charges portion, is not according to the method suggested by the Hon KSERC. The order stipulates that the billing has to be done, based on the difference in average consumption of 12 months prior to the period of assessment and with that (average consumption) obtained during the penal period. Hence the proportionate energy charges amount calculated requires a fresh look into it, based on the Hon KSERC decision.

(vi). Therefore, I am remanding the case to the Assistant Engineer, Kalamasserry, the Assessing officer, who has to review the case. Further, I direct that the Asst. Engineer (Assessing Officer) should give a chance of hearing the consumer on the provisional assessment 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.

(vii). 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 final assessment order (bill) to be issued based on this order and 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 Asst Engineer, Kalamasery (Assessing officer) for hearing as directed. No order on costs. Dated the 27th December, 2013,

Electricity Ombudsman.

Ref. No. P/ 345 / 2013 / 2124 / Dated 27.12.2013.

Forwarded to (1): M/s Industrial Engineering Corporation,
Plot No.50, Major Industrial Estate,
South Kalamaserry, Ernakulam- Pin- 683109.

(2): The Assistant Executive Engineer,
Electrical Sub Division, KSEB, Kalamaserry, Ernakulam.

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 Buildings, Ernakulam-682 018.