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APPEAL PETITION NO. P/349/2013

(Present: T.P. Vivekanandan)

APPELLANT : Dr. Tony John Akkara
Managing Director,
Trichur Metropolitan Health Care (P) Ltd.
Koorkkenchery P.O., Thrissur 7.

RESPONDENT : The Assistant Secretary,
Vydyuthi Section,
Thrissur Municipal Corporation, Thrissur..

ORDER

Background of the case: -

The appellant is the Managing Director of Thrissur Metropolitan Health Care Ltd, who runs a Hospital having an electric connection with Consumer No. 7290-B, under, Thrissur Municipal Corporation (Licensee). While so, the appellant was served with an arrear notice amounting to Rs.3, 95, 935/-, towards the dues of electricity consumed for the old months of 3/98, 5/98 to 9/98, 3/99 and 7/2000 to 10/2000. Being aggrieved, the consumer filed petition before CGRF, Electricity Dept. Thrissur Municipal Corporation and the Forum dismissed the petition vide order dated 12.11.2012. Not satisfied over the said decision, the consumer filed a Review Petition before the CGRF and the same was disposed of, by confirming the earlier order, vide order dated 30-1-2013. Still aggrieved by the said order, the Appellant has filed the Appeal Petition, before this Authority.

Main Arguments of the Appellant: -

(1). Timely remittance of electricity charges have been made then and there. Since the affair was of more than 10 years before, the search for the receipts from the old records dumped under the terrace of the building was found not fruitful, as majority of the records were in a damaged condition. Another notice dated 6.8.2008 was also received from the Electrical wing of the Corporation stating that an arrear of Rs. 7,06,502/- is outstanding from the hospital vide notice no. 1831-EW2/4816/2008. Fortunately the damaged receipts could be unearthed from the dumped files and the matter was reported to the Corporation.

(2). It is surprising to note that a consumer's connection was not disconnected even though a large amount of nine month's electricity charges became due. The

petitioner has asked the duplicate of the bills but the Corporation failed to give them and instead of that, they gave a statement which might have been prepared according to their will and pleasure. The bill copies which are prime document for the demand were not produced during the enquiry.

(3).The decision of the CGRF on 12.11.2012 in having denied an application for waiving the unfair demand is quite arbitrary and one sided and is against the interest of justice. An alleged claim which has been there for 14 years is justified by the CGRF who stand not for redressing the grievances of the consumers but for the Corporation.

(4). One of the prerequisite for obtaining an HT connection is the clearing of all the dues of the consumer. Here the HT connection has been provided to the consumer on 24-7-2008 i.e. prior to the issue of the above notices.

(5).The alleged arrears is pending for the last 12 to 14 years according to the Corporation. If there has been any such arrear, that should have been shown as arrear in the succeeding bills continuously or adjusted from the amount remitted subsequently. Even the bill copy for 12/2012 is silent about this.

(6). The CGRF has not given an opportunity for the final argument and the order dated 12.11.2012 was not pronounced in our presence and it was not informed about the declaration of the final order which was brought to the hospital in the A.N. of 21.12.2012. Though Review Petition was filed before CGRF for reviewing their decision, the findings were once again against the hospital on 30.01.2013, copy of which was received on 4-2-2013.

(7). As per Regulation 18 sub clause (8) of the Manual of Electricity regarding the recovery of the electricity charges, the Licensee shall not recover any arrears after a period of two years from the date when such sum become first due unless such sum has been shown continuously as arrears in the succeeding bills as recoverable arrears of the electricity charges for the electricity supplied. In this case no such mention has been made till the date of filing of the petition before CGRF. So the amount is not actually due and so also the giving of the HT connection.

Reliefs sought for: -

To exonerate the hospital from remitting the unjustified and unfair demand of the electricity wing of Thrissur Municipal Corporation and thereby reverse the decision of the CGRF in the interest of justice.

Arguments of the Respondent: -

The Respondent has filed the counter statement against the contentions raised in the Appeal Petition, stating that all the averments in the petition except which are admitted, are false and hence denied.

(1). The respondent submits that the electric connection no. 7290-B under LT VI B tariff was given to the hospital and the initial connected load of the connection was 37.46 KW. Later, on 24.7.2008 it is changed as HT connection by enhancing the connected load to 256 KW. During this time the respondent has issued a notice to recover the dues amounting to Rs.3,95,935/- from the consumer. The details of the dues are as follows:

AB	03/1998	Rs. 29269
CC	05/1998	Rs. 21698
CC	06/1998	Rs. 21698
CC	07/1998	Rs. 21698
CC	08/1998	Rs. 21698
AB	03/1999	Rs. 41795
CC	07/2000	Rs. 62868
CC	08/2000	Rs. 52315
CC	09/2000	Rs. 65185
CC	10/2000	Rs. <u>36013</u>
Total		<u>Rs. 395935</u>

2). In earlier periods, the provisional invoice cards of fixed amount were issued to consumers based on their average consumption and were being paid by them and excess consumption if any will be claimed by issuing additional bills. The disputed electricity bills are shown above and belong to the period from 05/98 to 09/98. The excess consumption has been calculated and billed after taking meter reading twice in a year. Later, this system has been changed and the Licensee adopted the monthly billing system.

(3). The HT connection was given to the hospital without realizing the arrears since the hospital is an essential service and due to the same reason, the service connection was not disconnected even though there was arrears pending.

(4). The appellant has approached the Munsiff court, Thrissur against the arrear notice issued and the same was referred to CGRF of Electricity wing of Thrissur Municipal Corporation. Before the Forum, the appellant had produced some old receipts but has failed to produce any receipts relating the arrear bill amounts mentioned in the notice dated 26.9.2008. Hence the argument of the appellant that the old receipts were non traceable as it is all damaged is not acceptable. The CGRF has disposed the petition of the consumer after examining all the records and documents.

(5). The respondent also denies the contention of the appellant that the CGRF has not given any opportunity for hearing and to produce the evidences before the Forum. The Counsel had appeared before the Forum and has argued the case and produced the available evidences, but failed to produce any documents to prove the remittance of the bills in question shown in the notice. So the review petition was dismissed by the CGRF.

(6). The respondent submits to dismiss the plea of the appellant and also agreed to give installment facilities for remitting the arrear amount by the consumer.

Analysis and Findings: -

The Hearing of the case was conducted on 18.7.2013 and 5.12.2013, in my chamber at Edappally, and S/s. PMSubramanyian, the Administrative Officer and KKSomanathan, the Asst. Manager represented for the appellant's side and Smt. ThressiammaKurian and Smt. SathideviKS, Senior Supdts. of Electricity Dept. of Thrissur Municipal Corporation, have represented for the respondent's side on the 1st day of hearing. During the 2nd hearing, Mr. P M Subramanyian and Smt ThressiammaKurian have appeared and argued the Case. On perusing the Appeal Petition, the counter of the Respondent, the documents filed, arguments raised during the hearings and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

1.0. The Electricity Dept. of Thrissur Municipal Corporation has issued a notice dated 26.9.2008 to the appellant, (consumer No.7290-B- Metropolitan Hospital) to remit a sum of Rs. 3, 95, 935/-, being the arrears of electricity charges for the old months of 3/1998, 5/1998 to 9/1998, 3/1999 and 7/2000 to 10/2000, and 2 additional bills belonging to that period. It is strange to note that the Licensee has taken more than 8 years to claim the old monthly bills from a consumer. It is also noted that the respondent has not taken any action against the party to recover the electricity charges, including issuing notice for disconnection of supply, for the default of bills for the last so many years. Moreover, on verifying the notice now issued, dated 26.9.2008, it is seen that no interest is levied for the belated period as the same is payable by the consumer, if he has defaulted payment of monthly bills. The Electricity Supply Code, 2005, vide clause 23, authorizes the Licensee to levy interest on the consumer for late payments, based on actual number of days of delay from due date of the bill. From the above, I feel that the notice issued by the Licensee even at this stage, is not a fool proof one, showing the lapses and negligence of its staff.

1.1. The consumer has changed his Electric connection from LT to HT category on 24.7.2008. Normally, when a consumer applies to change his Supply from LT to HT, the Licensee has to collect the up to date arrears prior to changeover, as the old LT connection is terminated and a new HT Agreement is executed. But, in this case, the respondent has issued the arrear notice on 26.9.2008, i.e. after the changeover to HT category and the explanation given is that the HT connection was given without verifying the old arrears, as the party was running a Hospital, which is an essential service and hence allowed the same.

1.2. It is seen that, earlier the consumer was served with another arrear notice dated 6.8.2008 by the Licensee intimating non receipt of old monthly bills and

other bills totaling to Rs.7,06,502/-, pertaining to the period 2002-03. But no further action on the notice was taken, as the consumer was able to produce the receipts of the old payments made against the arrears shown in the notice. This makes it clear that no individual accounts of electricity consumers were prepared and maintained properly by the respondent and the arrear notices were being issued, merely on assumptions.

1.3. As per the disputed notice dated 26.9.08, the arrear bills pertain to the old period of 5/98 to 9/98 and 7/2000 to 10/2000, i.e. bills of continuous 4 to 5 months each. This shows the Licensee has collected the succeeding month's bills, without collecting the alleged arrears (previous months) bills. This state of affairs demands a detailed investigation by Licensee and exercise of suitable remedial measures, since in such a situation any consumer is free to remit or not remit his bills and there is nobody to check it.

1.4. The failure to produce the receipts of old bills, after a period of 8 to 10 years, cannot be considered as a fault of the consumer. In such cases, the failure of the party to produce receipts is not a proof of having defaulted the paying of monthly bills. Normally, there is less possibility to keep the receipts of old bills by the consumers for such a long periods under safe custody, anticipating a notice from the licensee to produce the same, on a later date.

1.5. The appellant's allegation of not giving the opportunity of being heard and not pronouncing the order in his presence by CGRF, is found as not sustainable.

DECISION: -

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

(i). The Respondent, Electricity Dept. of Thrissur Municipal Corporation is seen to have resorted to the policy of sending arrear notices of very old periods, like the present one, which is more than 8 years old and asking the consumer either to produce the receipts or make the payments thereof. This attitude of Licensee is found as not sustainable before Law, as the Respondent has to make it sure that such an arrear did exist against the consumer before issuing notices. Usually the current month's bill is accepted along with the previous month's dues if any. It is an omission to accept the current month's bill ignoring the arrear bill and rarely may it occur such a bill. But here, it is seen claimed by the Licensee, the non payment of ten or more intermittent month's old bills, which is unusual.

(ii). Further, in another occasion the Licensee was forced to withdraw a notice dated 6.8.2008 for Rs.7,06,502/-, issued to the same consumer, containing arrears of many old month's bills, as the party was able to produce receipts of the bills referred. Hence, I cannot concur with these types of actions initiated by the Licensee to collect revenue by resorting to issuing notices in the pretext of old

arrears, by citing either to produce the old receipts or pay it. This matter has to be looked into seriously by the higher authorities of the Licensee. If at all the bills are payable, it has to be recovered from the concerned officials of the Licensee only, since there is noticed total lapses and negligence on their side in keeping the individual accounts of the consumers.

(iii).The Licensee is empowered to raise the bills of electricity consumed by the party. If the bills are not paid in time, they can issue notice of disconnection and can pursue legal action against the consumer to recover the arrears. But in this case, it appears to me that the Licensee has resorted to the practice of issuing notice to the appellant, alleging arrears of monthly bills and then withdrawing those claims, whose receipts were able to be produced by the party and pursuing action on the remaining bills. In such a situation if the consumer fails to produce the old receipts, he has to face the consequences cited in the notice, like the disconnection of electric supply and the initiation of Revenue Recovery action etc., which in my opinion is highly unjustifiable.

(iii).Accordingly, I find the notice dated 26.9.2008 for Rs.3, 95, 935/-, issued by the Licensee as not maintainable before Law and as such quash the same.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is allowed as it is found having merits and the Petition stands disposed of accordingly. The order of CGRF, Electricity Dept. Thrissur Municipal Corporation vide No. CGRF/TCED-36/2012 dated 12.11.2012, is quashed. No order on costs. Dated the 15th January, 2014,

Electricity Ombudsman.

Ref. No.P/ 349 /2013/2162 /Dated 15.01.2014.

Forwarded to : (1). Dr. Tony John Akkara,
Managing Director,
Trichur Metropolitan Health Care (P) Ltd.
Koorckenchery P.O., Thrissur 7.

(2). The Assistant Secretary,
Vydyuthi Section,
ThrissurMunicipal Corporation, Thrissur.

Copy to: (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam,Vellayambalam, Thiruvananthapuram-10.
(2). The Secretary, KSEBoard, Vydyuthibhavanam,
Pattom, Thiruvananthapuram.
(3). The Chairperson, CGRF, Electricity Department,
Thrissur Municipal Corporation, Thrissur.