

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P/075/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 26th May 2015

Appellant : Sri. C.S. Kamalasanan,
August Mandiram,
Pulamon P.O.,
Kottarakkara,
Kollam – 691531.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Kottarakkara,
Kollam.

ORDER

The appellant is a registered consumer with consumer No. 2267 (Old No. 851) under Electrical Section (East), Kottarakkara. The allotted tariff of the premises is LT I (a) and the connected load is 9115 watts. An inspection was conducted in the appellant's premises on 11-05-2012 by APTS and it was noticed that the supply issued for domestic purpose had been used for commercial purpose. The total connected load detected in the premises was 11787 watts and also detected that an unauthorised extension to the tune of 3915 watts was made from the premises to the nearby building having electric supply under LT VII A tariff. A site mahazar was prepared after recording the above irregularities and penal bill for Rs. 1,83,685.00 was issued under Section 126 of Electricity Act, 2003. The supply to the premises was disconnected as per Section 135 of Electricity Act, 2003 since the appellant unauthorisedly extended the domestic supply to another premises having commercial connection. As per the request of the appellant he was relieved of all the criminal proceedings by compounding the offence on collecting an amount of Rs. 1,20,000.00 as compounding fee against Section 152 of Electricity Act, 2003. The appellant also remitted the civil liability of Rs. 20,000.00 to get reconnection.

Against the provisional assessment the appellant filed objection before the Assessing Officer and later approached with an appeal before the Appellate Authority as per Section 127 of Electricity Act, 2003 after remitting 50% of the assessed amount. The Appellate Authority disposed the appeal upholding the final bill. Not satisfied with the above order appellant approached CGRF of South vide OP No. 867/2013. The Forum remanded back to the Assessing Officer *for making fresh assessment in the light of the Schedule of Tariff and Terms & Conditions for retail supply by KSEB with effect from*

01-12-2007 applicable to the petitioner under LT I (a) tariff. Still aggrieved appellant filed petition No. P/360/2013 before this Authority. Accordingly this Authority in its order dated: 06-12-2013 set aside the related order of CGRF, Kottarakkara in OP No. 867/2013 dated: 08-02-2013 and remanded the petition to the Assessing Officer for arranging a fresh hearing. The Assessing Officer conducted hearing on 27-06-2014 and 25-08-2014 and issued proceedings after reaffirming the earlier order. Against the above order, the appellant filed petition before Hon'ble CGRF (South) in OP No. 1258/2014 and the Forum dismissed the petition on 03-12-2014. Aggrieved against, the appellant filed this appeal before this Authority.

The hearing of the case was done on 15-05-2015 in my chamber at Edappally and Advocate H. Vivek Ujjwel Bharathi represented the appellant's side and Smt. Manju K., Assistant Engineer, Electrical Section (West) Kottarakkara represented the respondent. On perusing the appeal petition, counter of the respondent, arguments made during the hearing and considering all the facts and circumstances of the case this Authority comes to the following findings and conclusions leading to the decisions thereof.

The appellant already approached this Authority with an appeal against the order issued by the CGRF South in OP No. 867/2013 dated: 08-02-2013. A hearing was done on 25-09-2013 by this Authority and detailed order was issued in that appeal No. P/360/2013 dated: 16-12-2013. The allegation of extending supply from one premises to another premises and connecting additional load than the sanctioned load with the licensee's system tantamount to unauthorised use of electricity as specified under Section 126 of Electricity Act, 2003. However, if there is any allegation of dishonest or illegal abstraction of energy or tampering of the meter against the consumer then it will attract the provisions under Section 135 of the Act, 2003. This fact has been clarified by Hon'ble Supreme Court of India in the judgment in Civil Appeal No. 8859 of 2011 (2011 KHC 4978) (2012 (2) SCC 108) dated: 20-10-2011. Any such disputes or complaints are not maintainable before the CGRF and Electricity Ombudsman by virtue of Clause 2(1)(f) (vii)(1) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. The upper courts of law has also made it clear that when there is specific provision in the Act itself to hear such cases by designated courts or Appellate Authorities, then the same are excluded from the purview of CGRF and Electricity Ombudsman.

When the regulations specifically exclude the jurisdiction of CGRF and Electricity Ombudsman on all disputes pertaining to bills raised under Section 126 of the Act on allegation of unauthorised use the only remedy available to the appellant against such bill is to file an appeal under Section 127 before the Statutory Authority. Hence this Authority convinced that the appeal petition is not maintainable as per the KSERC Regulations. However, without going deep into the merits of the points raised by the appellant this Authority already found that the respondent had exceeded their powers in booking the case under Section 135 of the Act and in raising the bill for the offence of unauthorised use of electricity and explained in detail in the order No. P/360/2013 dated: 16-12-2013. Having some merits for reconsideration this Authority already remanded the case to the Assessing Officer to review and decide afresh as per law with an opportunity to hear the appellant. But it is felt that the Assessing Officer disposed the appeal even without applying mind to do justice to the appellant. Hence I feel that the Appellate Authority needs to review the case.

As per the notification issued under GO (P) No. 20/2014 PD dated: 28th May 2014 and published as S.R.O. No. 348/2014 in the Kerala Gazette Extra Ordinary No. 1442 dated: 09th June 2014, the Government has designated the Deputy Chief Engineers of Transmission Wing, Kerala State Electricity Board as Appellate Authority for the purpose of appeal under Section 127 of Electricity Act, 2003 (Central Act 36 of 2003). But the Hon'ble High Court of Kerala, in its judgment dated: 07th July 2014 in WPC No. (15161 of 2013 (U) and connected cases have observed that the officers designated as the Appellate Authority by the said notification continue to be directly related to the company and consequently do not satisfy the requirements of Rule 3 of the appeal to the Appellate Authority 2004 and directed the Government to make fresh appointment satisfying the requirements of Appellate Authority Rules.

Now the Government, as per GO (P) No. 34/2014 have constituted an Appellate Authority consisting of Sri. K.K. Unni, Retired Chief Electrical Inspector, residing at 21/1443 (B1), Kalathiparambil, Sajeev Road, Palluruthy, Kochi - 682 006 for the purpose of appeal under Section 127 of the Act. Hence I make it clear that the appellant is directed to approach the above mentioned Appellate Authority for redressing his grievances as per Section 127 of Electricity Act, 2003. The appeal petition is disposed of accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/075/2014/_____ /Dated:_____

Forwarded to:

1. Sri C.S. Kamalasanan, August Mandiram, Pulamon P.O., Kottarakkara, Kollam - 691531.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kottarakkara, Kollam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.