

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/128/2015

(Present: V.V. Sathyarajan)

Dated: 19th October 2015

Appellant : Smt. Naisy. S.
M/s. Anugraha Paying Guest Home,
Near Muttambalam,
Collectorate P.O,
Kottayam- 686 001.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEBoard Ltd,
Kottayam Central.

ORDER

Appellant is running a paying guest home with consumer No.370 under Electrical Section, Kottayam East, under LT VI B tariff with a registered load of 1000 watts. The premises of the appellant was inspected by the Assistant Engineer of the concerned section on 29-12-2008 and found that a ladies hostel was functioning there in the name and style "Garden City" and also found that the appellant was unauthorisedly using 3786 watts. Accordingly, a penal bill amounting to Rs. 29,434.00 was issued under LT VI B tariff which was remitted by the appellant. The subsequent bills are to be issued at penal rate till the regularisation of UAL. But, no penalisation was continued in the bimonthly bills from 12/2008 to 03/2010. During 5/2010, the mistake was noticed and a short assessment bill for Rs. 51,000.00 was issued for the above period and that amount was also remitted. It is alleged that the actual tariff applicable to ladies hostel is LT VII A but the bills were issued under LT VI B tariff. The appellant has neither regularised the additional load nor produced any certificate from concerned authorities to avail of concessional tariff of LT VI B.

On 09-09-2013, the premises of the appellant was again inspected by APTS and detected misuse of tariff and a connected load of 3365 watts against the sanctioned load of 1000 watts. Accordingly, penal bill for Rs. 26,848/- was issued towards the tariff misuse under Section 126 of the Electricity Act. Later the amount was revised due to arithmetical error and the revised bill was issued for Rs. 65,523.00. Again calculation error was

found and final amount for Rs. 64,163.00 was issued to the appellant. A complaint was filed before CGRF which was dismissed for want of jurisdiction. Aggrieved against the order of CGRF an appeal petition No. P/029/2014 was filed before this Authority. Accordingly this Authority in its order dated 31-10-2014 set aside the order of CGRF and the penal bill for Rs. 64,163.00 was quashed. Also directed the appellant to fix the tariff after conducting proper inspection and ascertaining the activities carried out in the premises.

The respondent conducted an inspection in the premises of appellant on 27-11-2014 and issued proceedings dated 15-12-2014 directing the appellant to remit Rs. 64,163.00 towards the short collection. It is alleged that the respondent did not comply the above order of Ombudsman, but upheld the short assessment bill with arbitrary assumptions and issued further bills under LT VII A tariff. Against this the appellant again approached CGRF (South), Kottarakkara to direct the respondent to comply the order of Ombudsman. But the Forum dismissed the petition due to lack of jurisdiction. Not satisfied with the above order, the appellant again approached this Authority with this petition.

A hearing of the case was conducted in my chamber at Edappally on 09-10-2015. Smt. Naisy S. appeared for the appellant's side and Sri Viji Prabhakaran, Assistant Executive Engineer, Electrical Sub Division, Kottayam for the respondent's side. On perusing the appeal petition, counter of the respondent, arguments made during the hearing and considering all 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 Forum in OP No. 1134/2014 dated 05-04-2014. A hearing was done on 12-08-2014 by this Authority and a detailed order was issued in that appeal No. P/029/2014 dated 31-10-2014. The contention of the appellant is that they are not running a hostel but a paying guest facility for students which should come under LT I domestic tariff. Further, the inspection was not conducted by the Assessing Officer as per Section 126 of the Act. Instead of complying the order of Ombudsman the respondent upheld the penal bill which was quashed by the Ombudsman, which is highly illegal. Even though the Ombudsman had given specific direction to the respondent in the order No P/029/2014 dated 31-10-2014 to revise the penal bill from the date of occupancy in the premises, the respondent issued the bill dated 24-12-2014 without any such revision.

According to the respondent an inspection in the appellant's premises was conducted on 27-11-2014 and found that premises has been using for lodging purposes. The appellant has rented this building and is running a paying guest home in the name and style, "Anugraha Paying Guest Home". The final proceedings dated 15-12-2014 was issued after convincing the purpose and the period of occupancy of the appellant by the Assessing

Officer. The Forum disposed the petition due to lack of jurisdiction for the bills under Section 126 of the Act.

On going through the pleadings it can be seen that the specific allegation of the respondent is that the appellant is misusing the supply issued under LT VI B tariff for commercial purpose. Further, the contention of the respondent is that the short assessment bill for Rs. 64,163.00 issued towards the continued penalty of unauthorized additional load for a period from 12/2008 to 07/2013 is in order. But on a perusal of the documents, there is no proper explanation forthcoming from the part of respondent for the non continuation of the penal charges and the subsequent inspection by the APTS in the appellant's premises on 09-09-2013 cannot be justifiable for the simple reason that the respondents are aware of the fact that the appellant had not regularized the unauthorized additional load.

It is the duty of the respondent to issue regular bills with penal charges until the additional load is regularized or removed. Here in this case there is no justifiable reason put forward by the respondent in permitting the appellant to continue the use of additional load for a lengthy period of 5 years. So there is clear lapse on the part of respondent in taking timely action to regularise the additional load. In this case if at all any losses sustained to the licensee it is only because of the malfunctioning of the responsible officers of the licensee. Hence it is advisable to conduct an enquiry to find out the reason and the persons responsible for the issue. Instead, the appellant is mulcted with heavy demand for a previous period of 5 years to cover up the lapses on the part of respondent is arbitrary and unreasonable.

It is admitted that the respondent had conducted a detailed inspection in the appellant's premises on 27-11-2014 and found that the premises has been using for lodging purpose. The appellant also admitted that their premises is a paying guest home in the name and style of "Anugraha Paying Guest Home" and the tariff applicable to the appellant's premises is LT VII A is found in order. The appellant admitted this fact during the hearing.

Having found some merits for consideration this Authority has already disposed the petition in favour of the appellant. But it is felt that even without applying mind to do justice to the appellant, the respondent has not implemented the order already issued. Hence this issue is again needs to review by this Authority. In the above circumstances this Authority comes to the conclusion that it is not just and proper to issue short assessment bill under dispute to the appellant, since the respondent has not furnished any valid or sustainable reason for his failure in permitting the appellant to continue the use of additional load for a lengthy period of 5 years, which is strictly against the rules. Hence the impugned bill issued for Rs. 64,163.00 is hereby quashed and set aside.

The appellant is directed to regularise the additional load if not done so far and the respondent is at liberty to take appropriate action against the

appellant as per Regulations. The respondent is also directed to realise the current charges under LT VII A tariff with effect from 09-09-2013 i.e. from the date of inspection by the APTS. Amount, if any, remitted excess by the appellant shall be adjusted or refunded against the future bills. The order of CGRF in OP No. 1392/2015 dated 27-05-2015 is set aside. The appeal petition is hereby allowed as indicated above without any order as to costs.

ELECTRICITY OMBUDSMAN

No.P/128/2015/_____ /Dated _____

Forwarded to:

1. Smt. Naisy. S. M/s. Anugraha Paying Guest Home, Near Muttambalam, Collectorate P.O, Kottayam – 686 001
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBoard Ltd, Kottayam Central.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSEBoard Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.