

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/171/2015

(Present: V.V. Sathyarajan)

Dated: 2nd March 2016

Appellant : Sri K.V. Sebastine
Kappil House, N.R. City,
Rajakkad,
Idukki.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Chithirapuram,
Idukki.

ORDER

Background of the case:

The appellant is a consumer with consumer No.6613 (old No. 11719) of Electrical Section, Rajakumary KSEB under LT IV tariff and is conducting a small scale furniture unit in the name and style as Sebastian Industries. The service connection was effected with a connected load of 7110 Watts and as per the request of the appellant the connected load was enhanced to 7350 Watts and 14920 Watts on 03-03-2000 and 23-05-2001 respectively. Again the connected load of the consumer was further enhanced to 60 kW with effect from 29-01-2008 after remitting sufficient additional cash deposit.

During the audit conducted by the Accountant General (Audit), it was detected that the consumer was given undue benefit to the tune of Rs.1,46,000.00 at Board's cost. Based on the audit report the Assistant Engineer issued a demand notice for Rs.1,46,000.00 to the appellant. Aggrieved against this, a complaint was filed before the CGRF (Central), Ernakulam. Meanwhile, the appellant also filed a Writ Petition before the Hon'ble High Court of Kerala which was disposed of with a direction to the CGRF to consider the petition by giving an opportunity to hear the complainant, vide judgment dated 20-07-2015 in W.P.(C) No. 29131. The CGRF dismissed the complaint vide order in OP No. 78/2015-16 dated 15-10-2015.

Against the above order, the appellant has filed this appeal petition P/171/2015 before this Authority on 11-11-2015. The appellant again filed a Writ Petition No. 34470/2015 before the Hon'ble High Court and the

Hon'ble High Court disposed of the petition directing this Authority to consider and pass orders on the appeal within a period of three months from the date of receipt of a copy of the judgment dated 16-11-2015.

Arguments of the appellant:

1. The appellant stated that he is conducting a small scale furniture unit in the name and style of Sebastian Industries. The unit started its operation during the year 1997-98 and that time the Section office of the KSEB was at Chithirapuram. The unit began its operations with a 10 HP electric motor. During the year 1999-2000 the capacity was enhanced by erecting another 10 HP motor. Thereafter, during the year 2000 the capacity was enhanced to 40 Hp.
2. The appellant made a request to the respondent for enhancing the connected load from 25 kW to 60 kW with effect from 29-01-2008 by remitting additional cash deposit. But in fact, apart from making the above request for enhancing the connected load, no machineries were installed because of certain unforeseen incidents. Thus additional capacity was not utilized and machineries were not installed. The project of the appellant to enhance the capacity of the unit by consuming additional power was dropped and later the appellant made a request during April/May 2010 to reduce the connected load enhance to 25 kW from 60 kW. Thus in short the KSEB never made any arrangement to enhance the additional connected load to 60 KW and hence no separate transformer of adequate capacity was installed either in the premise of the appellant or in the vicinity of the unit.
3. The Principal Accountant General made an audit and on the basis of said Audit enquiry a report was sent to the Assistant Engineer, Electrical Section Office, KSEB, Rajakumary alleging that the consumer had benefitted at the cost of KSEB to the tune of Rs. 1,46,000.00 for not installing the transformer at the cost of the appellant as provided in the then Regulation 8 of the Electricity Supply Code, 2005.
4. On the basis of the Audit Report, the Section officer made a demand of Rs.1,46,000.00 from the appellant.
5. It is most respectfully submitted that the Regulation 8 of the Supply Code, 2005 is not applicable to the complaint. The appellant is an existing consumer and the connected load was enhanced to 60 kW only in the year 2008. This regulation will be applicable only to a new consumer who applied for new connection. This is clear from the head note of the Regulation. Apart from mere enhancement of connected load, machineries were not installed and there was no consumption of additional power.

The transformer was not installed by the KSEB and the KSEB never incurred any loss due to the non-payment of cost of transformer by

the appellant. The payment of cost of transformer arises only if the same is installed by the KSEB and used by the consumer. In this case the transformer is not installed and hence the appellant is not bound to pay additional cost and hence the audit report is without any basis and understanding the correct facts and circumstances. Thus the appellant challenged the bill so issued before the consumer Grievance Redressal Forum.

6. The Forum as per order dated 15-10-2015 dismissed the complaint of the appellant without considering any of the contentions of the appellant with respect of non-installation of the transformer by the licensee for providing electricity connection to the appellant. Since the licensee did not establish the transformer, the demand of payment of charges for installation of transformer is illegal and unjust. This issue was not at all considered by the Forum.

Nature of reliefs sought from the Ombudsman.

- (a) Set aside bill of the Assistant Engineer, KSEB, Electrical Major Section, Rajakumary dated 11-08-2010 for Rs. 1,46,000.00 bearing No. 060134;
- (b) Set aside order No. CGRF-CR/Com P.78/2015-16/375 dated 15-10-2015 of CGRF, Ernakulam;
- (c) Declare that the appellant is not entitled to pay any amount to the Asst. Engineer, KSEB, Electrical Major Section, Rajakumary, Idukki District towards installation of transformer to the consumer No. 11719 of Electrical Major Section, Rajakumary, Idukki District on the basis of report of the Senior Audit officer, KSEB;
- (d) Such other reliefs as deemed to be fit and proper to this Hon'ble Ombudsman in the facts and circumstances of the case.

Arguments of the respondent:

The appellant, Sri K V Sebastian, Kappil House, N.R. City, Rajakad is a consumer of Electrical Section, Rajakkad bearing Consumer No. 6613 (old No 11719 Rajakumary) under tariff LT IV, effected with a connected load of 7110 Watts. As per the request of the appellant the connected load was enhanced to 7350 Watts on 03-03-2000 and further enhanced to 14920 Watts on 23-05-2001. The connected load of the appellant was enhanced to 60 kW with effect from 29-01-2008 as per the request of the appellant after remitting the sufficient additional cash deposit. The appellant did not make any request to reduce the connected load till date and the load is not changed yet. The enhancement of connected load was done based on the installation completion report and at that time the additional equipment was in connected condition.

The Account General Office made an audit report to charge Rs. 1,46,000.00 towards rates for erection of 11/433V, 100 kVA transformer, Pole mounted including 2 Nos. of PSC Poles as per the Regulation 8 of Electricity Supply Code, 2005.

As per the report of Audit, a bill amounting to Rs. 1,46,000.00 was issued to the appellant.

The Regulation 8(1) (c) of Kerala State Electricity Supply Code, 2005 says that "the cost estimates LT consumers shall include the cost of service line and terminal arrangements at the premises of the applicant but shall not include the cost of meter, if connected load is below 50 kVA. For loads of 50 kVA and above, connection shall be effected only after installation of separate transformer of adequate capacity, the cost of which shall be recovered from the consumer. In such cases the consumer shall provide the space for erecting such transformer". It is not mentioned anywhere in the Supply Code that the applicability is only for the new service connection and hence the regulation is applicable for the existing consumers also.

The enhancement of connected load is sanctioned based on the installation completion report submitted by the appellant and the same is submitted after connecting the additional equipment and the argument of the appellant regarding the non- installation of additional equipment is not correct.

The findings of The Honourable Consumer Grievance Redressal Forum is correct as per the then Rules and Refutations regarding the Supply of Electricity and the consumer is liable to pay the amount.

Analysis and findings

A hearing of the case was conducted in the Conference Hall, Electrical Circle, Thodupuzha on 10-02-2016. Sri K.V. Sebastine was present for the appellant's side and Sri. P.K. Sabu, Assistant Executive Engineer, Electrical Sub Division, Chithirapuram represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in 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.

On going through the records, it can be seen that the appellant enhanced his connected load from 25 kW to 60 kW with effect from 29-01-2008 after remitting additional cash deposit. As per Regulation 8(1) (c) of the Kerala Electricity Supply Code, 2005 reads as follows:

"The cost estimates for LT consumers shall include the cost of service and the terminal arrangements at the premises of the applicant but shall not include the cost of meter, if connected load is below 50 kVA. For loads of 50 kVA (45 kW) and above connection

shall be effected only after installation of separate transformer of adequate capacity, the cost of which shall be recovered from the consumer. In such cases the consumer shall provide the space for erecting such transformer”.

The audit team of Accountant General, Kerala has only detected that the appellant had not remitted the cost of separate transformer as per the Regulation 8 (1) (c) of Supply Code, 2005 and Board has sustained loss to the tune of Rs.1,46,000.00. Hence the audit team directed the Assistant Engineer to issue demand notice for Rs.1,46,000.00 to the appellant. According to the appellant Regulation 8 (1) (c) of the Supply Code, 2005 is applicable only to new consumers who apply for new connection and not for the existing consumers.

The main contention of the appellant is that since the respondent has not installed a separate transformer of adequate capacity either in the appellant's premises or in the vicinity of his unit the question of payment of cost of transformer does not arise. In this case, the respondent has not installed the transformer and has not incurred any expenditure for providing enhanced connected load and hence the appellant is not liable for any additional expenditure. But the argument of the appellant that he has not installed the machineries and has not utilized the additional capacity cannot be proved as correct since he had remitted the additional cash deposit towards the enhanced connected load of 60 kW on 29-01-2008.

According to the respondent, it is not mentioned anywhere in the Regulation 8(1) (c) of Supply Code, 2005 that the recovery of cost of transformer is only for the new applicants. As requested by the appellant enhancement of connected load was sanctioned after installing the machineries in the appellant's premises and based on the completion report submitted by him.

The Regulation 8 (1) (c) clearly indicates that **for loads of 50 kVA and above, connection shall be effected only after the installation of separate transformer of adequate capacity, the cost of which shall be recovered from the consumer.** The respondent's contention is that since the appellant was allowed to connect the additional load of 60 kW, he is liable to pay the cost of transformer. On verification of the records it can be seen that the respondent failed to recover the cost of transformer well in advance before the enhancement of connected load. Needless to say that it is the failure on the part of officers of the licensee to discharge their duty properly is the reason for the issue. The officers concerned of the licensee are responsible for the irregularity and irresponsibility. The principle of natural justice is not followed by the respondent in this case.

Here in this case, it is pertinent to note that no separate transformer was installed either in the premises of the appellant or in the vicinity of his unit, therefore the respondent has not incurred any expenditure on this account. Hence there is no justification for issuing a demand notice for Rs. 1,46,000.00 relying merely on the audit report.

As per Section 46 of the Electricity Act, 2003, the licensee is entitled to recover from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the licensee for providing any electric line or electrical plant required specifically for the purpose of giving such supply. The respondent has not adduced any evidences to prove the loss sustained by them for providing the enhanced load to the appellant.

Hence I am of the view that, collection of the OYEC charges (cost estimate) for installation of transformer which was actually not installed, to provide enhanced connected load to the appellant is not justifiable, when the respondents have already collected the cost estimates and the supervision charges, from the appellant and is not incurring any additional expenses in energizing supply to the consumer through his energy meter. It is not fair to penalize the appellant for the lapses occurred on the part of the officers of the licensee.

Decision

The licensee is entitled to recover from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the licensee for providing any electric line or electrical plant required specifically for the purpose of giving such supply as per Section 46 of Electricity Act, 2003. In view of the above factual situation there is no reasonable justification for issuing such a demand for Rs. 1,46,000.00.

In this background the demand issued for Rs. 1,46,000.00 is hereby quashed. The appeal filed by the appellant is found having some merits and is allowed. The related order of CGRF in OP No. 78/2015-16 dated 15-10-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/171/2015/ _____ Dated: _____

Delivered to:

1. Sri K.V. Sebastine, Kappil House, N.R. City, Rajakkad, Idukki.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Chithirapuram, Idukki.

Copy to:

- 1 The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2 The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
- 3 The Chairperson, CGRF-CR, 220 kV, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.