

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/175/2015

(Present: V.V. Sathyarajan)

Dated: 29th March 2016

Appellant : Sri Abdul Khader A. P.
Fasino Ladies & Kids,
Mele Chelari, Thenhipalam,
Malappuram.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Parappanangadi,
Malappuram.

ORDER

Background of the case:

The appellant, Sri Abdul Khader K.P. is a tenant of the premises having service connection with consumer No. 36685 under Electrical Section, Chelari. The service connection was registered in favour of Smt. Mariyam P.M., Ayisha Nivas, Mele Chelari, under LT VII A tariff for construction purpose on 08-07-2014 with a connected load of 2799 Watts. On 26-05-2015, the officials of KSEB Limited conducted an inspection in the premises of the appellant and it was found some irregularities in the classification of tariff. Based on the inspection, the appellant was issued with a short assessment bill amounting to Rs. 56,675.00 on 27-05-2015 under LT VI F tariff for the period from 8/2014 to 5/2015, as per Section 126 of Electricity Act, 2003.

Aggrieved against this, the appellant approached the Assistant Engineer, Electrical Section, Chelari by filing a complaint and the same was disposed of by revising the provisional assessment to Rs. 43,952.00 and issued a final order accordingly. Still aggrieved with the decision, the appellant filed a complaint before the CGRF, Northern Region, Kozhikode. The CGRF dismissed the petition vide order dated 27-10-2015 by holding that the case is not maintainable in the Forum as the disputed bill was issued as per Section 126 of the Electricity Act, 2003. Against decisions of the CGRF, the appellant has approached this Authority with this appeal petition on 26-11-2015.

Arguments of the appellant:

It is submitted by the appellant that on 26-5-2015 an inspection was conducted in his premises by a Sub Engineer and Lineman of KSEB, prepared a site mahazar and asked him to sign on it. On a plain reading of the mahazar it is revealed that the mahazar was prepared in the presence of Smt. Ambily, Assistant Engineer, Sri Abhilash, Lineman and Sri Krishna Kumar, Sub Engineer. But Smt. Ambily, the Assistant Engineer who has not conducted the said inspection, the appellant denied to sign the mahazar. On threatening disconnection of the service by the staff, he was forced to sign the same.

The appellant further contented that though the site mahazar was prepared it was not served on him at site but served on him only on the next day along with the provisional bill. Further, at the time of commencing the business the appellant enquired the tariff details at Section Office and it is informed that the tariff of both construction purpose and textile shop are one and the same and thereafter the respondent issued 7 numbers of electricity bills under LT VII A tariff. The appellant has argued that the correct tariff of his premises is LT VII A and the change of tariff to LT VI F was without issuing a notice which is against the Rules and Regulations. The appellant has requested to cancel the penal bill issued to him.

Arguments of respondent:

The appellant, Sri Abdul Khader KP is a tenant of the premises of the consumer No: 36685 and this connection was given under VII A tariff for construction purpose. After the tariff revision on 16-08-2014 the construction purpose connections are coming under VI F tariff. As per the anomaly written by the meter reader in the anomaly register that the connection given for construction purpose, is now being used for running a textile readymade shop. Accordingly the premises of consumer No: 36685 was inspected by the Section Squad on 26-05-2015 and it was found that the construction was already completed and the premises is now using for running a textile readymade shop.

From the consumption pattern it is very clear that the connection is being used for textile shop for the entire billing period. A site Mahazar has been prepared at the time of inspection and detected a total load of 4985 Watts. A copy of the site mahazar was served to the appellant. As per the site mahazar provisional bill for Rs. 56,675.00 has been issued on 27-05-2015 to the appellant under tariff misuse as per Section 126 of Electricity Act, 2003. The respondent has argued that this is a clear case coming under Section 126 of Electricity Act, 2003 and if the appellant is aggrieved by the final order issued by the Assessing Officer under Section 126 of the Act may file an appeal before the Appellate Authority under Section 127 the Act.

The appellant had filed petition before the CGRF, Kozhikode and the Forum dismissed the case as the bill was issued as per the Section 126 of

the Act and mentioned in its order that it is not maintainable in CGRF as it is under Section 126 of the Act.

Meanwhile the appellant lodged a complaint against the provisional bill on 03-06-2015. The Assistant Engineer, Electrical Section, Chelari conducted a personal hearing on 26-06-2015. At the time of hearing the appellant could not produce any single evidence to justify his arguments. Considering the complaint, a review was made on the provisional assessment. It is found that both commercial purpose and construction purpose was in VII A tariff up to 08/2014. After tariff revision on 08/2014 the construction purpose tariff changed from VII A to VI F. So construction purpose is now in VI F tariff.

Hence considering the grievance of the appellant, the period of assessment was revised and the final assessment was made for a period from 09/2014 to 03/2015. So a final bill for Rs. 43,952.00 was issued to the appellant. This connection was given purely for construction purpose and it is not regularised till the time of inspection. It is the responsibility of the appellant to regularise the tariff and additional load as per their purpose. Now the appellant is blaming KSEB for his fault of non-regularising the tariff and load. All procedures have been followed while conducting the inspection under Section 126 of Electricity Act, 2003.

Analysis and findings

A hearing of the case was conducted in the Conference hall of Tirur Electrical Circle on 09-03-2016. Sri Abdul Khader was present for the appellant's side and Sri Asif Kilimannil, Assistant Executive Engineer, Electrical Sub Division, Parappanangadi 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 following decisions.

The point to be decided in this case is as to whether the appellant had misused the tariff and the penal bill issued as per Section 126 of Electricity Act is in order or not.

On going through the records it can be seen that the respondent's contention for the change of tariff and issuance of penal bill to the appellant was based on the tariff revision effected from 16-08-2014. As per the above tariff revision, tariff for construction purpose was changed from LT VII A to LT VI F. Also the appellant's case relates to misuse of tariff, he was penalized under Section 126 of the Act, which is not maintainable before this Authority. On the other hand, the appellant has argued that both the tariff applicable to textile shop and construction purpose is one and the same i.e. LT VII A. But the respondent has changed the appellant's tariff to

LT VI F without issuing any notice which is against the existing Rules and Regulations.

The respondent admitted that service connection was being used for textile shop for the entire billing period and the tariff applicable was LT VII A. Though the respondent was well aware of the completion of construction activities and the functioning of textile shop in the appellant's premises, action on the part of the respondent to revise the tariff to LT VI F cannot be justified. Moreover, the Regulation 153 (15) of the Kerala Electricity Supply Code 2104, "Unauthorized additional load in the same premises and under same tariff shall not be reckoned as 'unauthorized use of electricity'. So the argument of the respondent that the appellant had misused the supply cannot be admitted.

Section 126 of Electricity Act, 2003 contemplates a comprehensive procedure for finalization of the assessment. Under sub section (i) of Section 126, if the Assessing Officer comes to the conclusion that the consumer or any other person is indulging in unauthorized use of electricity, he should provisionally make an assessment of the electricity charges payable by such person, to the best of his judgment. Sub section (ii) of Section 126 provides that the provisional assessment should be served upon the person in occupation or possession or in-charge of the place, in the manner prescribed. Sub section (iii) provides that the person upon whom such provisional assessment is served is entitled to file objection. It further provides that the Assessing Officer should pass a final order of assessment after affording a reasonable opportunity of hearing to such person.

On a perusal of the documents it can be seen that the allegation of the appellant is that the mahazar is prepared in the absence of site verification by the Assistant Engineer and the respondent has not produced any convincing evidence to disprove the allegation. In this background, when the genuineness of the mahazar is disputed, this Authority constrained not to rely on the mahazar, which is the crucial document for deciding the issue. As per Regulation 151 of Supply Code, 2014, a site mahazar shall invariably be prepared at site and the same shall be handed over to the consumer or his representative at site immediately under proper acknowledgement. Here in this case, the respondent failed to produce a copy of site mahazar as per the Regulation and hence there is no justification in issuing such a huge bill without observing the mandatory provisions of the Act and Regulations.

Decision

In view of the settled legal position the penal bill issued without observing the mandatory provisions of the Act and Regulations mentioned herein cannot be justified. The action on the part of respondent without complying with the legal formalities amounts to arbitrariness and denial of

natural justice. In the above circumstances the penal bill issued for Rs. 43,952.00 is not sustainable and hence quashed.

The appeal petition is found having some merits and is allowed. The order of CGRF in OP No. 49/2015-16 dated 07-10-2015 is set aside. Having concluded and decided as above it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/175/2015/ _____ /Dated: _____

Forwarded to:

1. Sri Abdul Khader A. P., Fasino Ladies & Kids, Mele Chelari, Thenhipalam, Malappuram.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Parappanangadi, Malappuram.

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, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road, Kozhikode