

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/080/2016
(Present: V.V. Sathyarajan)
Dated: 20th February 2017

Appellant : Sri. Beeran Koya
Naseeb House,
Exhibition Road,
West Hill, Kozhikode.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Mankavu,
Kozhikode

ORDER

Background of the case:

The appellant, Sri Beeran Koya, is a consumer having No. 23398 with a connected load of 6 kW under the jurisdiction of Electrical Section, Mankavu. During inspection in the appellant's premises on 14-09-2012, unauthorized additional load (UAL) to the tune of 75 kW was detected. Hence a penal bill for the period from 3/2012 to 7/2012 for an amount of Rs. 2,01,332.00 was issued and the same was paid by the appellant. While so, the Audit party noticed that though the appellant has regularized the additional load only on 16-03-2013 the penalization was not continued for the period from 9/2012 to 7/2013. Thus a short assessment bill for an amount of Rs. 5,02,636.00, towards the penal charges for unauthorized additional of 75 kW was issued on 27-11-2015 for the period from 9/2012 to 7/2013.

Aggrieved against the bill, the appellant filed an objection before the Assessing Officer on 09-12-2015, which was dismissed vide proceedings

dated 15-01-2016. So the appellant approached the CGRF with a petition and the Forum allowed the petition in part and quashed the impugned bill. Still not satisfied with the decision of CGRF in OP No. 179/2015-16 dated 22-06-2016, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant's contention is that the issuance of short assessment for a period from 9/2012 to 7/2013 amounting to Rs. 5,02,658.00 towards the fixed charges and proportionate energy charges as per the order No. MKV/Gen./98/Dt. 27-11-2015 of Electrical Section, Mankavu is unsustainable on facts and circumstances since the appellant had taken steps for regularizing the additional load during the month of July 2012 itself.

As per the bill dated 5-12-2012, the appellant has remitted a sum of Rs. 2,01,332.00 towards penal bill for unauthorized additional load for the period from 3/12 to 7/12. Thereafter immediately the appellant taken appropriate steps to regularize the connected load and during the month of July 2012 itself the concerned Section of KSEB regularized the connected load. At the time of the inspection by the Regional Audit team there was no irregularities as alleged. The appellant has sufficient documents in support of the above contentions. The appellant had sold out the building in the year 2013 due to his financial crisis.

The facts are being so the short assessment bill created by the Assistant Engineer, KSEB Electrical Section, Mankavu is unsustainable on facts and circumstances.

Nature of relief sought from the Ombudsman:

1. To set aside the order of the short assessment bill created by the Assistant Engineer, KSEB Electrical Section, Mankavu, Kozhikode.
2. To set aside the order of the Consumer Grievance Redressal Forum (Northern Region), Kozhikode Dt. 22-06-2016, in O.P.179/ 2015-16.
3. To set aside the revised bill issued as per vide order of Consumer Grievance Redressal Forum (Northern Region), Kozhikode in O.P. No. 179/ 2015-16, DT. 30-08-2016.

4. To stay off the final order passed issued through the bill dated 30-08-2016 as per the order of Consumer Grievance Redressal Forum in O.P. No. 179/2015-16.
5. To prohibit the KSEB authorities from disconnecting the electricity connection until finally adjudicating the complaint.

Arguments of the respondent:

The respondent stated that it is true that, the appellant owns an electric connection with consumer number 23398 under Electrical Section, Mankavu, Near Mini Bypass Road, Kozhikode. The connection was effected on 22-09-2010 under LT VII A tariff with a connected load of 6 kW

It is also true that, based on an inspection conducted from the Electrical Section, Mankavu on 14-09-2012, an unauthorised additional load of 75 kW was detected in the premises of the appellant and penal bill for Rs. 2,01,332.00 (Rupees Two lakhs one thousand three hundred and thirty two only) for the billing period from 3/2012 to 07/2012 was issued to the appellant and the appellant has paid the amount.

Later based on the audit report of Regional Audit Officer an additional bill for Rs. 5,02,636.00 (Rupees Five lakhs two thousand six hundred and thirty six only) for the billing period from 09/2012 to 07/2013 (up to the regularisation of unauthorised load) vide letter dated 27-11-2015 of the Assistant Engineer, Electrical Section, Mankavu.

The appellant has filed a petition against this bill before the Hon'ble Consumer Grievance Redressal Forum at Kozhikode in OP No. 179/2015 and the CGRF vide its order dated 22-06-2016 partially allowed the petition and directed the KSEB Limited to revise the penal bill, till the date of application for regularisation. Based on the above order, KSEB Limited has issued a revised bill for Rs. 3,27,092.00 (Rupees three lakhs twenty seven thousand and ninety two only) on 30/08/2016.

This is the bill being challenged by the appellant.

The respondent denies the statement given by the appellant that he applied for regularisation of the additional load immediately after the inspection. The inspection date being 14-09-2012 and the date of application for regularisation is 16-03-2013 that is 6 months after the detection of the unauthorised additional load. Also KSEB Limited has no information so far on the selling of the property and the connection is still in the name of the appellant.

In these circumstances the respondent stated that as per the relevant Clauses of the Electricity Act and Rules that prevailed at the time of inspection and Terms and Conditions of Supply, 2005, Clause 51(4), the KSEB Limited is entitled to penalise the consumer until the consumer regularises the unauthorised additional load. The excerpts from the Terms and Condition of Supply is quoted as below Clause 51(4), In case of Low Tension consumers whose connected load does not exceed 100 kVA but who have exceeded the contracted load by 10% by adding unauthorized additional load, the procedure mentioned in clause 50 (l) shall be applicable.

The unauthorized load should be got regularized by the consumer within a period of three months on application to the Assistant Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Assistant Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in Clause 50 (1) shall be paid till the date of payment of additional security deposit.

It is evident from the above Clause that, the penal charges shall be paid till the payment of additional security deposit. Hence the action of the office of the Assistant Engineer, Electrical Section, Mankavu to penalise till the date of application for unauthorised additional load is in order and hence the appeal petition submitted by the appellant has no merits and the Hon'ble State Electricity Ombudsman may upheld the judgement given by the CGRF permitting the KSEBL to collect the penal charges as given in the bill dated 30-08-2016.

Analysis and Findings: -

The Hearing of the case was conducted on 04-01-2017 in the Court Hall of CGRF, Kozhikode, and Sri P.N. Beeran Koya represented the appellant's side and Sri Ayyub N., Assistant Executive Engineer, Electrical Sub Division, Mankavu, represented the respondent's side. On perusing the petition of the appellant, the counter statement of the respondent, examining the documents and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions, leading to the decisions thereof.

On a detailed analysis of the pleadings and the documents produced by both sides it can be held that an inspection in the appellant's premises was conducted on 14-09-2012 and unauthorized additional load to the tune

of 75 kW was detected. Consequent to this, the appellant was imposed with a penal bill for an amount of Rs. 2,01,332.00 as per Section 126 of Electricity Act, 2003, and the same was remitted. Thereafter the respondent failed to continue the penal charges when the audit party detected the same. It is also pertinent to note that a notice to remove the unauthorized additional load or to regularize the same was not seen issued to the appellant. Aggrieved by the short assessment bill for Rs. 5,02,636.00 for the period from 09/2012 to 07/2013 i.e. up to the date of regularization, the appellant filed this appeal petition.

The version of the respondent is that the appellant had regularized the unauthorized additional load only 07/2013 and hence he is liable to remit the penal charges for the period from 09/2012 to 07/2013 as per Clause 50(1) of the of the KSEB Terms & Conditions of Supply, 2005. On the other hand, the appellant stated that he had taken appropriate steps to regularize the additional load during the month of July 2012 itself and regularized the additional load.

The point to be decided in this case is whether the respondent is entitled to issue penal bill for unauthorized additional load to the tune of 75 kW for the period from 09-2012 to 07/2013?

The procedure to be followed in cases of unauthorized additional load prevailing at the time of inspection is Regulation 51 of KSEB Terms & Conditions of Supply, 2005, which reads as; ***“Where a Low Tension consumer exceeds the connected load and/or resorts to unauthorized additional load and if the connected load exceeds 100 kVA, the unauthorized additional load shall be disconnected by the consumer within 24 hours of detection of the unauthorized load by the Board’s officers or take action to regularize the unauthorized additional load. If he fails to disconnect the unauthorized additional load within the time stipulated, the power supply to the premise shall be disconnected after the expiry of 24 hours, a notice to this effect shall be issued to the consumer by the Board’s officer immediately on detection of unauthorized additional load.***

Further, Regulation 51 (4) says ***“In case of Low Tension consumers whose connected load does not exceed 100 kVA but who have exceeded the contracted load by 10% by adding unauthorized additional load, the procedure stated in clause 50 (1) shall be applicable. The unauthorized additional load should be got regularized by the consumer within a period of 3 months on application to the Assistant Executive Engineer and after payment of additional security deposit and other charges as per rules. The***

regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Assistant Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit”.

While evaluating the rival contention it is essential to look into the judgment of the Hon'ble High Court in similar cases. The Hon'ble High Court of Kerala in its judgment in WP (C) No. 30111 and 30564 of 2012 clearly ordered that:

At the first instance, imposition of penalty on the allegation of continuance of unauthorized usage is not permissible, unless the Assessing Officer complies with the procedural formalities contemplated under Section 126 (2) & (3). Learned standing counsel had pointed out that under Regulation 51(2) of the KSEB Terms and Conditions of Supply the Board is entitled to levy penalty for unauthorized additional load until removal of the unauthorized additional load or until regularization of such load. But the said Regulation cannot be considered as an independent provision, apart from Section 126. Imposition of penalty being penal in nature, it is mandatory for the Board to put the consumer with notice of such proposal and to consider his objections. Section 126 contemplates a comprehensive procedure in this regard. Therefore even for imposition of penalty on the allegation of continuance of unauthorized usage, the procedure contemplated under 126 (2) & (3) are mandatory.

On the facts, there exists a dispute as to whether the unauthorized additional load continued for any period after the date of inspection or after the date of issuance of provisional order of assessment. It is pertinent to note that the respondent has not taken any steps in cases of detection of unauthorized additional load as per Regulation 51 of the KSEB Terms & Conditions of Supply, 2005. However, penalty for any continued unauthorized additional load can be imposed only if the Assessing Officer is convinced that the unauthorized additional load had actually continued during any period after the date of inspection, that too after complying with all procedure under Section 126 (2) and (3). Therefore, if the respondent is proposing to impose any penalty for the period after the date of inspection on 14-09-2012, he should make a provisional assessment to that effect and shall finalize it only after giving opportunity to the appellant to file objection after affording opportunity of personal hearing to the appellant.

The principles of natural justice imply to maintain procedural fairness from KSEB side as well. For imposing the penalty on energy charges the total energy is apportioned in proportion to the additional load detected and penalty is imposed for that part of energy which is assumed to be consumed on the portion of unauthorized additional load connected. The Hon'ble Commission while disposing the Petition No. DP/75/2009 has held that; ***“the difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty.”***

In this case, the appellant was seen penalized for the use of unauthorized additional load (UAL) for the period from 3/12 to 7/12 as per Section 126 of Electricity Act, 2003. But in the short assessment bill the respondent has not mentioned the relevant Section 126, though the calculation was made as per the provisions of Section 126. The Hon'ble High Court of Kerala in decisions in J.D.T. Islam Orphanage Vs Assistant Engineer, KSEB (2007(3) KLT 388) and Jomy Thomas Manjooran Vs KSEB (2013(1) KLT 595) held that unauthorized extensions cannot be penalized at the rates applicable to authorized temporary connections under LT VIII tariff. On the other hand, penalty can be imposed 2 times of the fixed charges for the period during which the unauthorized usage existed along with electricity charges due on the proportionate consumption of energy in the unauthorized additional load.

Admittedly the additional bill for an amount of Rs. 5,02,636.00 was issued only on the basis of an audit report of Regional Audit Officer. There was no inspection in the appellant's premises in order to ascertain whether the unauthorized additional load continued for any period after the remittance of penal bill. In this background, the issuance of additional bill on the appellant merely on the basis of audit report cannot be justified and hence liable to be quashed. It is needless to observe that, the imposition of such penalty if any can be only to the extent of 2 times of the fixed charges applicable on actual unauthorized additional load connected and to current charges on the proportionate consumption on the unauthorized additional load.

Decision

In view of the reported decision of Hon'ble High Court referred above, the case in hand, the respondent failed to make a provisional assessment

during the period under dispute after giving an opportunity to file objection. But the respondent simply imposed penalty for an amount of Rs. 5,02,636.00 even without observing the procedural formalities contemplated under Section 126 (2) & (3). Therefore, the penal bill issued for Rs. 5,02,636.00 is hereby quashed.

However, the respondent is free to initiate fresh proceedings if it is proposed to impose penalty on the allegation of continued usage of unauthorized additional load for the period from 9/12 till the date of application for regularization the quantum of penalty shall be limited as per the method described above. The imposition of penalty, if any, proposed shall be finalized by the respondent at any rate within a period of 30 days from the date of receipt of a copy of this order.

The appeal petition is disposed of accordingly. The order of CGRF in OP No. 179/2015-16 dated 22-06-2016 is modified. No order as to costs.

ELECTRICITY OMBUDSMAN

P/080/2016/_____ /Dated:_____

Delivered to:

1. Sri. Beeran Koya, Naseeb House, Exhibition Road, West Hill, Kozhikode
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Mankavu, Kozhikode

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