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APPEAL PETITION NO. P/085/2016  
(Present: V.V. Sathyarajan)  
Dated: 21<sup>st</sup> March 2017

Appellant : Sri. K. Ramakrishnan  
Managing Partner,  
Enarc Constructions,  
M.G. Road,  
Thrissur.

Respondent : The Assistant Secretary,  
Electrical Wing,  
Thrissur Corporation,  
Thrissur

### **ORDER**

#### **Background of the case:**

The appellant, Sri. K. Ramakrishnan, is the Managing Director of M/s Enarc Constructions having a service connection with consumer No. 18148 for a connected load of 3 kW under Electricity Wing, Thrissur Corporation. It is alleged that the respondent increased huge amount from the bill dated 14-06-2012 onwards. In addition to the actual energy charges the respondent had collected an amount of Rs. 18,000.00 to Rs. 20,000.00 and the appellant remitted the same. So, the appellant had submitted an application on 04-11-2015 to the Assistant Secretary, Electricity Department, Thrissur Corporation regarding the discrepancy in the electricity bill. As there was no reply, the appellant again sent a reminder on 19-12-2015.

But as nothing was happened, the appellant lodged a complaint before the CGRF, Electricity Department, Thrissur Corporation, on 15-02-2016 with a request to refund the excess amount collected from him. The CGRF had ordered that the bill issued by the respondent is as per Regulation 27 (A) of Supply Code, 2005 and is in order. Hence found that the appellant is liable to remit the penal charges up to 01-04-2014. It was also ordered that as the licensee failed to comply with Regulation 153 (7) of Supply Code, 2014, the respondent is directed to refund the excess amount collected from the

appellant after from 01-04-2014 by adjusting against his future bills. In compliance with the order, the respondent revised the assessment for the period up to 01-04-2014 and issued a short assessment bill for Rs. 12,895.00. Feeling aggrieved by this, the appellant has submitted this appeal petition before this Authority with a request to refund the excess amount collected.

### **Arguments of the Appellant**

The arguments of the appellant are based on the brief facts and circumstances which are narrated above. Further the appellant has adduced the following arguments.

The appellant is having an LT service connection with consumer number 18148 which was disconnected on 20-11-2015 after converting to HT service category. The appellant pointed out some defects in the billing during the period from 14-06-2012 to 07-10-2015. Normally he was getting bimonthly bills approximately for an amount of Rs. 25,000.00. But he got bills amounting to Rs. 50,000.00 to Rs. 65,000.00 bimonthly w.e.f. 14-06-2012 onwards. In the year 2000, the respondent inspected his premises and not reported any additional connected load. On receiving the exorbitant bills, the appellant had submitted a complaint on 05-09-2012 to the respondent regarding meter faultiness and the respondent informed the meter was free from defects. At that time also, the respondent had not detected any unauthorized additional load in the appellant's premises. Even though the appellant applied for HT conversion on 06-03-2014, the same was provided only on 29-09-2015 i.e. after a period of 18 months.

An amount of Rs. 3,67,273.00 was found collected as penal charges towards the Unauthorized Additional Load till 07-10-2015. The complaints given to respondent on 04-11-2015 and 19-12-2015 were not considered and hence the appellant approached the CGRF with a petition. The appellant argued that he had not used any additional load and the respondent never informed usage of any additional load in the building. If any detection of unauthorized additional load, it is proper to inform the appellant and to disconnect the connection, as per rules. This was not done. Without complying the rules and provisions, charging the penalty is not justifiable.

The CGRF had ordered that the respondent has to refund the excess amount collected from 01-04-2014 by adjusting in the future bills. The Assistant Secretary, in his letter dated 22-09-2016, has directed to remit an amount of Rs. 12,895.00 being the short assessment. This calculation is not correct. The respondent has not taken the orders of CGRF in its proper sense and hence requested to refund the excess amount collected with 12% bank interest.

**Arguments of the respondent:**

The respondent has stated that the appellant was penalized for using 6 kW load in addition to the sanctioned load of 3 kW, as per Regulation 27 (A) of the Supply Code, 2005. Against the penal amount collected, the appellant approached the CGRF, Electricity Department, Thrissur Corporation on 15-02-2016. The CGRF had ordered that the bill issued by the respondent is in order as per Section 27 (A) of Supply Code, 2005 and the appellant is liable to remit the amount till 01-04-2014 and to refund the excess amount collected after 01-04-2014 by adjusting in the future bills, since the licensee failed to follow the procedures as per Section 153 (7) of Supply Code, 2014. According to the CGRF, the penal charge collected was not correct. On the basis of the orders of CGRF, a notice was given to the appellant after deducting the excess amount collected after 01-04-2014 for Rs. 1,73,945.00 and rectifying the defects in the bill issued up to 01-04-2014 and revised as Rs. 1,86,840.00. Hence the appellant was directed to remit the balance of Rs. 12,895.00.

**Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam on 03-03-2017. Sri K. Ramakrishnan was present for the appellant's side and Sri. B. Nikhil, Assistant Engineer, Electricity Department, Thrissur Corporation represented the respondent's side. 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.

The issue leading to the dispute was originated when the respondent issued the bill dated 14-06-2012. On verification of the bill issued to the appellant, it is noted that in addition to the actual energy charges an amount of Rs. 18,000.00 to 20,000.00 has been shown as E.C. in all bills up to 07-10-2015. Even though the appellant was unaware of this E.C., the amount shown in the bill was paid. According to appellant, the issue regarding the excess billing was brought to the notice of Assistant Secretary, Electricity Department, Thrissur Corporation, but nothing was happened.

Refuting the above contentions, the respondent stated that the appellant was using unauthorized additional load of 6 kW in addition to the sanctioned load of 3 kW. Hence penal charge as per Regulation 27 (A) of the Supply Code, 2005 was realized from the appellant. As per the order of CGRF, Electricity Department, Thrissur Corporation (No CGRF/TCED/7071 dated 20-07-2016) the respondent is entitled to collect penal charges up to 01-04-2014 and excess amount collected after 01-04-2014 has to be refunded to the appellant since the licensee has not acted upon as per Regulation 153(7) of Supply Code, 2014. Also the Forum noticed that as the penal charge was collected wrongly from the

appellant, the respondent issued revised penal bill for an amount of Rs. 12,895.00 for which the appellant is liable for payment.

**The issue raised in the appeal is whether the appellant is liable for making payment of the excess amount collected during the period from 14-06-2012 to 07-10-2015 and also for an amount of Rs. 12,895.00 towards the penal charges for the alleged use of unauthorized additional load?**

The perusal of records reveals that the respondent had collected penal charges for unauthorized additional load to the tune of 6 kW from the appellant for the period from 14-06-2012 to 07-10-2015 as per Regulation 27 (A) of Supply Code, 2005 and the realisation of penal charges up to 01-04-2014 was found correct by the CGRF in its order dated 20-07-2016. Since the licensee has not acted upon as per Regulation 153(7) of Supply Code, 2014, the Forum has ordered to refund the penal charges already collected from the appellant after 01-04-2014. Accordingly an amount of Rs. 1,73,945.00 collected after 01-04-2014 has been adjusted against the revised bill for Rs. 1,86,840.00 up to the period 01-04-2014. Hence demand for an amount of Rs. 12,895.00 (Rs. 1,86,840.00 – Rs. 1,73,945.00) was issued to the appellant on 20-09-2016.

While evaluating the rival contentions it is essential to look into the provisions contained in Regulation 27 (A) of Supply Code, 2005, which is extracted below.

**27(A) - Unauthorized use of electricity (1) “if on an inspection of any place or premises or after inspection of the equipment, gadgets, machines, device found connected or used or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefitted by such use”.**

This provision mandates that 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. Further, the provisional assessment should be served upon the person and the person upon whom such provisional assessment is served is entitled to file objections. It further provides that the Assessing Officer should pass a final order of assessment after affording a reasonable opportunity of hearing to such person within 30 days from the date of service of provisional assessment.

Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within 7 days of service of such provisional assessment order upon him. The

assessment will become final only when the Assessing Officer passes the final order after considering the objections and after affording opportunity of personal hearing. Then only the person against whom such assessment is made will become liable for payment of penalty. But as long as such an option is not exercised or when the person upon whom the provisional assessment is served has chosen to object the same the assessment cannot be said to be completed / finalized and no liability for payment can be fetched, until final order is issued.

On a detailed analysis of the pleadings and the documents produced by both sides it can be held that, admittedly there is no inspection conducted in the appellant's premises. No mahazar is seen prepared detailing the irregularities detected at the time of inspection. Further, a notice as per Regulation 153(7) of Supply Code, 2014 has not been issued to the appellant. In the event of detection of unauthorised use of electricity or of theft or of any other irregularity, a detailed site mahazar shall invariably be prepared at site by the Assessing Officer under Section 126 of Electricity Act. Further, a copy of the mahazar should be handed over to the appellant or his representative present at the premises under proper acknowledgement at the spot itself on completing the inspection. The above procedure was not seen followed in this case. The respondent has not proceeded as per Section 126 of Electricity Act and not issued penal bill under the above Section for unauthorised use of electricity.

The 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). The respondent has not put forward any valid grounds or supporting documents in this case for realizing the penal charges from the appellant. It is also pertinent to note that, even though the appellant had applied for converting LT service to HT category on 06-03-2014, the penalization was continued till 07-10-2015. A prudent interference on the part of respondent would have taken even at the time of processing the application for conversion; the actual connected load of the appellant could have been detected. But this was not seen done in this case. Even a reasonable explanation was not seen given to the appellant to satisfy his queries. If that would have been given, this sort of unnecessary litigation could have been avoided.

It is the bounden duty of the licensee to take appropriate action against the appellant on detection of unauthorised additional load as per Regulation 153 of the Supply Code, 2014. The Sub clause (2) of the Regulation 153 of Supply Code, 2014 reads as, **“the difference between the total connected load in the premises of the consumer at the time of inspection and the sanctioned load of the consumer shall be reckoned as unauthorised**

**additional load”.** But here in this case, it is revealed that the respondent has not followed the procedures stipulated under the Section 126 of Electricity Act, 2003 and Regulation 153 of Supply Code, 2014. The principles of natural justice imply to maintain procedural fairness from licensee’s side as well. Hence the idea for continued penalization is found not in order, without a fresh site inspection and preparation of mahazar, recording the anomalies if any, detected. So, the facts and rival contentions and the correctness of the findings recorded by the CGRF are not in order.

### **Decision**

In view of the above findings, the excess amount collected during the period from 14-06-2012 to 07-10-2015 and the additional amount of Rs. 12,895.00 demanded towards the penal charges for the alleged unauthorized additional load is not sustainable and liable to be quashed. Hence the respondent is directed to refund the excess amount already collected from the appellant by way of penal charges with interest at bank rate **as per Regulation 134(3) of Supply Code, 2014**. This shall be done at any rate within a period of 30 days from the date of receipt of this order.

The order No, CGRF/TCED/7071 dated 20-07-2016 of CGRF, Electricity Department, Thrissur Corporation is modified to the extent as ordered above. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/085/2016/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri. K. Ramakrishnan, Managing Partner, Enarc Constructions, M.G. Road, Thrissur.
2. The Assistant Secretary, Electrical Wing, Thrissur Corporation, Thrissur

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Chairperson, Consumer Grievance Redressal Forum, Electrical Wing, Thrissur Corporation, Thrissur.