

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/015/2017

(Present: V.V. Sathyarajan)

Dated: 04th April 2017

Appellant : Sri Paramaswaran K. K.,
Kalavath Thundy,
Civil Lane Road,
Palarivattom, Ernakulam

Respondent : The Asst. Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Palarivattom, Ernakulam.

ORDER

Background of the case:

The appellant, Sri K. K. Paramaswaran, is a commercial consumer (LT VII A) with consumer No. 34081, having a connected load of 4.9 kW, under Electrical Section, Palarivattom. The appellant submitted an application for an additional load of 120 kW on 15-12-2015 and is under processing. While being so, the appellant's premises was inspected by the Assistant Engineer concerned on 28-09-2016 and detected that unauthorized additional load of 66.27 kW was connected and used in the premises. Hence the appellant was served with a provisional bill for an amount of Rs. 2,57,905.00 on 28-09-2016 towards the unauthorized additional load of 62 kW as per Section 126 of Electricity Act 2003.

As the appellant had not filed any objection against the provisional bill, the respondent issued final bill on 06-10-2016. Aggrieved against this bill, the appellant had filed a petition dated 07-10-2016, before the CGRF, Ernakulam. But the CGRF has dismissed the petition with a finding that the petition comes under the purview of Section 126 of Electricity Act and has no authority to entertain the petition, vide its order No. CGRF-CR/ Comp. 88/2016-17 dated 23-12-2016. Feeling aggrieved by the decision of CGRF, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

1. The appellant is a consumer who submitted application for additional power allocation for 120 kW on 15-12-2015 to start a dry cleaning unit in the name "5asec". The appellant was asked to pay an amount of Rs.10,010.00 by the licensee and accordingly the appellant paid the said amount vide receipt No. 55430151215102093 dated 15-12-2015.
2. After a lapse of six months the appellant was asked to pay an amount of Rs. 2,62,016.00 and the said amount was also paid by the appellant vide receipt No. 55430160602101102 dated 02-06-2016. Again after a lapse of 2 months the appellant was asked to purchase Ring Main Unit (RMU) and as per the directions of the licensee the appellant purchased RMU by spending an amount of Rs. 3,45,000.00 on 31-8-2016 and informed the licensee.
3. The appellant installed all the appliances and informed the licensee. So far the appellant was not informed whether the additional power allocation was sanctioned or not. Since the application submitted by the appellant was incomplete shape in accordance with law and appellant was asked to deposit the various amounts as aforesaid and the appellant complied with all the directions of the licensee, the appellant was of the bonafide belief that he has been allocated with the additional power as requested in his application. Moreover no notice was issued to the appellant stating that his request for additional power allocation was rejected.
4. But to the surprise of the appellant, he has been issued with a letter No. BB/ES PVTM/Inspn-Section Squad/2016-17/27/28-9-2016 demanding an amount of Rs. 2,57,905.00 towards penalty for unauthorized additional load. In fact the appellant has not connected any unauthorized connected load as alleged. The said demand letter is issued without issuing any notice rejecting the application for additional power allocation. The appellant is being penalized for the inaction on the part of the licensee. Therefore the demand letter is illegal, arbitrary and unjust. Along with the said demand letter a demand notice dated 28-9-2016 has also been issued. In the said demand notice the date fixed to pay the amount to avoid disconnection is "05-09-2016" which is prior to the issuance of the demand notice. An incorrect calculation statement was also attached along with the demand notice. It is stated in the demand letter that a surprise inspection was conducted in the premises of the appellant on 28-09-2016 and found 66.27 kW connected load while the registered load is only 4.90 kW.

In fact the site mahazar is not correct. The licensee failed to note the generator set kept in the premises which is being used to run the appliances. The licensee failed to note the appliances connected to the said generator set. Moreover the licensee did not consider the total connected load sanctioned initially to the entire building, which is 44 kW. Hence the site mahazar, demand letter, demand notice and calculation statement are unsustainable and baseless. The appellant is not liable to pay any amount as claimed in the said demand letter, demand notice and calculation statement. The licensee is not entitled to demand the above said amount claimed in the demand notice and letter especially when no notice was issued to the appellant rejecting his application for additional power allocation by the licensee.

Now the licensee has issued a demand letter No. BB/ES PVTM/Inspn-Section Squad/2016-17/31/06-10-2016 demanding an amount of Rs. 2,57,905.00. towards penalty for unauthorized additional load along with a demand cum disconnection notice dated 06-10-2016 fixing 04-11-2016 as the last date for payment of amount demanded to avoid disconnection and details of final assessment stating that the assessment is finalized as per the said demand letter. As submitted already the appellant is not liable to pay the amount either in the provisional demand letter dated 28-09-2016, demand notice or details of assessment or in the demand letter dated 06-10-2016 issued along with demand notice and details of final assessment. The demands made by the licensee are illegal, arbitrary and unjust apart from unsustainable. After issuing the provisional demand notice a transformer was installed in the premises of the appellant. But so far the same has not been energized. At this juncture it is submitted that the amount towards the cost of the transformer was paid by the appellant on 02-06-2016. But the transformer was installed after a lapse of 4 months. The appellant is now asked to pay the amount for no fault of his. The inaction on the part of the licensee in energising the transformer is a clear deficiency in service.

5. Hence the appellant filed Complaint No. 88/2015-17 before the CGRF, Central Region, Ernakulam. Along with the complaint the appellant also filed two petitions to direct the Assistant Engineer, Electrical Section, KSEB Ltd., Palarivattom, Ernakulam to energize the transformer installed in the premises of consumer No. 1155435034081 under LT VII A considering the application of the appellant for additional power allocation forthwith and to not to disconnect the power supply to the consumer number 1155435034081 under LT VII A of the appellant pursuant to the demand letter No. BB/ES PVTM/Inspn-Section Squad/2016-17/27/28-9-2016, demand cum disconnection notice dated 28-9-2016, demand letter No. BB/ES PVTM/Inspn-Section Squad/2016-17/31/06-10-2016 and demand-cum-disconnection notice dated 06-10-2016 demanding an amount of Rs. 2,57,905.00 towards penalty

for unauthorized additional load issued to consumer No. 1155435034081 under LT VII A. The Hon'ble CGRF was pleased to stay the disconnection of power supply.

Nature of relief sought for:

The CGRF has not considered the above said grounds raised and without considering the facts, circumstances and evidence in the case in hand, erroneously passed the order impugned herein. The Forum ought to have found that no reply statement was filed by the Assistant Engineer of the licensee of its Electrical Section, Palarivattom who is the respondent. The Forum erred in not considering the delay and laches on the part of the licensee to energize the transformer. The Hon'ble Forum failed to consider the reply statement filed by the appellant along with a petition to call for the documents from the licensee. No further opportunity for hearing was granted to the appellant though requested on 01-12-2016. For the grounds raised in the above paragraphs and for those that be urged in the time of hearing it is humbly prayed that this Honourable Ombudsman may be pleased to set aside the Order No. CGRF-CR/Comp.88/2016-17 dated 23-12-2016 of the CGRF, Central Region, Ernakulam.

Arguments of the respondent:

As per Section 2(l)(f) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) 2005, Electricity Ombudsman lacks jurisdiction in this complaint. It may please be submitted that as per Section 127(1) of the Electricity Act, 2003, any person aggrieved by a final order made under Section 126 may, within 30 days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fees as may be specified by the State Commission, to an Appellate Authority as may be prescribed. As per section 127(2) of the Electricity Act, 2003, no appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal. Here, the appellant is not approached the above statutory authority and preferred a petition before this Authority. It may be in order to evading from remitting the required amount and appeal fees. This Authority lacks jurisdiction to entertain the present complaint against these opposite parties.

Section 145 of the Electricity Act, 2003 is as follows:

"No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Assessing Officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and

no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

As stated supra the complaint is not maintainable and may be dismissed in limine on the above grounds. An inspection was conducted by the Section Squad of Electrical Section, Palarivattom at the premise of Consumer No. 34081 on 28-09-2016 which is registered under LT VII A tariff in the name of Sri. Parameswaran K.K., who is running a "Dry Cleaning" unit. The registered load of the service connection is 4.9 kW. The existing load on inspection is found as 66.27 kW. Hence there is an additional unauthorised load of 62 kW in the premise. Accordingly a provisional bill of Rs. 2,57,905.00 was issued on 28-09-2016. As no appeal was filed by the consumer, the final bill was issued on 06-10-2016.

Aggrieved by this the consumer filed an appeal before Hon'ble CGRF, Ernakulam. Appellant filed Complaint No 88/2016-17 before the Hon'ble CGRF, Ernakulam and after conducting a personal hearing on 01-12-2016 dismissed the petition as the petition comes under the purview of section 126 of Electricity Act, 2003. On analysing the consumption pattern of the consumer, it's seen that the bimonthly consumption had increased abnormally from the bill date of 07-07-2016. The consumption pattern is as shown below.

01/01/16	211	unit
01/03/16	1150	unit
01/05/16	3617	unit
01/07/16	10879	unit
01/09/16	12173	unit
01/11/16	9538	unit

For a connected load of 4.9 kW, the maximum bimonthly consumption shall be $4.9 \times 12 \times 60 = 3528$ unit only, if the firm is working for 12 hrs in full load, even though this is quite unnatural. Hence the consumption in bill period clearly proves that, there is unauthorised load, many times the registered load. Hence the petition comes under the purview of Section 126 of Electricity Act, 2003. The Hon'ble Ombudsman has no authority in entertain the petition.

It is true that the appellant has applied for an additional power allocation of 120 kW on 15-12-2015. The requested power can be given only after completing 11 kV line extension works including erection of a 100 kVA Transformer. Detailed estimate has been prepared, in which the party remitted materials and labour cost of works to be carried out by KSEB Ltd. and supervision charges of works by the party (for erection of RMU and cable

laying). They had already submitted an affidavit for erection and commissioning of RMU and cable laying.

The appellant is well aware that the additional power allocation can be given only after completing the works mentioned above; moreover, the erection and commissioning of RMU and cable laying works are to be completed by themselves. The location of RMU was finalised by the appellant and Sri. Kamarudhin (neighbour) submitted a joint application and remitted the supervision charges only on 19-10-2016 (20 days after inspection). KSEB Ltd. has completed all works including Transformer erection as on 25-11-2016. The appellant submitted the completion report of 67.82 kW and remitted application fee on 10-01-2017 after obtaining energisation approval of RMU from Electrical Inspectorate on 05-01-2017 and remitted the Additional Security Deposit of Rs. 63,000.00 on 27-01-2017 and hence the transformer was charged after completing all formalities on 03-02-2017.

It is clear from the above stated facts that the respondents are bound and acted in consonance with statutory and constitutional provisions and in compliance with the principles of natural justice. It is humbly submitted that because of the above positions, the Hon'ble Authority has no reason to entertain the complaint. The appellant is not entitled for the relief prayed for. For the reason stated above, it is most respectfully prayed that the complaint may be dismissed.

Analysis and findings:

Hearing of the case was conducted on 08-03-2017 in my chamber at Edappally, Kochi. Advocate Santhosh G Prabhu, represented the appellant. Smt. Latha S., Assistant Executive Engineer, Electrical Sub Division, Palarivattom appeared for the respondent. Both sides have presented their arguments on the lines stated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments made 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 foremost prayer of the appellant is to energize the transformer installed in his premises considering his request for additional power allocation for which he complied with all formalities as per law. But the respondent energized the transformer only on 03-02-2017 and the inaction on the part of respondent in energizing the transformer is a clear deficiency in service. The appellant installed all the appliances and informed the respondent on the bonafide belief that the power allocation has been sanctioned as per his request. It is also stated that no notice was issued to the appellant rejecting his application for additional power allocation. Hence the demand issued for

Rs. 2,57,905.00 towards the penalty for unauthorized additional load is illegal, arbitrary and unjust apart from unsustainable.

Refuting the above contention, the respondent stated that as per Section 2(1)(f) of Kerala State Electricity Regulatory Commission (CGRF & Electricity Ombudsman) Regulations, 2005, Electricity Ombudsman lacks jurisdiction in this complaint. As per Section 127(1) of Electricity Act, 2003, any person aggrieved by a final order made under Section 126 may, within 30 days of said order, prefer an appeal in such form, verified in such manner, and be accompanied by such fees as may be specified by the State Commission, to an Appellate Authority as may be prescribed. As per Section 127(2) of Electricity Act, 2003, no appeal against an order of assessment under Subsection (1) shall be entertained unless an amount equal to half of the assessed amount has been deposited any cash or by way of bank draft with the licensee and documentary evidence of such deposits has been enclosed along with the appeal. In order to evading from remitting the required amount and appeal fees the appellant preferred this petition which may be dismissed.

In view of the arguments made by both parties, it appears that the point to be decided in the matter is whether the appeal is maintainable before this Authority or not. It is needless to enter into the merits of the case, if this Authority has no jurisdiction to entertain the same. However, it can be held that no timely action is seen taken by the respondent in the application submitted on 15-12-2015 for additional power allocation of 102 kW. Hence the prayer of the appellant at the time of filing the petition to direct the respondent to energize the transformer installed in the appellant's premises is found justifiable. Even though there was lapse on the part of respondent to the timely completion of the works and to energize the transformer, the appellant is not supposed to connect any additional load to the system without sanction from the respondent. Now it is revealed that the respondent has energized the transformer on 03-02-2017 and since the issue has been settled there is no scope for proceeding further in this regard.

On a detailed analysis of pleadings and documents produced by both sides it can be held that an inspection in the appellant's premises was conducted on 28-09-2016 and as per the site mahazar, unauthorized additional load to the tune of 62 kW was detected at the time of inspection. It is specifically provided under Section 127(1) of Electricity Act, 2003, an appeal is maintainable against any proceedings or bill raised under Section 126 of the Act before the Appellate Authority. So, the CGRF and Electricity Ombudsman do not have any authority to entertain complaint relating to unauthorized use of electricity.

In the above circumstances this Authority is of the firm view that the appeal petition is not maintainable. If the appellant had strong arguments against the disputed bill he ought to have raised the same before the Appellate

Authority under Section 127 of the Act. Such a course is the only remedy available to him. Section 127 (I) of the Electricity Act, 2003 reads as follows:-

“127. Appeal to appellate authority:- (1) Any person aggrieved by a final order made under Section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.”

Decision

In short, the appellant herein is not entitled to file a petition before this Authority against the bill raised under Section 126 of Electricity Act. It is therefore held that the remedy available to the appellant is only to file appeal before the Appellate Authority as per Section 127 of Electricity Act, 2003. It is made clear that for filing appeal a period of 30 days is allowed from the date of receipt of this order.

The order of the CGRF is upheld. The appeal petition is rejected as not maintainable. No order as to costs.

ELECTRICITY OMBUDSMAN

P/015/2017/ _____ /Dated: _____

Delivered to:

1. Sri Paramaswaran K. K., Kalavath Thundy, Civil Lane Road, Palarivattom, Ernakulam
2. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Limited, Palarivattom, Ernakulam

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, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.