

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/077/2017  
(Present: Sri. A.S. Dasappan)  
Dated: 31<sup>st</sup> October 2017

Appellant : Sri Manuel Mohan Das  
Kevin Cashews, Chengoor,  
Nettayam P.O., Ambalamkunnu  
Kollam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSEB Limited,  
Veliyam, Kollam

### **ORDER**

#### **Background of the Case:**

The appellant is an LT IV A consumer under Electrical Section, Veliyam with Consumer No 3856. The registered connected load of the premises is 20078 Watts and the contract demand is 20000 Watts. A cashew factory named M/s. Kevin Cashews is functioning in the premises. A penal bill for Rs. 58,985/- for the period from 04/2014 to 03/2016 was issued to the consumer on 05-12-2016, since sufficient capacitor was not installed in the petitioner's premises as per general conditions stipulated in the tariff order dated 27-09-2014. An objection against the demand was filed before the Assistant Engineer and he did not allow the petition and rejected without quoting any valid reason or regulations. So the appellant had approached the Hon'ble CGRF (South) by filing a petition in OP No. 325/2016 which was dismissed vide order dated 26-05-2017. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

1) Appellant being a resident of Thillery in Kollam City is a Low Tension consumer under Veliyam Electrical Section of the Kerala State Electricity Board Limited, having availed electrical connection to his Cashew Factory, under Consumer No. 3856 from the said Veliyam Electrical Section, for his cashew factory at Chengoor. Cashew factory to which aforesaid electrical connection is availed of by appellant being a seasonal industry, consumption of electricity through the electrical connection thereof varies from month to month.

2) Ever since availing the subject electrical connection, the appellant has been duly paying the electrical charges as per bills issued to him from time to time.

3. While so, on 10-12-2016, the appellant was served with an unnumbered bill dated 05-12-2016 captioned as "Demand Notice as per Rule 134(1) of Supply Code, 2014 - Penal Bill for not connecting capacitors from 4/2014 to 3/2016" demanding a sum to the tune of Rs. 58,985/-. It is so issued without revealing the particulars and details of particulars of the amount demanded therein or as to assessment of the amount thereof and as to how it is assessed or arrived at.

4) Since receipt of the bill, appellant had on 14-12-2016 approached the Assistant Engineer of Veliyam Electrical Section, pointing out that he is not liable for payment of the amount demanded, as no penalty as is demanded in the bill thereof has been levied on him and he has not been served with any order imposing penalty thereof on him and no proceedings for levy of penalty thereof has been ever initiated against him; the demand made by the bill thereof under Section 134(1) of Supply Code, 2014, is not legal or correct and is rather erroneous and wrong. Appellant also sought for revocation of Annexure A1 bill so raised and drop the demand made therein. However, he declined to revoke the same, on the pretext that he is not competent to do so; also warning that unless the amount demanded thereof is not paid immediately; the electric connection to appellant's factory would be disconnected.

Appellant submits that the impugned bill issued to appellant and impugned order of the Consumer Grievance Redressal Forum, upholding the bill are illegal and erroneous, in as much as the impugned demand as short assessment, under Rule 134(1) of Supply Code, 2014, of penal amount for not connecting capacitors, for the period from 4/2014 to 3/2016, are made without any proceedings have been previously initiated against appellant and no order levying it having been previously issued to appellant. Going by the scheme and provisions in Rule 134(1) of Supply Code, 2014, penalty which has not been levied or imposed earlier on appellant, cannot be demanded thereunder and when that be so, impugned demand could not have been made nor upheld, but should have been set aside.

Appellant also submits that the bill and the order upholding it, are illegal and erroneous; in as much as the impugned demand made/upheld thereunder, is for a period of about 30 months prior to "the date of its issue, when none of the provisions in the Electricity Act or rules or regulations thereunder, enable the Board to make such demand for such period and when such demand for such long period is barred by lapse of time.

Again, appellant submits that the bill and the order upholding it are illegal and erroneous; in as much as the impugned demand is made/upheld, on the premise of not connecting capacitors, when such a premise is wrong and not correct as also not substantiated by the Board.

Plea of the Board of appellant having not connected capacitors during the period from 4/2014 to 3/2016 being not factual or true and plea thereof having not been substantiated by the Board by due materials or evidence; impugned demand in the bill and the order upholding it; are wrong and bad in law.

Appellant submits that the bill is bad and erroneous in as much as the assessment of the amount demanded there under is made, purely on assumption without the actual figures and facts as to assessment as also without revealing its basis. It is baseless and not based on any cogent materials. Such assessment is bad and thereby the bill is bad and wrong as also liable to be set aside. So also the order of the Consumer Grievance Redressal Forum upholding the bill, without duly considering the above aspects, is erroneous and liable to be set aside too.

#### Nature of relief sought from the Ombudsman

(1) To set aside the bill dated 05-12-2016 for Rs. 58,985/- issued by Assistant Engineer of Veliyam Electrical Section of Kerala State Electricity Board Ltd., to the appellant, and the order dated 26-05-2017 of the Consumer Grievances Redressal Forum (South), Kottarakkara, by relieving appellant from the demand and liabilities there under; and

(2) To stay the bill dated 05-12-2016 for Rs. 58,985/- issued by Assistant Engineer of Veliyam Electrical Section of Kerala State Electricity Board Ltd., to the appellant, and the order dated 26-05-2017 of the Consumer Grievances Redressal Forum (South), Kottarakkara, as also all further proceedings there under, pending disposal of this complaint.

#### **Arguments of the respondent:**

The Internal Audit wing of this licensee, in their periodical inspection at the Section, it was noticed that sufficient capacitor was not installed in the petitioner's premises as per general conditions stipulated in the tariff order

dated 27-09-2014. The tariff order issued by the Regulatory Commission specifically stated in the general conditions (3) that "For LT industrial and agricultural consumers, who have not installed capacitors with ISI certification of specified voucher, the fixed charge and energy charge shall be higher by 20% of the tariff applicable to the respective categories".

Accordingly a penal bill for Rs. 58,985/- for the period from 04/2014 to 03/2016 was issued to the consumer on 05-12-2016. Regulation 134(1) of the Supply Code, 2014 states as 'if the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill'

Here the consumer was undercharged and the consumer is liable to remit the amount short collected from him due to the installation of insufficient capacitor. The demanded amount was actually due to the licensee. The issued bill is legal and as per the prevailing rules in the Board.

The short assessment bill was issued for the period from 04/2014 to 03/2016, that is, only for 24 months. Though the consumer was enjoyed the benefit much earlier, assessment was limited for 24 months only as per the provisions in Regulation 152 (3) of the Supply Code 2014.

In the above circumstances the Hon'ble State Electricity Ombudsman may please to dismiss this appeal as it is totally against facts and rules.

### **Analysis and findings**

A hearing of the case was conducted in the Court Hall of CGRF, Kottarakkara on 20-10-2017. Sri. Sankaranarayanan Pillai, advocate appeared for the appellant and Smt. Letha M.K. Assistant Executive Engineer, Electrical Sub Division, Veliyam 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.

The case of the appellant is that the respondent had collected penal charges as 20% extra for the non installation of capacitors even without conducting any inspection in the appellant's premises. The respondent issued a short assessment bill for Rs. 58,985/- being the 20% extra on fixed and energy charges for the non installation of capacitors for the period from 04/2014 to 03/2016. The billing was done based on the inspection of Regional Audit Officer in the Section Office.

In the case in hand, the respondent admits that the Section had not conducted an inspection in the premises of the appellant. If that being so, it is easy for them to find out the details of the capacitor installed and if there is any doubt they could have asked the appellant the date of installation and to produce evidence for the same. But this was not seen done by the respondent. If the respondent is fully aware of the non-installation of the capacitors, it is the responsibility the respondent to issue notice and to collect penal charges as 20% extra in the bills issued. Further the respondent has produced a copy of the monthly reading register in which the rating of capacitor is furnished as 5 Kvar, but no date of installation is seen. The respondent has failed to give a convincing reason for their failure to collect the extra charges from the appellant, if no capacitor was installed during the period in dispute. So it can be presumed that the contention of the appellant that they had installed the capacitors in the disputed period is found in order.

The respondent found that capacitors were installed in the premises but argued that the installations were carried out after the receipt of the penal bill. An inspection was not seen done by the respondent to verify whether sufficient capacitor is provided or not and a site mahazar was not prepared. The Regional Audit Officer inspection was based on the records available in the Section Office. Even after the Regional Audit Officer inspection, the Section authorities have not inspected the premises of the appellant and no notice was given to the appellant for providing sufficient capacitors. In the absence of completion report and connected records, it is difficult for this Authority to decide the date of installations of capacitors. The contention raised by the respondent that the non installation of capacitors were noted in the reading register and the respondent is aware of the above facts, there is no justification for the non collection of extra charges.

For the aforesaid reasons, I accept the contention of the appellant that the capacitors were installed during the disputed period. The contention of the respondent that they are empowered to recover the amount undercharged from the consumer by issuing short assessment bill as per Regulation 134(1) of Supply Code, 2005 is not applicable in this case. This Regulation is applicable only in the cases where genuine omissions occurred and in this particular case the respondent failed to prove that the appellant was undercharged.

**Decision:**

In the absence of any positive evidence to disbelieve the contentions raised by the appellant that the capacitors were installed in the premises in the disputed period, I hold the 20% extra charges for the period from 04/2014 to 03/2016 is arbitrary and hence unsustainable. The appeal petition filed by

the appellant is found having merits and is allowed. CGRF order OP No. 325/2016 dated: 26-05-2017 is set aside.

Having concluded and decided as above it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/077/2017/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri Manuel Mohan Das, Kevin Cashews, Chengoor, Nettayam P.O., Ambalamkunnu, Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Veliyam, Kollam

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, Kottarakkara - 691 506.