

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/116/2017
(Present: A.S. Dasappan)
Dated: 19th February 2018

Appellant : Sri. K. Sivarajan
Manthanathu Puthen Veedu,
Anakkottoor P.O.,
Kottarakkara

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Kottarakkara,

ORDER

Background of the Case

The appellant is a consumer with Consumer No. 29075 under Electrical Section, Kottarakkara West. This service connection stands registered in the name of Sri K. Sivarajan, with a connected load of 2186 watts under LT 5 A tariff. While so, on 21-03-2017, the KSEB authorities conducted an inspection in the premises and detected unauthorized additional extension of supply, from the poultry farm to a nearby house for construction purposes. On the basis of the site mahazar prepared, a provisional bill for Rs. 34376/- was issued to the consumer, under Sec.126 of Electricity Act, 2003. Aggrieved against this bill, the consumer filed objection before the Assessing officer i.e. the Assistant Engineer who disposed of the petition by confirming the provisional bill after allowing a hearing. Still not satisfied, the appellant then lodged a complaint before the CGRF, Kottarakkara which was dismissed, vide order no. OP No. 437/2017 dated 19-08-2017. Then the appellant filed a review petition before the CGRF on 04/11/2017 which was dismissed as the Forum has no jurisdiction to entertain the complaint and directed the appellant to prefer appeal before the Electricity

Appellate Authority, vide order no. RPNo.532/2017 in OP No. 437/2017 dated 16/1/2018. But aggrieved by this, the appellant has submitted this Appeal petition before this Authority.

Arguments of the appellant:

The appellant is a consumer of Kottarakkara Electrical Section with consumer number 29075. The appellant has a poultry farm having separate electric connection near to his house. The appellant closed the farm for a period more than four months and started refunctioning by the end of November 2016.

The KSEB officials misunderstand that the appellant misused energy for other purposes and issued a penal bill for Rs.34376/-. The appellant had filed petition before the concerned Assistant Engineer and CGRF along with the bills of purchase of chicks and its food, but no relief received from them. The KSEB officials issued the penal bill with a misunderstanding while the appellant cut a wooden piece when readymade wooden fittings were being done in the nearby house.

The appellant has no source to remit the amount. It is requested to condone the delay, if any, in filing the petition and to exempt from paying the penal bill.

Arguments of the respondent:

It is respectfully submitted that as envisaged in section 145 of Electricity Act 2003, even civil court do not have jurisdiction to entertain the matters of disputes in assessment under Section 126, the appellate authority is the competent statutory authority referred to in Section 127. The same was upheld by the Hon'ble Supreme Court of India in U. P. Power Corporation Ltd. & Ors v Anis Ahmad (2013(3) KLT SN 31), that a "complaint" against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum. Moreover as per clause 2(1)(f)(vii)(i) of Kerala State Electricity Regulatory Commission(CGRF & EO)Regulations 2005, all actions initiated under Section 126 of the Electricity Act 2003 is not maintainable before this Ombudsman. Hence this Ombudsman has no jurisdiction to entertain this complaint as the matter related to Section 126 and 135 of Electricity Act 2003. Hence this Hon'ble Ombudsman may be pleased to dismiss the complaint in limine.

The appellant has submitted the following facts.

The appellant, K. Sivarajan, Manthanathu Puthen Veedu, Anakkottoor, Kottarakkara possesses two electric connections vide Consumer Nos. 21933 (present tariff LT I A) and Con No 29075(present tariff LTV B) under KSEB Electrical Section, Kottarakkara West under Electrical Sub Division, Kottarakkara and Electrical Division, Kottarakkara. The customer was issued with a bill for Rs.34376/ to realize the assessment made under Section 126 of Electricity Act 2003 since unauthorized usage of energy was detected during an inspection conducted on 21/03/2017.

Against the issuance of such bill the appellant filed OP NO 437 of 2017 before Honourable Consumer Grievance Redressal Forum. The Honorable Forum in its judgment dated 19th day of August 2017 has stated that the Forum has no jurisdiction to entertain the complaint but at the same time remanded the case to the Assistant Engineer with a direction to issue the bill by calculating the difference in tariff between LTV B and LT VI F.

Being severely aggrieved and dissatisfied with the Order of the Forum the opposite party filed review petition on 04/11/2017 praying to withdraw the impugned Order dated 19th day of August 2017 in OP No: 437 /2017 and to allow this Licensee/ Appellant to realize the actual loss sustained by this Licensee/ Appellant on this account quantified to the tune of Rs 32360/- (Rupees Thirty Two Thousand three hundred and sixty Only) from the Consumer along with costs.

The energy is using for constructing purpose to the nearby house in the same compound and the applicable tariff is LT VI F which is owned by Sri Sasikumar, Assistant Secretary ,Panchayath.

Electricity Act 2003 amendment 2007 section 126(5) stipulates that if the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of energy has taken place. In this case the assessing officer had been convinced that the consumer had engaged in the unauthorized use of electricity from 09/2015 onwards.

Also as per the Hon'ble Supreme Court in its judgment in Seetharam Rice Mill's Case (2010(4) KHC 1) had declared that whenever the consumer commits breach of an agreement falls under regulations and provisions of the Act and by consuming electricity in excess against the sanctioned connected load, such consumer would be in blame and under liability within the scope of Section 126 of the Act, 2003. The assessment of the penalty can be made as per the Section 126 (6) of Electricity Act, 2003 as declared in the ruling in Seetharam Rice Mill's case.

The Hon'ble Supreme Court has also directed that Sections 126 and 127 of the Act is a Code in itself having detailed provisions for inspection, provisional assessment, hearing of party, final assessment, appeal and disposal.

Unauthorized additional load (UAL) =564 watts

Penal fixed charge=3 KW X Rs 60/KW X 2 X 6 months=Rs 2160/-

Fixed charge already paid =3 KW X Rs 8/KW XI month X 6=Rs 144/-

Balance fixed charge to pay =Rs 2160-Rs 144=Rs 2016/-

Month	Consumption	Amount to pay	Amount paid
11/2016	750	750xRs 7.80x2 = Rs 11700/-	Rs 1009/-
01/2017	698	698xRs 7.80x2 =Rs 10888.8/-	Rs 943/-
03/2017	822	822*Rs 7.80*2 =Rs 12823.2/-	Rs 1100/-
Total		Rs 35412.00	Rs 3052/-

Balance energy charge to pay =Rs 35412-Rs 3052=Rs 32360/-

As per regulation 154 (1) of Kerala Electricity Supply Code 2014 Un authorized extension means.

(1)The extension is beyond the limits of the premises or

(2)The extension is for a purpose other than for which the supply is authorized whether or not such extension is within or outside the premises.

Also the same regulation (5) says Consumption of electricity on account of unauthorized extension shall be considered as unauthorized use and shall be assessed under Section 126 of the Electricity Act 2003.

In the petition before the Honourable Consumer Grievance Redressal Forum and the appeal petition filed before the assessing officer the appellant himself admitting that he has unauthorisely used electricity.

The respondent visited the premises on 13/06/2017 and on enquiry with the workers engaged in the construction of Sri Sasikumar's house it is revealed that there is an agreement between the appellant and Sri Sasikumar about sharing of energy charges and is evident from the consumption pattern which is shown below.

The consumption details of the consumer are as follows.

Month	Consumption	Remarks
01/2015	8	
03/2015	5	
05/2015	5	
07/2015	3	
09/2015	2	
11/2015	6	
01/2016	4	
03/2016	3	
05/2016	27	
07/2016	200	
09/2016	42	
11/2016	750	
01/2017	698	
03/2017	822	
05/2017	244	
07/2017	412	
09/2017	38	

From the petition itself the following observation can be made.

1. The appellant himself is admitting the unauthorized usage of electrical energy.
2. Being a pensioner from BSNL he has known all the rules and consequences regarding unauthorized usage of electrical energy.
3. It may also be noted that the appellant owns an electric connection in LT IA tariff in the same compound and he purposefully used the subsidized electric connection for unauthorized use.
4. The beneficiary Sri Sasikumar being an Assistant Secretary, Panchayath is well versed with the building rules.

In the above circumstances, the respondent requests this Authority to dismiss the complaint.

Analysis and Findings:

The Hearing of the case was conducted on 19-01-2018, in the Court Hall of CGRF, Kottarakkara. The appellant was present and his Advocate Sri. M.K. Sudhakaran Nair also represented him during the hearing. Sri G.Soni, Assistant Executive Engineer, Electrical Sub Division, Kottarakkara represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

On a perusal of the documents it can be seen that the appellant was issued with a penal bill amounting to Rs. 34376.00 under Section 126 of Electricity Act, 2003, for unauthorized use. The Section 126 (1) Electricity Act 2003 reads as; "If on an inspection of any place or premises or after inspection of equipments, gadgets, machines, devices found connected or used, after inspection of records maintained by any person, the assessment 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".

In such a context, I am of the opinion that an inspection done by an officer on Assistant Engineer's behalf and supported by a site mahazar, and if the same action is convinced by the Assistant Engineer, the Assessing officer, it is legally sufficient to proceed against the consumer, under Section 126, and raise a provisional assessment thereof.

As per Regulation 154 of the Supply Code, 2014, extension of supply of electricity shall be reckoned as unauthorized if

- (i) the extension is beyond the limits of the premises; or
- (ii) the extension is for a purpose other than for which the supply is authorized whether or not such extension is within or outside the premises.

Provided that in the case of domestic consumers, temporary extension within the premises for non domestic purposes shall not be reckoned as unauthorized extension if the load of non-domestic purpose is not more than twenty percent of the sanctioned load.

Here, in this case, the allegation is that the appellant is a consumer under LT VB tariff and unauthorisely used the supply for a purpose other than for which the supply is authorized. Further, in the site mahazar, it is stated that the sanctioned load is 2186 watts and the extension of supply for non agricultural purpose is 564 watts.

Any such dispute or complaints regarding the assessment under Section 126 of Electricity Act 2003 are not maintainable before CGRF and Electricity Ombudsman by virtue of Clause 2 (1) (f) (vii) (1) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. The orders issued by the CGRF in the review petition filed by the appellant, it was clearly directed the appellant to prefer appeal before the Electricity Appellate Authority. Instead of filing appeal before the aforesaid statutory authority, the appellant herein approached first the CGRF and thereafter this Authority. The appellant's remedy was only to file an appeal before the Statutory Authority under Section 127 of the Act. 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.”

If the appellant is aggrieved by the final order issued by the Assessing Officer under Section 126 of the Act may within 30 days of said order file an appeal before the Appellate Authority under Section 127 of the Act.

Decision

When the regulations specifically exclude the jurisdiction of CGRF and Electricity Ombudsman on all disputes pertaining to bills raised under Section 126 of the Act on allegation of unauthorized use the only remedy available to the appellant against such bill is to file an appeal under Section 127 before the Statutory Authority. Hence I make it clear that the appellant is directed to approach the Appellate Authority for redressing his grievances as per Section 127 of Electricity Act, 2003. The appeal petition is disposed of accordingly. The decision in of CGRF (South) Kottarakkara vide order no. RPNo.532/2017 in OP No. 437/2017 dated 16/1/2018 is affirmed. No order as to costs.

ELECTRICITY OMBUDSMAN

P/116/2017/ _____ /Dated: _____

Delivered to:

1. Sri. K. Sivarajan, Manthanathu Puthen Veedu,Anakkottoor P.O., Kottarakkara.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Kottarakkara.

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.