

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/085/2018
(Present: A.S. Dasappan)
Dated: 20th December 2018

Appellant : Sri. Saji M Nair
Manager, Vijay Industries,
Polpully, Palakkad

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Chittur,
Palakkad

ORDER

Background of the Case

The appellant is representing M/s Vijay Industries, Polpully, Palakkad engaging the manufacturing of FRP doors and interior furnishing goods, with consumer number 10376 under LT IV A industrial tariff, and having a connected load of 7 kW, under Electrical Section, Chittur, Palakkad. The appellant had requested to grant an additional load of 9 kW on 20-06-2016. The respondent sanctioned the additional load on 29-06-2018. While being so, the respondent issued a short assessment bill dated 28-06-2018 amounting to Rs. 16,875/- towards the fixed charges for 25 months from 06/2016 to 06/2018 for the additional load 9 kW connected. Aggrieved by the delay in providing the additional load requested by the appellant which paved the way for subsequent happenings, the appellant filed a petition before the CGRF. The CGRF, Kozhikode has ordered the following in its order dated 29-09-2018 in OP No. 58/2018-19:

“1) The short assessment bill for Rs.16875/- is quashed. 2) the Licensee shall issue short assessment bill for 24 months only.”

Still aggrieved by the said order of the CGRF, the appellant has filed the appeal petition before this Authority.

Arguments of the appellant:

The appellant is the Manager of M/s Vijay Industries, Polpully, Palakkad engaging the manufacturing of FRP doors and interior furnishing goods, who is the authorized person for representing the matter. The registered owner Sri V. Kanthaswamy started the firm during 1995 had availed the service connection with a connected load of 7 kW under industrial tariff.

The appellant applied for an additional load of 9 kW and submitted all the documents along with the application and remitted the entire requisite fee as early as 04-06-2016. On receipt of application the licensee has not intimated any defects or any deficiency in the application. But, the licensee sanctioned the additional load only on 29-06-2018 after a lapse of 25 months that too even without insisting any further documents or fees. Further even without an iota of evidence, the licensee issued the present demand for Rs 16875.00 as short assessment arbitrarily in order to cover up their inefficiency in dealing with a genuine consumer who applied for additional load. Hence the demand issued for Rs 16875.00 is arbitrarily, illegal and not sustainable either on facts or on law for the following reasons.

The appellant submitted an application for power requirement before the Assistant Engineer, Electrical Section, Chittur on 20-04-2016 for enhancing the connected load to 16 kW from 7 kW. Accordingly, the appellant remitted Rs 10.00 as fee for power feasibility and Rs 2000.00 as advance Estimate Cost for Service Connection charges vide receipt Nos. 65010160420102194 and 65010160420102195 respectively. The licensee after verification of documents and site inspection, directed the appellant to remit Rs 25.00 towards the application fee and Rs 50.00 as testing fee and the same was remitted on 04-06-2016 vide receipt no 65010160604101008, and 65010160604101007 respectively.

As per Regulation 76(8) of Supply Code 2014, states that an 'application form' shall become an 'application' on receipt of all applicable charges, security deposit and all necessary documents including approvals from statutory or other authorities; and the application shall be deemed to have been received on the date of receipt of all such charges and documents.

As per Regulation 62 of Supply Code 2014, the licensee had to regularize the additional load in accordance with the provisions of KSERC (Licensee's Standards of Performance) Regulations 2015 as amended from time to time. But the licensee regularized the additional load after a lapse of 25 months i.e. on 29-06-2018. It is pertinent to note that the subsequent regularization of additional load is without any clarifications or on the basics of additional documents from the appellant proves that the application is devoid of any defect.

As per Regulation 99(7) of Supply Code 2014, the licensee shall issue order on the application for the enhancement of load within thirty days from the date of its receipt and intimate the applicant whether or not the enhancement of load is sanctioned. This regulation mandates to issue orders on the appellants application for enhancement of load within 30 days from the date of receipt and to intimate the appellant whether the enhancement is sanctioned or not. This right of the applicant is infringed in this case. There is patent illegality on the part of licensee in the regularization of additional load which cannot be accepted on any ground.

Further, there is no evidence to show that the appellant had connected and used the additional load during the period from 04-06-2016 to 28-06-2018. Hence the present demand is not sustainable either on law or on facts and liable to be dropped. In fact, a genuine applicant who applied for additional load is now penalized for the reasons not related to him. The licensee regularized the additional load only after repeated follow up. It is also pertinent to note that the present demand issued is in order to cover up the inefficiency on the part of licensee. Hence there is no justification for issuing such a demand after a lapse of 25 months on the basis of an assumption. The lethargy shown by the licensee in regularizing the additional load ought to have taken in to account. Even, without taking any action in the appellant's application for the period of 25 months, the issuance of demand of Rs 16875.00 is again a harassment of appellant. This type of negligent attitude from the officers of the respondents may be prevented by this Authority.

The officers of the licensee are liable to be directed to pay the compensation for the inordinate delay in regularizing the additional load as per the provisions in the Standard of Performance issued by the Honorable Commission.

Arguments of the respondent:

The Respondent (KSEBL) has submitted before the CGRF that there was no agreement with the Appellant Saji M Nair. The Appellant is not a consumer of the Respondent. The electric connection to Consumer No. 10376 of Electrical Section, Chittur is owned by one V. Kanthaswamy. The Forum has not considered this prayer. Hence it is once again prayed that the Appellant has no locus standi to file this Appeal and hence this Petition may be dismissed as not maintainable.

It is true that one V. Kanthaswamy availed an electric connection in 1995 in LT IV A tariff with a Connected Load of 7000W. On 04.06.2016, the consumer made an application to the Assistant Engineer, Electrical Section, Chittur for an enhancement of Connected Load to the tune of 8740W to make the total Connected Load 15740 W. The consumer had remitted AF and TF on

04.06.2016. Since the consumer is an LT IV Industrial consumer and the consumer had not attached the Panchayat License and sanction from the Taluk Industries Center, the consumer was instructed on 13.06.2016 to produce the said documents urgently so as to process his application. But the consumer never cared to produce them may be because of the hindrances from the Panchayat. The load was not regularized for want of these certificates.

On 28.06.2018, the Consumer informed this respondent that he is unable to obtain the said certificate from the Panchayat. He produced the Pollution Certificate dated 07.06.2017 of Pollution Control Board. When the consumer informed of his inability to produce the license of the Panchayat, he was instructed on 26.06.2018 that he may produce an undertaking to the effect that he has no objection to disconnect the additional load in case of an objection from the Panchayat. The consumer has produced this undertaking on 29.06.2018.

The consumer has produced the completed application for enhancement of load only on 29.06.2018. Subsequently the load was regularized with effect from 29.06.2018 after remitting the necessary charges.

Even before filing application for enhancement of additional load on 04.06.2016, the consumer has connected this load and using the same without permission of this licensee. The consumer had started using the load even as early from 7/2015 which is evident from the consumption pattern. Even though the consumer was susceptible for charging penalization under "Section 126 of Electricity Act, 2003, this was not done owing to the application produced by him in 6/2016. Since an application for enhancement of load was pending for anomaly attributable to the consumer himself, the consumer was spared from proceedings under Section 126 on lenient grounds. Hence the revenue loss sustained to this licensee by way of fixed charges was assessed for a period of nearly 2 years as per Regulation 134 of Supply Code, 2014.

It is evident that the consumption has gone high from 7/2015, The consumption for the prior 6 months was around 100 units, whereas the consumption has gone to 158 units in 7/2015, 246 units in 8/2015, etc. This shows that the consumer has connected the additional load from 7/2015. Even though this period is known, this licensee could have charged the difference in fixed charges as short collection from 7/2015 itself. But taking a lenient view, the short assessment was limited as provided in the bill dated 28.6.2018.

It is further submitted that the short assessment was issued for the period from 6/2016 to 6/2018 as per the calculation detailed below:

$$\text{FC Rs. } 75 \times 9 \text{ kW} \times 25 \text{ months} = \text{Rs. } 16,875$$

The bill was issued only for the escaped portion of Fixed Charges for the Additional Load portion only and no penalization penalty was charged on the bill. The bill issued is legal and as per the statute.

It is evident from the documents submitted that the license from the Factories and Boilers Department was obtained by the consumer on 22.01.2018 only, Certificate from the Kerala State Pollution Control Board was obtained only on 07.06.2017, Certificate from the Taluk Industries Office, Chittur was obtained on 27.06.2017 only and the declaration by the consumer due to non-availability of Panchayat License was dated 29.06.2018. The consumer submitted an application for enhancement of additional load on 04.06.2016 casually and purposefully to protect from penalization under Section 126. This is quite evident from the dates of each of the certificates mentioned above.

The averment of the appellant before the Forum was that he has not connected the said additional load, he has incurred financial loss due to the non-regularization of load, etc., are false and suppression of facts. Moreover, the short assessment was not done as per Section 126 or 135 of Electricity Act to follow the procedure laid down in Regulation 150 of Supply Code, 2014. The appellant was trying to mislead the Forum by quoting Regulation 150. The bill is to make good the loss sustained to this licensee by way of connecting additional load. The bills in these periods are undercharged by way of difference in fixed charge. The provisions of Regulation 150 are not applicable here.

The CGRF, Kozhikode vide its order dated 03.10.2018 almost confirmed the short assessment bill which was reduced for 24 months instead of 25 months. The Forum found no anomaly in issuing the short assessment bill except the period of assessment. The Forum also found evidences to show that the total load in the premises is 15740 W. The Forum also found that the delay occurred in the regularization of connected load is due to the delay in submission of records by the consumer.

The Appellant is correct in quoting the Regulation 76(8) of the Supply Code, 2014. From the above Regulation, it is clear that the approval from the statutory authority is compulsory to treat an application form as "application". Only on the receipt of such documents the application is to be treated as received.

The Appellant has rightly pointed out Regulation 62 of the Supply Code also. In the Standard of Performance Regulations 2015 it is clearly defined that application complete in all respect along with necessary documents constitute an "application". Hence the argument of the appellant that there was lapse on the part of this licensee in regularization of load is false and frivolous.

From the above, it could be seen that the respondents have claimed only the amount due from the Appellant on normal tariff rates and no penalization has been done. It is therefore prayed that the Appeal be dismissed with cost.

Analysis and findings:

The hearing of the case was conducted on 11-12-2018 in the office of the Electricity Ombudsman, Edappally, Kochi and Sri. Saji M Nair represented for the appellant's side and Sri Nagarajan S, Assistant Executive Engineer, Electrical Sub Division, Chittur and Sri. Vipin N, Nodal Officer (Litigation), Electrical Circle, Palakkad appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

The appellant had submitted an application on 20-04-2016 for enhancement of the connected load from 7 kW to 16 kW after remitting the application fee, testing fee and Rs. 2,000/- as advance estimate cost. The respondent sanctioned the additional load on 29-06-2018 i.e. after a lapse of 25 months. According to the respondent, the delay was due to the failure to submit sufficient documents along with the application which are the causes attributable to the appellant. The appellant was issued a short assessment bill dated 28-06-2018 for Rs. 16,875/- for the period from 6/2016 to 6/2018 towards the cost of escaped portion of fixed charge for the additional load portion. This short assessment was based on the consumption pattern of the appellant.

The appellant's argument is that there is no evidence to show that he had connected and used the additional load during the period from 04-06-2016 to 28-06-2018 and as a genuine applicant who applied for additional load is now penalized for the reasons not related to him.

On going through the records it can be seen that the respondent has not conducted a site inspection and produced a copy of the site mahazar. As per the guidelines issued by the licensee vide Board Order (FB) No. 2518/2013 dated 28-11-2013 it is the duty of the Assessing Officer or the Authorized Officer to conduct inspection and to prepare a site mahazar. All relevant findings including the nature of unauthorized use detected, description of evidences seized etc. should be included in the site mahazar. The site mahazar which is the main evidence and essential document to substantiate the claim of the respondent to prove any unauthorized use of electricity has taken place is not seen produced by the respondent in this case. There is no justification for not producing the mahazar if it is so prepared at the time of inspection.

In the absence of a site mahazar, the action of the respondent to penalize the appellant for unauthorized additional load is violation of the existing rules and regulations. It is mandatory to comply with the **General Provisions Relating to Inspection under Regulation 173 and Issue of Notice to the Consumer under Regulation 174 of the Supply Code, 2014**. The **Regulation 153 of the Kerala Electricity Supply Code, 2014** clearly depicts the estimation and regularization of unauthorized additional load. The respondent has stated that even though the consumer was susceptible for charging penalization under "Section 126 of Electricity Act, 2003, the consumer was spared from proceedings under Section 126 on lenient grounds. The licensee is not allocated any powers to deviate from the provisions of the Act or the Code at his discretion.

Under **Regulation 153 (7)**, "if it is found that any additional load has been connected without due authorization from the licensee or in violation of any of the provisions of the **Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010**, as amended from time to time, the licensee shall direct the consumer to disconnect forthwith such additional load and the consumer shall comply with such direction, failing which the supply of electricity to the consumer, shall be disconnected by the licensee". In this particular case, the respondent has failed to act in accordance with the provisions in the Supply Code and guidelines issued by the licensee regarding inspection and preparation of mahazar etc.

The assessment made in this case is without observing the above mentioned Regulations in Supply Code and the guidelines issued by the licensee. The short assessment bill was prepared based on a presumption that the appellant had connected additional load in his premises and the reliability of such a presumption is that the increased consumption pattern. On going through the consumption pattern, except a few months the consumption of the appellant was below 200 units which are not questionable for a connected load of 7 kW. So the question to be answered is whether the respondent had detected any unauthorized load in the premises in an inspection conducted during the period. In this case, by no stretch of reasoning, it can be said that the CGRF took a wrong view in finding that the appellant's additional load to be treated as regularized from 07/2016 onwards. Hence the request of the appellant to set aside the short assessment levied by the respondent is found justifiable. So the assessment is not sustainable before law and is liable to be set aside.

Decision

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

The short assessment bill for Rs. 16,875/- is quashed. The order of CGRF, Kozhikode vide order No. OP/58/2018-19 dated 29-09-2018 is set aside. The Appeal Petition filed by the appellant is found having merits and is allowed. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/085/2018/_____ /Dated:_____

Delivered to:

1. Sri. Saji M Nair, Manager, Vijay Industries, Polpully, Palakkad
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Chittur, Palakkad

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