

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/090/2018
(Present: A.S. Dasappan)
Dated: 29th January 2019

Appellant : Sri. Shaji Ayyappan
Director, Shwas Homes Pvt. Ltd.,
Shwas Mystic Heights,
Kaniyampuzha Road, Eroor P.O.,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Tripunithura,
Ernakulam

ORDER

Background of the Case:

A three phase electricity connection bearing consumer number 12626 under the jurisdiction of Electrical Section Eroor has been given to the appellant under LT VII A commercial tariff with a sanctioned load of 16.7 kW for the purpose of running the office of Shwas Homes Pvt Ltd. An inspection was conducted in the premises on 29th March 2014 by the APTS wing of KSEBL and reported that there is an unauthorized addl. load of 11kW connected to the appellant's premises and the appellant was penalized for the unauthorized additional load both for fixed charges and proportionate energy charges, amounting to Rs. 3,32,545/-. The matter was taken up before the Appellate Authority by the appellant and the Authority set aside the final order of the Assessing Officer, limited the penalty to only 13 days from 17.3.2014 to 29.3.2014 and directed KSEBL to revise the penal bill issued. Being aggrieved, the respondent challenged the order of the Appellate Authority before the Hon. High Court of Kerala vide WP (C) No. 34346/15 and the case is still pending for disposal. Meanwhile, on 07.07.2018, the appellant filed complaint No. 32/2018-19 before the Consumer Grievance Redressal Forum (CGRF) to refund the penal part for UAL in the monthly bills issued to the Appellant from May 2014 to January 2018 and to revise those monthly bills served to the appellant

on the reason that the same was not based on the actual consumption. The CGRF, Central Region, Ernakulam dismissed the petition stating that the case relating to penalization of UAL is pending before the Hon'ble High Court of Kerala and has no jurisdiction to entertain the complaint, vide order No.32/2018-19 dated 13-11-2018.

Aggrieved by the order of the CGRF, the appellant has submitted this appeal petition before this Forum.

Arguments of the appellant:

Recently the appellant had to connect up some additional loads to their office building. After making proper modifications in the electrical installation, the appellant approached KSEBL for sanction and regularization of the load. It was only then, appellant came to understand that, he was being penalized for unauthorized additional load of 11 kW way back from May 2014 i.e. ever since the inspection was conducted by the APTS wing of KSEBL.

On perusal of the regular bills, it is learnt that the appellant was being penalized for 11 kW of unauthorized additional load, both for fixed charges and proportionate energy charges amounting to an average of more than Rs. 10,000/- per month. More over in certain months billing was not made for the actual consumption recorded in the energy meter, but for a much higher consumption fixed at the whims and fancies of the billing authorities.

The appellant's consumption in Dec 2014 was 566 units, in Jan 2015 it was 87 units, in Sep 15 it was 278 units, but in all these months the appellant was charged for an assumed average consumption of previous months. The meter was properly working and the same meter is still in service. Both the aforesaid acts of the Licensee falls under excess billing and violation of provisions contained in the Act and rules. On learning the matter of penalization for UAL, which was not in existence and wrong/excess billing, the appellant had raised their grievance before the Assistant Engineer, Electrical Section, Eroor with copies to the Asst. Executive Engineer and Executive Engineer, requesting refund of the penal/excess amounts realised from them from May 2014 to January 2018.

The penalization for fixed charges and proportionate energy charges indefinitely on a consumer in the pretext that, there is unauthorized connected load in a premise is against the prevailing rules and regulations for supply of power by a Licensee. Even if unauthorized load is found in the premises after an inspection, KSEB Ltd gives a notice to the consumer to disconnect the same or regularize it within a reasonable time frame. If the consumer does not respond to such a notice, KSEB Ltd should disconnect power supply to the premises after the said period. No penalization for additional load can be made by KSEBL indefinitely, and it does not stand before the law. More over it is

blatant denial of natural justice against a consumer, who pay their electricity bills promptly and regularly.

Regulation 153 of Supply Code, 2014 reads as follows "If it is found that any additional load is connected up without due authorization (in a premises) the Licensee shall direct consumer to disconnect the additional load and the consumer has to comply with that direction, failing which supply of Electricity to the consumer shall be disconnected by the Licensee." Also Regulation 153 (9) reads as follows "If it is found that additional load has been connected up..... steps may be initiated to regularize the connected load in accordance with the provisions in the agreement within a time frame"

Section 126 and 127 of Electricity Act, 2003 is clearly a regulatory measure to restrict the consumption of a consumer according to their connected load/contract demand. There is no provision at all in the said sections of the Act allowing the consumer to connect up additional load for any length of time by paying a penalty to the Licensee.

Merely imposing a penalty will not serve the purpose of restriction of unauthorized consumption of electricity, which is the core purpose of Section 126 and 127 of the Act. In the event of detection of UAL in a premises, the load should be regularized within a time frame or disconnect it from the mains immediately, in order to check abnormal unauthorized load growth and consequent failure of the system.

In the event of detection of UAL in a premises, the load should be regularized within a time frame or disconnect it from the mains immediately, in order to check abnormal unauthorized load growth and consequent failure of the system. This is why Regulation 153(7) and Regulation 153(9) of Supply Code, 2014 and also Section 126 of Electricity Act 2003 do not permit the Licensee to penalize the consumer indefinitely and facilitate to continue the usage of UAL for an indefinite period. Section 126 of Electricity Act is not intended to squeeze and grab money from a consumer by the Licensee over and above the regulatory tariff rates. Here the consumer had disconnected the additional load, informed the same to the Electrical Section office and (up on satisfying it) the service connection was never disconnected. The otherwise contention cannot withstand the prevailing rules and real facts in this case. Immediately after the inspection the appellant was served with a notice to disconnect the additional load and remit the penal amount. Accordingly the appellant had disconnected the UAL then and there. Once the service connection is not disconnected for not dismantling the UAL, as directed by the Licensee, it is ample evidence to show that the consumer had disconnected the same and was penalized without authority and does not stand the test of law.

Despite the ruling of the Apex Court and the Hon'ble High Court of Kerala, the penal charges included in the regular bills in question contains two

times fixed charges and proportionate energy charges. The transformer installed in the premises by the appellant can cater the load. The total load being only 28 kW, including the alleged UAL, there is no need for any enhancement of voltage level too.

The CGRF never considered this matter or rather kept mum on it. It may be noted that an amount of Rs. 6,65,142/- has been levied as penal charges from May 2014 to January 2018.

"The analysis and finding" of the CGRF is totally erroneous, against facts in evidence and also against rules and regulations in force. WP (C) No 34346/15 is absolutely based on an inspection conducted in the premises of the appellant under Section 126 of the Electricity Act and on a decree issued by the Appellate authority under Section 127 of the Act, setting aside the penal bill, which was challenged by the Respondents in the Hon'ble High Court of Kerala. The issue of penal assessment afterwards in regular bills for UAL is entirely a different matter, which can not be combined with the issue pending before the Hon'ble High Court in the aforesaid WP(C).

As per sec 126 of the Electricity Act and Regulation 153 of Supply Code, 2014 there is no provision to penalize a consumer after the inspection. Penalization can be made for any period of time before the inspection, if the date of connecting up UAL can be traced or for a period of 12 months prior to the inspection, if the date of connecting up UAL is not known. This has been made crystal clear in Regulation 153 of Supply Code, 2014 by the Regulatory Authority. As per Regulation 153, if UAL has not been removed / disconnected by the consumer or regularized it within a time frame the only option left before the Licensee is to totally disconnect power supply to the premises. Section 126 of the Act is a code in itself. It has laid down the procedure for inspection and penalization for UAL in a consumer's premises. There is no mentioning of any penalty after the inspection under Section 126 of the Act. Regulation 153 of the Supply Code clearly explains it. More over the Hon'ble Apex Court and High Court of Kerala have categorically laid down that continuance of UAL will affect system stability and hence cannot be permitted.

Hence it is prayed before the Ombudsman that:-

1. To set aside the order of the CGRF dated 13.11.2018
2. To quash the penal Charges for UAL in the monthly bills issued from May 2014 to January 2018 and direct the Respondents to refund the same with interest as per Regulation 134 of the Supply Code, 2014.
3. To revise those monthly bills served not based on actual consumption.
4. To avoid penalization for proportionate energy charges as directed by the Hon'ble High Court of Kerala.
5. To call for the records leading to such penalization for a long period of 45 months

Such other reliefs as the Ombudsman may deem fit

Arguments of the respondent:

The appellant had not regularized or removed the UAL of 11 kW but used the same till it is regularized on 16.02.2018. No intimation was given by the appellant during the said period that he had removed the UAL of 11 kW detected during the inspection on 29.03.2014. Hence the respondent issued regular bills which included the fixed charges and energy charges on account of UAL of 11 kW and the appellant cleared all these bills as he is fully aware that he had been continuing the usage of UAL in the premises. The connected load was enhanced to 29.84 kW on 16.02.2018 on the basis of application submitted by the appellant.

On 07.07.2018, the appellant filed complaint No. 32/2018-19 before the Consumer Grievance Redressal Forum (CGRF) to refund the penal part for UAL in the monthly bills issued to the Appellant from May 2014 to January 2018 and to revise those monthly bills served to the appellant on the reason that the same not based on the actual consumption. As per the order dated 13.11.2018 of the CGRF dismissed the complaint stating that the case relating to penalization of UAL is pending before the Hon'ble High Court of Kerala and has no jurisdiction to entertain the complaint.

The monthly consumption pattern of consumer number 12626 justifies the existence of UAL in the premises of the appellant and its usage for the period beyond the date of inspection on 29.03.2014. The appellant is unable to produce any documents or evidence to substantiate the contention that UAL of 11 kW detected on 29.03.2014 was removed subsequently. Hence the contention of the appellant that they had removed the UAL of 11kW is not true to facts.

The Hon'ble High Court of Kerala in WP(C) No. 13129 of 2008 held that the unauthorized connected load would continue to be unauthorized until the same is regularized or removed. The Hon'ble High Court further observed that the petitioner has not produced any documents or evidence to substantiate the contention that the unauthorized connected load detected was subsequently removed, the respondent Kerala State Electricity Board is justified in issuing the penal bill for the subsequent period also. The said legal position was also upheld by the Division Bench of Hon'ble High Court of Kerala in WA No. 991 of 2014 and the Hon'ble Apex Court in SLP No. 34302 of 2014.

In the instant case, the appellant had connected UAL of 11 kW over and above the sanctioned load of 17 kW, resulted in a total load of 28 kW. As per the cost data approved by the Hon'ble KSERC, up-gradation of distribution system is necessitated for the enhancement of connected load from 17 kW to 28kW and the appellant had remitted Rs.18,150/- on 16.02.2018 towards the cost for replacement of existing weather proof service main and fuse unit with

those of higher current carrying capacity. Hence the levy of proportionate energy charges is quite justifiable in the light of judgment dated 12.04.2017 in WP(C) No. 31025 of 2008 of the Hon'ble High Court of Kerala.

Thus the UAL of 11 kW was continued to remain connected and in used in the appellant premises therefore the regular bills which included penalty portions for unauthorized use of Electricity is in order and justified.

Analysis and Findings

The hearing of the case was conducted on 22-01-2019 in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri. S Babukutty, represented the appellant's side and Sri. Sunil, C.S., Assistant Executive Engineer, Electrical Sub Division, Tripunithura and Sri. Sanjeev C Bhasker, Senior Superintendent, Electrical Section, Erroor represented the respondent's side. On perusing the Appeal Petition, the counter of the respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The pertinent facts of the case are as follows:

The appellant is having a three phase connection bearing consumer number 12626 under LT VII A for the office at Shwas Mystic Heights, Vyttila. The appellant was penalized under Sec. 126 of Electricity Act, 2003, for connecting extra load than the sanctioned load. That is to say, consumer had availed 11 kW of unauthorized additional load (UAL) in the premises, which was detected during the APTS inspection done on 29-03-2014. Penal bill for one year amounting to Rs. 3,32,545/- was served on the appellant, on 31-03-2014. The appellant approached the Appellate Authority against the demand, but the Authority set aside the final order of the Assessing Officer and limited the penalty from 17-03-2014 to 29-03-2014. The respondent challenged this decision by filing a writ petition in W.P. (C) No. 34346/2015 in the Hon'ble High Court of Kerala. The present appeal petition filed by the appellant is against the continuation of the penalization done by the respondent under Section 126 in the monthly bills issued to the appellant from May 2014 to January 2018.

After hearing both parties, the Petition decreed by the CGRF in brief, was as follows;

“On analyzing the case in details, it is observed that a W.P. (C) No. 34346/15 is pending before the Hon'ble High Court of Kerala regarding the same subject matter. It is not proper on the part of the Forum to decide an issue which is pending before the High Court. Hence the Forum has no jurisdiction to entertain the complaint as the case is pending before the Hon'ble

High Court. Hence the Forum decided to dismiss the case due to lack of jurisdiction.”

The main dispute of connecting unauthorized additional load in the premises is tantamount to “unauthorized use of electricity” under Section 126 of Electricity Act, 2003. The APTS inspected the premises of the appellant on 29-03-2014 and detected additional load in the premises. Even though the appellant has alleged excess billing in certain months, he has not put forward any supporting evidences to substantiate this allegation. At the same time the main allegation is that the appellant was being penalized for 11 kW of unauthorized additional load, both for fixed charges and proportionate energy charges amounting to an average of more than Rs. 10,000/- per month for the period from May 2014 to January 2018. Hence the issue raised by the appellant is a proven case of penalization under Section 126 of Electricity Act 2003. The dispute pertains to the continuance of the penalized amount under Section 126.

Any dispute or complaints pertaining to such matters are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. The Hon High Court has also made it clear that, when there is specific provisions in the Act itself, to hear such Cases by designated Appellate Authority, the same are excluded from the purview of CGRF and Ombudsman. As such, I have not gone deep into the merits of other points raised by the appellants in the Petition.

This appeal is not maintainable in law for the reason that the subject matter is beyond the jurisdiction of this Authority. Law has vested the exclusive right to examine the bill on the Assessing Officer under Section 126 and the Appellate Authority under Section 127 that has ample powers to examine whether the continuance of penalization in the monthly bills under Section 126 is justifiable or not. No other authority can transgress into their exclusive domain as held by the Apex Court.

The contention of the appellant is that for raising the penal bills is wrong, for which the Hon High Court of Kerala has taken a position that – *‘when the regulations specifically exclude the jurisdiction of the CGRF on all disputes pertaining to bills raised under Sec.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’*. The said ruling make it clear that CGRF and Ombudsman are barred from entertaining the related part of the bill raised under section 126 and accept the same.

Decision:

Since in this case, the grievance has arisen out of the detection of unauthorized load and the penal assessment made and its continuance in monthly bills under Section 126 of the Electricity Act, 2003, it is clear that the

petition itself is not maintainable before the CGRF or the Electricity Ombudsman as per the KSERC Regulations. That is any dispute or complaints pertaining to such matters are not maintainable before the CGRF and Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. Hence I decide that the Appeal Petition filed before this Authority by the appellant is not maintainable.

The appellant is free to file an appeal against the penal monthly assessment of the Assessing Officer, under Section 127 of Electricity Act, 2003.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants' stands disposed of with the said decisions. No order on costs.

ELECTRICITY OMBUDSMAN

P/090/2018/ _____ /Dated: _____

Delivered to:

1. Sri. Shaji Ayyappan, Director, Shwas Homes Pvt. Ltd., Shwas Mystic Heights, Kaniyampuzha Road, Eroor P.O., Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Tripunithura, 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.