

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/092/2018  
(Present: A.S. Dasappan)  
Dated: 5<sup>th</sup> February 2019

Appellant : Sri. Joseph Mathew  
Aswasa Bhavan, National Office,  
Pampady, Kottayam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Ponkunnam,  
Kottayam

### **ORDER**

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

The appellant is a consumer under Electrical Section, Pampady having consumer number 15340 under tariff LT VI D with connected load of 5660 watts. A penal bill for Rs. 1,15,995/- was issued to the appellant after an inspection conducted by the APTS, KSEBL on 16-06-2018. It is found in the inspection that the service connection availed under LT VI D was misused for domestic purposes for which tariff under LT I A with higher rate is applicable and also connected unauthorized additional load of 10214 over and above the sanctioned load of 5660 watts. The appellant filed a complaint before the CGRF, Kottarakkara against the assessment made under Section 126 of Electricity Act 2003. According to the respondent, the matter of the complaint is an assessment under Section 126 of the Act and the CGRF is barred from entertaining such complaints in view of regulation 2 (1) (f) (vii) (1) of the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. Accordingly the Forum held that it was improper to entertain the complaint and directed the appellant to approach the Appellate Authority, vide order No.103/2018 dated 10-10-2018. But without complying the said order of CGRF, this appeal petition was filed before this Authority.

#### **Arguments of the Appellant:**

Aswasa Bhavan was registered in 1987 and was working as an organization for public and also recognized by both State and Central

Government. As it was difficult to continue the functioning of the organization as per the new J.J. Act (Juvenile Justice) it was decided not to renew the registration further. The organization had validity of registration up to May 2018.

After conducting inspection in the premises and preparing mahassar by the Sub Engineer, Sri T.T. Abraham and Assistant Engineer, Sri Aneesh Kumar along with APTS, Kottayam, the appellant was given a penal bill for a huge amount for the misuse of electricity.

Though petition and explanation were given in Ponkunnam Electrical Division and CGRF, the appellant was compelled to remit the amount. The appellant paid the entire amount. As the organization had registration for public service, the appellant is eligible to get VI D tariff and requested for necessary orders.

### **Arguments of the Respondent:**

Anti Power Theft Squad (APTS) of KSEBL conducted an inspection on 16-06-2018 in the premises of Consumer Number 15340 which comes under Electrical Section, Pampady. In the inspection it was noticed that electricity connection allotted under LT VID tariff was being used for the higher tariff for domestic purposes LT I A. Besides and additional load for 10214 Watts was being used unauthorisedly against the allowed load 5660 Watts. A site mahazar was prepared and a final assessment bill for Rs. 1,15,995/- was issued to the appellant under Section 126 of IE Act, 2003. The appellant had to file appeal before the Appellate Authority as per Section 127, but approached CGRF, Kottarakkara and the CGRF registered the petition vide 103/2018. The order of CGRF is as per rules. The contention of the appellant that he had remitted the entire amount is wrong and he has to remit Rs. 68,961/- towards the balance portion of the 5 installments granted by the respondent.

On the above circumstances, it is requested to direct the appellant to remit Rs. 68,961/- and dismiss the appeal petition.

### **Analysis and Findings**

The hearing of the case was conducted on 29-01-2019 in the office of the Kerala State Electricity Ombudsman, Edappally, Kochi 24. Sri. Joseph Mathew and Sri. Micheal Mathew represented the appellant's side and Sri. Babu Y, Assistant Executive Engineer, Electrical Sub Division, Ponkunnam 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 subject matter in the petition pertains to the withdrawal of tariff VI D allotted to the appellant by the respondent stating that there is no activity eligible for the tariff VI D and the penalization done under Section 126 of Electricity Act 2003 and also for unauthorized additional load connected in the premises.

The main dispute of tariff misuse and 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 16-06-2018 and detected tariff misuse and additional load in the premises. The issue raised by the appellant is a proven case of penalization under Section 126 of Electricity Act, 2003 and the calculation of the short assessment was done under the provisions of Section 126 (6) of the Electricity Act, 2003.

Any dispute or complaints pertaining to such matters under Section 126 of the Electricity Act 2003 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:**

In view of the above factual position I don’t find any reason to interfere with the findings and decision taken by the CGRF, Kottrakkara in this case and

hence the order of CGRF No. 103/2018 dated 10-10-2018 is upheld. Having concluded and decided as above, it is ordered accordingly. No order on costs.

**ELECTRICITY OMBUDSMAN**