

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/018/2019
(Present: A.S. Dasappan)
Dated: 8th May 2019

Appellant : Sri. Subash T.J.
Managing Director,
Line On Power Pvt. Ltd.,
Palarivattom, Ernakulam

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

ORDER

Background of the Case:

The appellant is a consumer under Electrical Section, Palarivattom having consumer number 25603 under industrial tariff LT IV B with connected load of 19420 watts. A penal bill for Rs. 2,03,780/- was issued to the appellant after an inspection conducted by the APTS, KSEBL on 11-05-2018. It is found in the inspection that the service connection availed for industrial purpose was misused for commercial purposes. The appellant filed a complaint before the CGRF, Ernakulam 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.44/2018-19 dated 21-02-2019. But without complying the said order of CGRF, this appeal petition was filed before this Authority.

Arguments of the appellant:

1. Appellant is the Managing Director of Line On Power Limited which is a Small Scale Industrial Unit (now Small and Medium Enterprise) engaged in the manufacture of electrical equipments, repair and installation of machinery and equipment and manufacture of electronic products, which are all coming under the activity type of "manufacturing". Appellant is aggrieved by the Order dated

21/02/2019 in OP No 44/2018-19/601 issued by the CGRF Ernakulam by which it rejected the complaint on the ground that the issue comes under section 126 of the Electricity Act 2003. But the issue involved in this case does not come under section 126 of the Act and hence this representation. The appellant has used electricity connection only for the purpose for which it was sanctioned and there is no evidence to prove that it was misused for commercial purpose as claimed by the Kerala State Electricity Board. In the absence of materials the authority cannot impose penalty under section 126 of the Act. Three inspections were conducted and no material was obtained by the Board to show that the appellant has misused the industrial connection for commercial purpose. Even then the Assistant Executive Engineer, Electrical Sub Division, Palarivattom has stated that there is misuse of electricity connection and imposed penalty in commercial tariff, in spite of a finding in the mahazar that servicing Electrical Sub division Palarivattom has stated that there is misuse of electricity connection and imposed penalty in commercial tariff, in spite of a finding in the mahazar that servicing and manufacture of inverters was found in the unit. Appellant is not bound to pay any amount to Licensee unless and until he is liable to pay it.

2. Appellant is a consumer of electricity with consumer No 25603 under LT IV B tariff in Electrical Section office of Kerala State Electricity Board Limited at Palarivattom. On 11/5/2018 the Sub Engineer by name Binosh Kumar N.B. of the Section office conducted an inspection in the premises of the appellant along with Ernakulam Anti Power Theft Squad and prepared a mahazar. According to the mahazar, the meter was working correctly. It was further found that servicing of Supra brand inverters was going on in the unit, that no works relating to software/information technology was seen there. The following machineries were found using, connected to KSEB system.

a.	AC1900W	1 No.
b.	AC 1773 watts	1 No.
c.	Computer 150 watts	11 Nos.
d.	Printer 250 Watts	3 Nos.
e.	Fan 60 Watts	30 Nos.
f.	Tube 40 Watts.....	33 Nos.
g.	CFL 11 Watts	13 Nos.
h.	Soldering Iron 35 Watts.....	2 Nos.
i.	Lift motor 5KW	1 No

3. The above findings do not tally with each other. What is the practicability of operating 11 computers and 3 printers for servicing inverters. So admittedly there were other works going on in the unit, to which the inspection team conveniently shut their eyes, with the ulterior motive of somehow misinterpret the actual operation in the unit so as to increase the tariff rate of the unit and thereby to harass the appellant.

4. The mahazar was followed by a provisional assessment demand dated 14/5/2018 for Rs. 2,03,780/- issued by the Assistant Executive Engineer

(Assessing officer) with calculation details. According to the Assessing officer the usage detected in the mahazar amounts to usage under LT VII A tariff and hence penalty at LT VII A tariff rate was imposed at two times for the previous twelve months deducting the fixed and energy charges paid under LT IV tariff.

5. A perusal of the tariff order shows that what is detected in the mahazar does not come under LT VII A commercial tariff list and that the purpose behind this inspection and assessment order is to convert tariff of a running manufacturing industrial unit to that of a commercial unit in an illegal manner without the assistance of any material to do so.

6. The unit of the appellant is having permanent registration as a Small scale Industrial unit and the relevant certificates issued by the Industries department were produced before the Assessing officer. As per Order No A5/3914/06 dated 29/5/2006, the General Manager, District Industries Centre, Ernakulam has revalidated the SSI status certificate of the unit of the appellant permanently. This Certificate was produced before the Assessing officer, which was distorted by the said officer limiting its value up to 13/2/2006 while issuing the final assessment order. Moreover the Udyog Aadhar Registration certificate issued by the Ministry of Micro Small and Medium Enterprises to the unit of the appellant has described repairing activity also as a manufacturing activity. Therefore the appellant is entitled to the tariff under LT IV category 7. Appellant pointed out these aspects at the time of personal hearing of his objection before the Assessing Officer on 1/6/2018.

Thereafter another inspection was conducted by the very same Sub Engineer on 30/6/2018 in the presence of the Assessing officer and prepared a mahazar. In that mahazar it is stated that servicing and manufacturing of inverters was found in the unit. Even after such a finding, ignoring the actual facts and contentions of the appellant the Assessing officer has issued final assessment order No DB/APTS-INSP/AEE/PTM/18-19/66 dated 12/07/2018 upholding the preliminary assessment as such advising the appellant to pay 50% and go in appeal.

8. The appellant need pay any amount to the KSEBL only if he is liable to pay the same. The appellant is not bound to pay any amount on account of this kind of an illegal action adopted by the Board for extracting money from an industrial unit. In the absence of detection of any commercial activity in the premises of the appellant and without detecting any of activities mentioned in LT VII A commercial tariff, there is no justification or reason on the part of the assessing officer in imposing penalty at commercial tariff rate on the appellant.

9. The issue involved in this case is not coming under the purview of Section 126 of the Electricity Act. The appellant has not used the electricity supplied by KSEB Limited to his consumer No 25603 for any purpose other than the sanctioned purpose even according to the findings in the mahazar and none of the ingredients of LT VII A tariff list framed by the Kerala State Electricity Regulatory Commission are detected in the mahazar. Appellant has not misused electricity for any purpose

other than for which electric connection was sanctioned. Therefore the findings entered into by the Assessing officer are not coming under the purview of section 126 of the Electricity Act 2003. Therefore a complaint was filed before the Consumer Grievance Redressal Forum.

10. The CGR Forum initially conducted a preliminary hearing, admitted the complaint and granted stay of the demand. Then the Forum appointed a commission consisting of three engineers of the Board and they conducted another inspection on 7/11/2018 and submitted a report. In that report also they could not find any commercial activity in the premises whereas they found manufacturing activity, office of the industrial unit etc. However The CGRF entered a baseless finding that the case is coming under section 126 of the Indian Electricity Act 2003 which according to the Forum "is evident from the Commission report." It is further stated that the Forum lacks jurisdiction to entertain the complaint because proceedings are initiated under section 126 of the act 2003 and dismissed the case.

11. As per the Commission report, the ground floor is admittedly used for manufacturing purpose. The first floor is found to be used as office of the industrial unit. The office contains software used for production purpose in the industrial unit along with accounting works in the industrial unit. The second floor was found to be accommodated with UPS covers and components. The cover means the metal and plastic covers of UPS and the components required for assembling the UPS. So all these floors are used for industrial purpose. The top floor is the refreshment area of the staff and employees of the industrial unit. Hence the entire building was used for industrial purpose only and the findings in the impugned order are illegal and factually unsustainable.

12. Demonetization and implementation of GST have adversely affected the volume of work in the industrial unit. The production in the unit is demand based production and the same may vary from time to time. The unit is engaged in contract manufacturing work for Line On and Supra brand UPS including Solar UPS and inverters. The unit is bound to do the service of the products manufactured and sold by it. The service work is normally onsite service along with service of UPS and equipments brought to the industrial unit for repairing.

13. The three inspections conducted in the Unit produced three separate reports. The first mahazar found servicing of UPS, the second mahazar found manufacturing and service of UPS and the third Commission report found complete industrial activity. However the consumer" was illegally punished by the KSEBL for unauthorized use of electricity without any basis.

14. The activity in the Unit is IT enabled production work. The software required for the production of UPS is manufactured in the Unit itself and that is why it is an IT enabled production unit. At the time of granting connection, the tariff was under LT IV and subsequently the same was suo motu changed by KSEBL to LT IV A and then to LT IV B. None of the inspections have found any activity other than the permitted tariff.

15. Apart from all these aspects, the General Manager, District Industries Centre, Ernakulam issued certificate dated 31/8/2018 stating that the unit is a registered small scale manufacturing MSME unit which is engaged in manufacturing of UPS for IT application, servo stabilizers, Inverters, Solar Inverters etc., and the unit is eligible for electricity tariff of a manufacturing MSME unit. The Unit is also having Certificate issued by the Factories and Boilers authority. The Kochi Corporation has issued D & O license to the unit for manufacture of IT, Electrical and electronic equipments. The photographs of Production Unit, Raw material Store Unit and office area reveals that the activity in the Unit is exclusive industrial activity.

Nature of the order sought from the Ombudsman

The appellants request to set aside the Order dated 21/02/2019 in CGRF-CR/OP No 44/2018 -19/601 issued by the CGRF Ernakulam and to consider the complaint on merits and set aside the entire proceedings in the case including the final assessment order No DB/APTS-INSP/AEE/PTM/18-19/66 dated 12/07/2018 issued by the Assistant Executive Engineer, Electrical Sub Division, KSEBL, Palarivattom and to allow this petition.

Arguments of the respondent:

The electricity connection bearing Consumer No. 25603 under the jurisdiction of Electrical Section, Palarivattom is in LT - 4B tariff with a sanctioned connected load of 19420 watts for "Line On Power Private Ltd" in the said premises. The Anti Power Theft Squad of KSEB Ltd., Thrissur along with Sri Binesh Kumar N B, Sub Engineer, Electrical Section, Palarivattom conducted a surprise inspection in the premises on 11/05/2018 and a site Mahassar was prepared by the Sub Engineer, Binesh Kumar N.B. Pursuant to this inspection, a provisional assessment of Rs. 2,03,780 was issued to the consumer on 14/05/2018 under Section 126 of Electricity Act 2003 in the ground that the consumer had used the electricity for other activities.

In order to verify the claim by the consumer, the respondent has inspected the premises with the Sub Engineer who has already prepared the Mahassar on 21st May 2018 in connection with the inspection by the APTS. The premises with Con No 25603 has 4 floors, ground plus three. Respondent has noticed the manufacturing in the ground floor only and the servicing of inverters of supra and other brands were seen in first floor and no business related to the Information Technology using the 11 computers connected as filed in the objection dated 21/05/2018 and hearing dated 1st June 2018. Hence the final order was issued for misuse of tariff from LT4 B to LT 7A which was challenged before the CGRF, Central Region. The respondent has submitted before the CGRF that this is a clear case of unauthorized use of Electricity under Section 126 of Electricity Act 2003. Hence requested CGRF not to accept the objection filed by the consumer as the authority has no jurisdiction to entertain the complaint. Though CGRF has not accepted the request and examined the case as detailed in the CGRF order for a period from

7/2018 to 02/2019 and passed the order stating that the case is coming under section 126 of Electricity Act 2003 which is evident from the commission report. The CGRF has also viewed that the petitioner has not resorted to the statutory appellate remedy available as per Section 127 of EA 2003. Therefore the appellant is bound to pay Rs 2,03,780 to the licensee without further delay as 11 months has already been lapsed further to the first inspection in May 2018.

Having an SSI or MSME certificate in favour of the applicant alone will not be an eligibility to get an industrial tariff. If the licensee on inspection convinces that if there is manufacturing activity alone taking place in the premises, the licensee will allow the consumer to continue in industrial tariff even when there is no valid SSI or MSME certification. It is also submitted that the inspection by the APTS on 11/05/2018 revealed that the servicing of inverters of different brands were going on there. There is no mention about any manufacturing activities there on the premises. As the premises is a ground plus three floors, the respondent do not believe that the APTS might have neglected the manufacturing activity if there was something like that existed there at the time of the inspection.

The objection filed before the respondent claimed that there is IT related activity and no evidence to prove the claim has been produced at the time of hearing on 1st June 2018 or inspection by the undersigned dated 30th June 2018. The assessment is done on the basis of the inspection conducted on 11th May 2018. Any variations or changes which might have happened in the premises further to this will not be counted.

The third report, the commission noted that the manufacturing process with just 2 persons is going on only in the first floor. On enquiry, the respondent has received information that the premises where the inspection done during May 2018 by APTS is the Corporate Office.

While considering all inspections, hearing, discussion with the Managing Director of Line On Power Pvt Ltd at the time of the inspection, the respondent could not convince that the premises can be given the tariff of 4B where to get the industrial tariff, a minimum set up of a manufacturing area is seen there. The MD LINE ON is the managing partner of another brand Supra which is getting manufactured in another premises under Electrical Section, Palarivattom. The electricity connection bearing Consumer No. 25603 is considered as a business house according to the Tariff order published by the Kerala State Electricity Regulatory Commission. In good faith the assessment has been done.

Analysis and findings:

Hearing of the case was conducted on 02-05-2019 in my chamber at Edappally, Kochi. Sri Jose J Matheikal represented the appellant. Sri. Sunil N.V., Assistant Engineer, Electrical Section, Palarivattom appeared for the respondent. In view of the arguments made by both parties, it appears that the foremost question to be decided in the matter is whether the appeal petition is maintainable or not. It

is needless to enter into the merits of the case, if this Authority has no jurisdiction to entertain the same. It has come to my notice that a surprise inspection was conducted by the APTS, Thrissur on 11/05/2018 in the premises of the appellant and misuse of electricity for the purpose other than for which the usage of electricity was authorized was detected. A provisional assessment bill for Rs. 2,30,780/- was issued. An objection was filed before the Assessing Officer and subsequently a final order of assessment was issued. The main contention of the appellant in the petition preferred before the CGRF and this Authority is the issue did not come under the purview of Section 126. It is found that the assessment was made as per the procedure followed under Section 126 of the Electricity Act 2003 and the CGRF's order was to approach the Appellate Authority for remedy. It is admitted that the appellant did not file any appeal before the Appellate Authority under Section 127 of the Electricity Act. Since the bill raised under Section 126 based on allegation of unauthorized use of electricity falls under the exception clause 2 (f) (vii) of the Regulations, the CGRF / this Authority does not have any authority to entertain this complaint. 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." Instead of filing appeal before the aforesaid statutory authority, the appellant herein approached first the CGRF and thereafter this Authority. Moreover, CGRF / Electricity Ombudsman has no jurisdiction to entertain complaints relating to unauthorized use of electricity as provided under Section 126 of the Act, in view of the bar under Sub Clause (vii) (I) of Clause 2 (f) of the Regulations. It is therefore held that the remedy available to the appellant is only an appeal before the Statutory Authority under Section 127 and that this appeal petition is not maintainable.

However the following facts are also revealed from the orders issued by the CGRF. The CGRF formed a Commission consisting of three engineers to find the truth in the matter. The premises was inspected by the Commission on 7-11-2018 in the presence of the appellant. The Commission has reported the following facts. "This is a four storied building. In the ground floor the premises is used as a manufacturing unit. Two people were working in this area. There is a store in this floor and the work area consists of workbench, transformer winding machines etc. In the first floor there is the Managing Directors cabin, waiting area, file stocking area and work area for office staff. In the second floor there are two big halls and files are kept in one side of this hall. Also UPS cover and components are kept there. The second floor is not seen used at present other than keeping old files, UPS covers etc. In the third floor there is a big hall and a suite consisting of a bed room, bathroom and a living cum kitchen area. Industrial purpose is noticed only in the ground floor of the building. Also the first floor is seen functioning as the office of this industrial unit."

Since it is found that there are some valid arguments raised by the appellant to be considered, as pointed out in the report submitted by the Commission, I am remanding the case into the Assessing Officer, who has to review the case based on the Commission report and the sale proceeds of the manufactured goods. Further this Authority direct that the Assessing Officer should give a further chance of hearing the appellant and dispose the case, as per law, within one month of this order. Till that date no coercive action shall be taken by the KSEBL against the appellant, based on the pending bill under dispute in this case. The appellant is also eligible for filing appeal before the Appellate Authority on the final order of the Assessing Officer, if he desires so.

Decision:

From the analysis done and the findings and conclusion arrived at, which are the above, I take the following decision.

The appeal petition is rejected as not maintainable. But I am remanding the case to the Assessing Officer, who has to review the case. Having concluded and decided as above, it is ordered accordingly. The appeal petition filed by the appellant is disposed of as it is remanded to the Assessing Officer for hearing as directed. No order on costs.

ELECTRICITY OMBUDSMAN

P/018/2019/_____ /Dated:_____

Delivered to:

1. Sri. Subash T.J., Managing Director, Line On Power Pvt. Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Palarivattom, 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.