

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/033/2019

(Present: A.S. Dasappan)

Dated: 25th June 2019

Appellant : Sri. Narayanan K.,
Energy Head,
Indus Towers Ltd.,
Palarivattom,
Ernakulam

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd, Mankavu,
Kozhikode

ORDER

Background of the case:

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The appellant have two electric connections under Electrical Section, Perumanna with consumer numbers 7697 and 7801 under LT VII A tariff having connected loads 15 kW and 20 kW respectively.

The appellant was given a short assessment bills amounting to Rs. 2,23,132/- and Rs. 2,94,641/- towards the short assessment of penalization in respect of consumer nos.7801 & 7697 for UAL detected in the premises during the inspection on 30/07/2009 and additional load declared under voluntary discloser scheme respectively including surcharge from 2011 onwards, vide letters dated 23/11/2018 & 12/12/2018. The appellant had filed petition against the above bills before the CGRF Northern Region Kozhikode and the CGRF by its order dated 30/03/2019, partially admitted the petition and decided to quash the short assessment bill in respect of

Consumer No. 11673007697 and in the case of consumer no. 1167341007801, the penal bill is found sustainable. The Assistant Engineer Electrical Section Perumanna vide the notice dated 17/04/2019 directed to remit the penal bill amount of Rs. 1,22,353/- in respect of consumer no.7801 with a surcharge of Rs.1,82,076/- (total Rs. 3,04,429/-). Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

Since the case of consumer numbers 7697 and 7801 were pertaining to the period of 2009 and around 10 years back, the appellant has no records of the inspection for the verification and hence requested to the Assistant Engineer for the history of the case such as inspection report and the copy of the bill etc. for verification vide letter dated 31/12/2018. But they didn't furnish the necessary details. By the letter dated 03/01/2019 of the Assistant Engineer, and from the appellant's available records, the following information regarding consumer number 7697 is revealed.

An inspection was conducted by the Assistant Engineer in the premises on 30/07/2009 and detected UAL of 5 kW in the same premises and a provisional penal bill was issued for Rs. 2,16,000/- under LT 8 tariff by considering the UAL as temporary extension. The provisional bill was revised to Rs. 90,000/- and final bill was issued accordingly after the personal hearing in the same tariff of LT 8 by considering the UAL detected in the same premises as unauthorized extension. The period of assessment was taken as 6 months. The bill was remitted on 08/09/2009 to avoid the disconnection of the site. Even the UAL was detected in the same premises, the penal bill was issued by considering the additional load as unauthorized extension. It is not legal and sustainable as per the Act and Rules and to be revised under LT 7A tariff. Subsequently, by many orders, the KSEBL itself issued directions to revise the penal bills issued for the UAL detected in the same premises considering as Unauthorized Extension. The excess amount collected by erroneous penal bill by applying the wrong tariff should be refunded. Then after more than one year of time, another short assessment of penal bill for the same offence for Rs. 92,500/- was issued based on the audit report by extending the period of assessment for the UAL detected on 08/09/2009 to one year. It is baseless and not sustainable. Once the assessing officer fixed the period of misuse of electricity and penal bill issued based on his assessment and after more than one year of time, the revision of the penal bill by extending the period of assessment without any basis and simply based on the office audit report is not legally sustainable. The excess amount collected by applying erroneous tariff should be refunded as per regulation 158 (18) of KESC 2014.

As regards consumer number 7801, during the year of 2010, the appellant had disclosed additional load of 12 kW voluntarily as per the scheme announced by the KSEB. But after around one year of time even without an inspection in the site a penal bill for Rs. 1,22,353/- was issued by considering the load declared under the voluntary disclosure scheme as UAL based on the report of the audit team. It is not legal and sustainable. The initiation of penalization of any case of misuse of electricity should be started with an inspection and inspection report (site mahassar). But in this case, any inspection in the premises was conducted by any officer assigned for the same. Moreover, once the additional load declared as per the voluntary disclosure scheme announced by the licensee and after one year of time, the same additional load was penalized as unauthorized additional load is not legal and sustainable. The appellant is ready to remit any short assessment in the fixed charges concerned to the declared additional load. As per records, the appellant had filed a petition against the penal bill before the Vydhyuthi Adalath conducted by KSEB on 13/02/2011, the bill was revised to Rs. 61,177/- and the revised amount was remitted on 26th July 2011 by DD no. 10047909.

The licensee denied the payment. Moreover, as per the section 56(2) of the Indian Electricity Act 2003, and the connected regulation 136(3) in the supply Code 2014, the assessment prior to the period of two years is not sustainable. The section 56(2) of the Act says, "notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after a period of two years, from the date when such sum first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall be cut off the supply of the electricity". In this case, the bills were issued during the years of 2010 & 2011 but up to the month of 03/2018 no arrears are shown in the monthly bills and from 04/2018 onwards the amount was added in the monthly bills as arrears as under dispute. Hence as per the above Act and Regulation, the appellant is not liable to pay the bills. In this case, the limitation clause as per the above Section of the Act and concerned Regulations are very important as the case pertains to the period of 2010 and 2011.

The UAL was detected during the inspection on 30/12/2009 in the same premises of consumer No. 7697. But the penalization was done by considering the UAL as Unauthorized Extension and the bill was issued under LT 8 tariff as the tariff of the mobile tower is LT 7 (a) from the date of the tariff revision order dated 24.10.2002.

As per order No. B.O.D (F) No.1167/2016 (14.1/2662/2010) dated, Thiruvananthapuram, 16.04.2016, in cases where the tariff of the connection is only disputed then the same be settled in tune to the decision taken by the Board in W.P.(C) No.34101/2010 as per Board Order dated

24.4.2014 i.e. the tariff of the Cellular Mobile Tower connection is LT VII A with effect from 24.10-2002 (date of tariff order)." Many similar cases are settled as above by the licensee itself. But the CGRF did not consider the above and the request to revise the penal bill under LT 7 (a) tariff is declined.

The CGRF viewed that the licensee was not vigilant on the issue of regularization of connected load declared under voluntary disclosure scheme which caused loss of revenue in respect of fixed charges. But for compensating the loss of fixed charges, penalization by considering the declared additional load as UAL is not legal and sustainable. But this fact is not considered by the Forum in its erroneous order.

The reliefs requested by the appellant are:

1. To revise the penal bill issued in respect of the Con. No. 11673007697 under LT VII A tariff by considering the UAL as Temporary Extension and refund the excess amount remitted as per Regulation 158(18) of KESC 2014.]
2. To cancel the penal bill issued in respect of the Cons. No. 1167341007801 for the additional load declared under Voluntary Disclosure Scheme announced by the Licensee by considering the same as UAL.

Arguments of the respondent:

Details of arrears regarding Con No. 1167343007697 are stated below:

The appellant has filed the above appeal petition in respect of a bill issued towards unauthorised use of electricity. The then Assistant Engineer of Electrical Section, Perumanna conducted a surprise inspection at the premises of the consumer on 30.07.2009 and detected an unauthorized load of 5 kW. Following the above, a provisional assessment bill amounting to Rupees 2,16,000/- was served on to the appellant on 07.08.2009 as per Sec. 126 of Electricity Act, 2003. On receipt of the provisional bill, the appellant filed an objection with the licensee and after hearing the appellant, the provisional assessment bill was reduced to Rs 90,000/- by fixing the period as six months for assessment and the appellant remitted the amount on 08.09.2009 on his own volition. However, on the audit of the accounts of Electrical Section, Perumanna, the Senior Audit Officer, o/o Accountant General, Kerala found that KSEB had made an error in assessment of the above bill and he observed that the appellant should be assessed for 12 months and a revised bill to be issued. Accordingly, on the observation made by the Senior Audit Officer of Accountant General, the appellant was served with a short assessment bill of Rupees 92,500/- on 04.01.2011. With the appellant not remitting the balance amount of Rs. 92,500/- as mentioned above, his service connection was disconnected on 28.01.2011.

Consequently, the appellant decided to approach a "Janakeeya Adalath" conducted by KSEB on 13.02.2011 against the above bill.

The appeal committee of the Adalath considered the above matter and issued a direction to the effect that re-connection would be effected to the appellant and a suitable reply be given to the AG regarding the matter. The Adalath also directed the appellant to execute an undertaking with licensee for getting supply re-connection. Accordingly, the appellant submitted an undertaking on 28.02.2011 agreeing that the arrear amount raised by the licensee would be remitted by him if the AG insisted to on the remittance thereof and thereupon reconnection was effected. However, there was no enough evidence or reason for Assistant Engineer, Electrical Section, Perumanna to take a different stand from the one took by the Senior Audit Officer who represented Accountant General of Kerala. Hence no further correspondences were made with AG in this regard. Consequent to the above mentioned "Janakeeya Adalath", the Secretary (Admn), KSEB issued an order dated 19.09.2016 taking stock of the arrear issued under Electrical Circle, Kozhikode, by which there was a direction to the Deputy Chief Engineer, Electrical Circle, Kozhikode to recover the arrear from the appellant.

Later, the appellant was advised by the licensee to the Adalath held last year (OTS 2018) so that he could have benefitted by the reduction in the interest rate. But the appellant did not participate in the Adalath.

In the petition, the appellant has attempted to invoke Section 56(2) of Electricity Act 2003 to his advantage. The said section cannot be applied in respect of the matter in question as the subject of arrear involved in this matter was already conveyed to the consumer and as a result, he had furnished undertaking to remit the arrear amount willingly.

Sec. 56(2) of Electricity Act 2003 is applied in cases where the subject of arrear is not brought to the attention of the concerned. In the instant case [he appellant has himself made undertaking to remit the arrears if the situation so warrants and therefore he is stopped from invoking Sec. 56(2) of Electricity Act, 2003.

Since the above arrear remained unpaid, the appellant was given a notice of disconnection on 12.12.2018. In the light of the above, the appeal petition filed by the appellant may be dismissed.

Arrear relating to consumer No. 1167341007801.

As regards to the above consumer number, the appellant had been availing himself of a registered load of 12 KW as on 31.08.2010. Later, the appellant made a submission with Electrical Section, Perumanna wherein he

disclosed his desire to regularize the then total load of 20 KW. The above submission was made as per a voluntary disclosure scheme declared by KSEB. As per the disclosure made by the appellant, registered load was 12 KW and the additional load for which regularization sought was 8 KW. Last date fixed for disclosure was 15.11.2010 and though the appellant was instructed to submit the load details, test report etc required regularizing the load within the stipulated time in the Section Office; he failed to comply with the instructions.

Since necessary documents were not made available by the appellant, the section authorities did not take any further action on the mere submission made by the appellant for the load enhancement.

The Senior Audit Officer, representing Accountant General, Kerala made an observation that the additional load of 8 KW which was voluntarily disclosed by the appellant amounted to unauthorized load and that should be treated as such.

Consequent to the above observation, a provisional bill of Rupees 1,22,353/- was served to the appellant on 22.11.2010. The appellant filed an objection and personal hearing was conducted on 20.12.2010. Since the appellant could not positively express his stand for not regularizing the additional load which he had been using, the provisional bill was confirmed as final on 27.12.2010. As per the records, the appellant has not remitted any part of the above amount so far.

The appellant himself had disclosed that he was using additional load over and above the registered load. Though he was reaping the benefit from the above load, he had not remitted FC for that much load nor did he take any fruitful steps to regularize the same in accordance with the rules. It was therefore unauthorized use of electricity and the appellant ought to have remitted the final assessment bill amount.

Consequently, the appellant decided to approach a "Janakeeya Adalath" conducted by KSEB on 13.02.2011 against the above bill. The appeal committee of the Adalath considered the above matter and issued a direction to the effect that re-connection would be effected to the appellant and a suitable reply be given to the AG regarding the matter. The Adalath also directed the appellant to execute an undertaking with licensee for getting supply re-connection. Accordingly, the appellant submitted an undertaking on 28.02.2011 agreeing that the arrear amount raised by the licensee would be remitted by him if the AG insisted to on the remittance thereof and there upon reconnection was effected. However, there was not enough evidence or reason for Assistant Engineer, Electrical Section, Perumanna to take a different stand from the one took by the Senior Audit Officer who represented Accountant General of Kerala. Hence no further

correspondences were made with AG in this regard. No decision was taken by "Janakeeya Adalath" in favour of consumer.

In this case, the benefit of Section 56 (2) of Electricity Act 2003 cannot be granted to the appellant because the appellant had submitted an undertaking to the effect that he would remit arrear amount, which means he knew everything about the arrear and that he was ready to clear it at some point of time.

Later the appellant was advised to participate in OTS 2018 in order to get benefit by way of reduction in interest rate. But the appellant was not turned up. Since the appellant did not clear the arrears he was served with a disconnection notice on 12.12.2018.

The appellant contents that for detecting unauthorised additional load there should be an inspection and pursuant to it there should be a Mahassar. This contention does not hold much water because a site inspection is conducted by the officials to examine whether the consumer concerned has connected to his installation any load for which he has not obtained permission from the licensee. It means an inspection for the sake of it need not necessarily be conducted. What is of prime importance is whether a consumer has been using unauthorised additional load and not whether the fact of UAL is disclosed by the consumer himself or the same is detected by somebody else.

Assessing Officer need not inspect the premises to arrive at a conclusion that unauthorized usage of electricity is being taken place at premises. Assessing Officer can rely on any records maintained by licensee, consumer or any person involved in unauthorized usage of electricity and conclusion can be reached at on the unauthorized use of electricity even without inspecting the premises. The inspection and the assessment thereof are perfectly in agreement with the provisions of the Electricity Act 2003 and hence is valid. The Hon'ble High Court of Kerala in Sulabha Marketing Pvt. Ltd. Vs Kerala State Electricity Board Limited & others has held that the presence of the Assessing Officer is not mandatory as per the provisions of the Electricity Act 2003.

What is stated below is applicable to both consumer numbers 1167343007697 and 1167341007801.

The final assessment order was issued by the Assistant Engineer, Electrical Section, Perumanna and if the appellant was aggrieved by the said order he was at liberty to move the State Electricity Appellate Authority. However the appellant did not move the Appellate Authority in the above matter so far.

As per Sec. 126 of Electricity Act the Civil Court shall have no jurisdiction to entertain any suit or any proceedings which an assessing officer referred to in Section 126 of the Act or an appellate authority referred to Sec. 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Since the bills in respect of the above two consumer numbers were issued to the appellant as per Sec.126 of Electricity Act the Consumer Grievance Redressal Forum, Kozhikode and this Ombudsman do not have jurisdiction to entertain the petitions filed by the appellant. In such a scenario the appellant may kindly be advised to approach the appellate authority if he is aggrieved by the assessment orders.

Aggrieved, by the assessment order for Rs.1,22,353/- in Con. No.7801 the appellant filed a petition before the Consumer Grievance Redressal Forum, Kozhikode. After examining the matter in detail the Forum has held that the appellant is liable to pay the amount for having connected unauthorised additional load.

In the light of the above, it is requested that the appeal petition may be dismissed.

Analysis and Findings

The hearing of the case was conducted on 14-06-2019, in the office of the State Electricity Ombudsman, Edappally, Kochi, and the appellant was represented by Sri. M.Y. George, and the respondent by Sri. Sajeewan K, Assistant Executive Engineer, Mankavu Electrical Sub Division and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes 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 final decisions thereof.

The appellant's grievances relate to penal short assessment bills issued to him as per Section 126 of Electricity Act 2003. The Assistant Engineer of Electrical Section, Perumanna conducted a surprise inspection at the premises of the consumer 7697 on 30.07.2009 and detected an unauthorized load of 5 kW. A provisional assessment bill amounting to Rupees 2,16,000/- was served on to the appellant on 07.08.2009 as per Sec. 126 of Electricity Act, 2003. The provisional assessment bill was reduced to

Rs 90,000/- by fixing the period as six months for assessment and the appellant remitted the amount on 08.09.2009. On the observation made by the Senior Audit Officer of Accountant General, the appellant was served with a short assessment bill of Rupees 92,500/- on 04.01.2011. The appellant filed a complaint before the CGRF alleging that the aforesaid bill was issued in wrong tariff. The Forum has decided to quash the short assessment bill issued by the licensee in respect of consumer number 7697. Now the appellant's request is to revise the penal bill issued in respect of the Con. No. 11673007697 under LT VII A tariff by considering the UAL as Temporary Extension and refund the excess amount remitted as per Regulation 158(18) of KESC 2014.

The second issue relates to consumer number 7801. The appellant made a submission with Electrical Section, Perumanna wherein he disclosed his desire to regularize the additional connected load of 8 kW which was in excess of the registered connected load of 12 kW. The Senior Audit Officer, Accountant General, Kerala made an observation that the additional load of 8 kW which was voluntarily disclosed by the appellant amounted to unauthorized load and that should be treated as such. Consequent to the above observation, a provisional bill of Rupees 1,22,353/- was served to the appellant on 22.11.2010 as per Section 126 of Electricity Act 2003. The appellant filed an objection and after conducting a personal hearing, the provisional bill was confirmed as final. According to the appellant, he had filed a petition against the penal bill before the Vydhyuthi Adalath conducted by KSEB on 13/02/2011, the bill was revised to Rs. 61,177/- and the revised amount was remitted on 26th July 2011 by DD no. 10047909. In this issue, the CGRF held that the short assessment issued in respect of consumer number 7801 is sustainable. The request of the appellant is to cancel the penal bill issued in respect of the Cons. No. 1167341007801 for the additional load declared under Voluntary Disclosure Scheme announced by the Licensee by considering the same as UAL.

The most important argument of the appellant is as per the Section 56(2) of the Indian Electricity Act 2003, and the connected regulation 136(3) in the Supply Code 2014, the assessment prior to the period of two years is not sustainable. The section 56(2) of the Act says, "notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after a period of two years, from the date when such sum first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall be cut off the supply of the electricity".

According to the appellant, in this case, the bills were issued during the years of 2010 & 2011 but up to the month of 03/2018 no arrears are shown in the monthly bills and from 04/2018 onwards the amount was added in the monthly bills as arrears as under dispute. Hence as per the

above Act and Regulation, the appellant is not liable to pay the bills. In this case, the limitation clause as per the above Section of the Act and concerned Regulations are very important as the case pertains to the period of 2010 and 2011.

It is pertinent to note that, there is serious lapses occurred on the side of respondent to take proper action in time as per rules.

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.

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 is admitted that the appellant did not file any appeal before the appellate authority under Section 127 of the Electricity Act. Since the bills raised under Section 126 based on allegation of unauthorized extension of electricity and unauthorized load 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."

Decision:

From the findings and conclusions arrived at as detailed above, I decide as follows.

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 Electricity Act, 2003 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. The order of the CGRF is set aside. The appeal petition is rejected as not maintainable. No order as to costs.

The appellant is at liberty to prefer appeal before the Appellate Authority within a period of 30 days from the date of receipt of this order under Section 127 of the Electricity Act 2003. No coercive action shall be taken by the respondent against the appellant during the appeal period, based on the pending bills under dispute in this case.

ELECTRICITY OMBUDSMAN

P/033/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Narayanan K., Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Mankavu, Kozhikode

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