

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/031/2019
(Present: A.S. Dasappan)
Dated: 28th June 2019

Appellant : Sri. S.M. Hamsa
Secretary, Trikkakara NRI Flats
Allottees Association, Opposite NPOL,
Trikkakara P.O., Ernakulam

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

ORDER

Background of the case:

The Consumer No. 1157313019121 is a registered consumer at Electrical Section, Thrikkakara West in the name of Executive Engineer, Kerala State Housing Board, Panampilly Nagar, Kochi with a connected load 124 KW in I -A Tariff from 29.08.2005. The appellant in the Appeal No. P/31/2019 is the Secretary, Thrikkakara NRI Flats Allottees Association, Thrikkakara. The appellant was served with an arrear bills for Rs.1,45,700/- and Rs. 51,639/- towards low voltage supply surcharge for the usage of 124 kW connected load for the Low Tension Service connection without availing High Tension service connection. The case of the appellant is that the original connected load of the Consumer in 2005 was 124 k W and the same was for 4 Towers in the complex and a tower was separated in 2008 itself with the full concurrence and on completion of the procedure as per regulation 8 and 9 of the Kerala Electricity Supply Code with the KSEB Authorities with Eastern Group, and hence the connected Load was reduced to 90 k W from 2008 itself and hence the present imposing of penalty and fine of Rs. 1,97,339/- is illegal and unsustainable. The appellant has remitted Rs. 1,97,339/- as low voltage surcharge. An objection was filed before the Executive Engineer for the refund of the amount collected and not getting any positive response from the licensee, the appellant had approached the CGRF (CR) by filing a petition in No. 86/2018-19. The Forum dismissed the petition due to lack of merits, vide order dated 30-03-2019. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

1. It is an admitted fact that the original connected load of the Consumer in 2005 was 124 k W and the same was for 4 Towers in the complex and a tower was separated in 2008 itself with the full concurrence and on completion of the procedure as per regulation 8 and 9 of the Kerala Electricity Supply Code with the KSEB Authorities with Eastern Group, and hence the connected Load was reduced to 90 k W from 2008 itself and hence the present imposing of penalty and fine of Rs.1,97,339/- is illegal, unsustainable and the said separation was not accounted by the KSEB and hence the consumer shall not be penalized and the amount collected under threat of disconnection is liable to be refunded or to be adjusted towards future bills. The separation of one tower by KSEBL was without notice.
2. Regulation 8 and 9 of the Kerala Electricity Supply Code 2014 was not applicable to the procedure in 2008 while separating the connected load of one tower out of the 4 Towers in 2008. This was without the knowledge of the appellant. Hence the present action in respect of an action in 2008 is unsustainable and illegal and only to extract money from the consumer and make unlawful enrichment.
3. Once the separation and reduction of connected load is done in 2008 by the KSEBL itself, the fault stating that no forms were submitted is unsustainable. Unless there were proper formalities, the KSEBL ought not have separated the load of One Tower to M/s. Eastern Group. As per regulation 100, on the application of the Eastern Group, the total connected load for 4 Towers were reduced on separation of the connected load to the one tower which was separated from the 4 Towers. Otherwise the said separation and connection to the Eastern Group is illegal and with malafides. No notice of separation was issued to the appellant.
4. Once a Tower is separated without notice to the consumer, it is the bounded duty of the KSEBL to reduce the connected Load of the remaining three Towers and necessary changes ought to have made in the records of the KSEBL. The failure of the Systems of the KSEBL cannot be attributed to the shoulders of the consumer. Hence the impugned order is to be set aside for the ends of Justice. Same rate was accepted by the KSEBL after separating the connected Load of one Tower out of 4 Towers. Hence the rate ought to have reduced and the excess amount collected ought to have reimbursed to the consumer from 2008 till September, 2017. Since the separation of one tower was without the knowledge of the consumer, proper notice ought to have served to enable the consumer to change the connected load in parity with the remaining Towers. On this ground also the order of the Forum as well as the demand notice of the KSEBL are wrong and liable to be set aside.
5. The Tariff order passed by the Regulatory commission was implemented with effect from 01-04-2017. The separation of 1 Tower by the KSEBL was done in 2008, without intimating the Appellant. Appellant being an Association was not a party to the said proceeding for separation of one Tower. Hence applicant association was not aware of the said separation. Hence the connected load of the 3 Towers was less than

90 kW as certified by the Electrical Contractor. Since the connected load is less than 90 kW, the imposing of penalty and recovery of Rs. 1,97,339/- is illegal and that amount is to be refunded or adjusted towards the future bills of the consumer. The finding of the CGRF is perverse and against the facts of the case. Regulation 8 and 9 categorically empowers certain acts. But the fault of the Board and its system does not permit the KSEBL to recover penalty from the consumer for the fault of their system.

6. The officers of the Board who issued the penalty Bills are under the Electrical Inspectorate and the officers ought to have got verification from such authority before issuing such bills, which are imaginary and which does not cause any loss or damages to the KSEBL. Hence it is clear that the present action and issuance of bills are for making unlawful enrichment and due to the failure of the KSEBL itself and its computer systems. Hence the impugned bills as well as the impugned order of the CGRF are liable to be set aside for the ends of Justice.

7. The conclusion of the Forum that the consumer did not comply with Regulation 103 (2) is misleading. The Board did not explain under what procedure, one Tower was separated from the 4 Towers having 124 kW. It is for the Board to submit the effect of separation of one Tower and consequential reduction of total connected load. This aspect was totally neglected by the Executive Engineer of the Board as well as the Forum. The application on 22-09-2017 by the consumer was under threat to avoid further coercive action on the part of Board as well to avoid further imposing of penalty. If the Board had any grievance in this aspect, the same ought to have brought to the notice of the consumer immediately after the separation of the Tower from the 4 Towers in 2008 itself or in the near future. Hence the fault cannot be imposed on the consumer after implementation of the new Tariff in 2017.

8. The matter of violation of Natural Justice by the Board, before imposing penalty is not properly considered by the Forum. The separation of one tower was in 2008. The Code of 2014 was published after six years from the date of effecting the separation of one tower from the total connected load. Even after publication of new Code in 2014, the Board did not issue a notice to the consumer regarding the illegality if any on the part of the consumer. The present bills are issued in 2017, after three years from the date of publication of the Code. Hence the present notice and recovery of fine is illegal and unsustainable and those bills are liable to be set aside and the amount collected are to be refunded or to be adjusted towards future bills of the consumer. Consumer had approached with an application on 22-09-2017 is to avoid future threat and imposing of fine, which are unilateral on the part of the KSEBL. Hence the reasoning of the Forum is perverse. Forum ought to have considered the admitted fact that the separation of one Tower in 2008, without intimating the appellant, out of 4 Towers for which the connected Load was 124 kW, and collection of HT Charges for about 10 years, is without notice to the appellant and hence the appellant had no occasion to file application to reduce the connected load. Hence the present bill is unsustainable.

9. Appellant is liable to pay low voltage surcharge in the event of having the connected load of 100 kW or more. But on separation of the Tower of Eastern Group from the initial connected load on proper application and procedure, the connected load becomes less than 90 kW. Hence the reasoning of the Forum and its consequential conclusion in not as a normal human being concluded, hence the finding of the Forum is liable to be set aside.

Nature of relief sought from the Ombudsman

The additional Bill of Rs. 1,49,838 and the penalty thereof amounting to Rs. 51,639/- having a total of Rs. 1,97,339/- shall be set aside and the amount collected towards penalty and fine for the usage of 124 kW connected load for the Low Tension Service connection without availing High Tension Connection, shall be reimbursed or adjusted towards future bills.

The excess amount for HT Connected Load over and above the required amount for the LT Connection, from the date of separation of one Tower from 4 Towers till September, 2017 shall be refunded or adjusted towards future bills.

Arguments of the respondent:

The averment in the petition that while separating a tower from the complex during 2008, the consumer produced revised scheme by reducing the connected load to 90 kW as per Regulations 8 & 9 of Kerala Electricity Supply Code 2014 is not true to facts. The true fact is that the consumer submitted the scheme without any change in the connected load of 124 KW. Regulation 103 (2) of Kerala Electricity Supply Code 2014 stipulate that 'the consumer shall execute a supplementary agreement for enhancement or reduction of sanctioned load. On the above Regulation the consumer shall make supplementary agreement for reduction of sanctioned load. As per Regulation 100 of Kerala Electricity Supply Code an application form filled by the consumer along with a completion certificate verified and tested by the authorized license holder of electrical supervisor as approved by Electrical Inspectorate is necessary to apply for the reduction of sanctioned load to licensee. In the subject case the petitioner approached and submitted application for the reduction of load on 22.09.2017 only and Kerala State Electricity Board Limited approved the Appellant's application with new connected load of 90 KW on the same day itself. The statement of the petitioner that the bill issued for Rs. 1,97,339/- is illegal and arbitrary and against principles of justice is not true to facts. The connected load of the appellant was 124 KW and above the limit of 100 KVA up to which a LT connection is allowable as per Regulation 8 of Kerala Electricity Supply Code,2014 and the Tariff order passed by (Kerala State Electricity Regulatory Commission from 01.04.2017 that the low voltage surcharge can be demanded to consumer having connected load/contract demand above 100 kW/KVA and availing supply at LT level, the said consumer is liable to remit the low voltage surcharge as per Regulation 9 of Kerala Electricity Supply Code, 2014 with effect from 01.04.2017 till regularisation of connected load on 22.09.2017. The low voltage surcharge bill issued to the appellant is Rs. 1,45,700/-. During the inspection conducted by RAO the bills were revised on the

finding that low voltage supply surcharge shall be the difference between demand charge payable at HT level and the demand charge/fixed charges payable at LT level. The difference of kW and KVA has to be collected from the consumer and hence additional bill of Rs. 51,639/- was also issued. Therefore the total bill issued towards low voltage surcharge was Rs. 1,97,339/- and the same was remitted by the consumer.

The whole complex was constructed by Kerala State Housing Board and the service connection for the common area is in the ownership of the Executive Engineer, Kerala State Housing Board with connected load of 124 kW. Due to some unknown reasons the fourth tower was handed over to M/s Eastern Group and they completed the tower and applied for a separate connection in the ownership of Mr. Firoz Meeran with revised scheme approval. In the scheme the existing 124 KW was not revised instead of that they added additional 34 kW for the applied connection only. The above incidents happened during 2008. During 2008 the applicant was M/s Eastern Group and not the appellant or Kerala State Housing Board. The load in the submitted scheme was also not revised to 90 KW.

The averment that one tower was separated without giving notice to the consumer and it is the bounden duty of KSE Board Limited to reduce the connected load of remaining 3 towers and necessary changes ought to have made in the records of Kerala State Electricity Board Limited cannot be admitted. As submitted supra the whole complex was under the ownership of Kerala State Housing Board, later they handed over the fourth tower to M/s. Eastern Group. The primary consumer Kerala State Housing Board was responsible for the reduction of the connected load by revising the approved scheme after reducing the connected load of the fourth tower which was handed over to M/s. Eastern Group.

Regulation 103 (2) of Kerala Electricity Supply Code, 2014 stipulates that “a consumer shall execute a supplementary agreement for the enhancement or reduction of sanctioned load”. When the appellant earlier approached Consumer Grievance Redressal Forum praying for quashing of the demand raised by the respondent Kerala State Electricity Board Limited, the Consumer Grievance Redressal Forum (CR) viewed that the petitioner had not complied with the Regulation 100 of Supply Code 2014 which stipulates that consumer shall apply for reduction of load or contract demand specifying reasons in the form specified by the licensee. The Forum also observed that the petitioner submitted an application with relevant documents and remitted required charges to reduce the connected load only on 22.09.2017 and it was sanctioned by the licensee on that day itself. On the above observations the Forum dismissed the complaint.

Regulation 9 of Kerala Electricity Supply Code 2014 permits realization of low voltage surcharge by the licensee at the rates approved by the Commission from time to time in the tariff order. As per the tariff order dated 18.04.2017 the licensee can collect low voltage surcharge from the consumer who avail LT supply whose connected load/contract demand is above 100 kW/kVA. Hence a demand for Rs.

1,45,700/- was issued (29140 x 5) to the petitioner as low voltage surcharge. Moreover the inspection of Regional Audit Wing revealed the difference of kW and KVA which is to be collected for the above period (difference between demand charges payable at HT level and the demand charge/fixed charge payable at LT level). Hence an additional bill of Rs. 51.639/- was also issued to the appellant.

The disputed bills were issued based on the Regulations specified in Kerala Electricity Supply Code 2014 and on the tariff order issued by Kerala State Electricity Regulatory Commission. Since the appellant revised connected load on 22.09.2017 the low voltage surcharge was demanded from 04/17 to 09/2017 based on the tariff order dated 18/04/2017.

Kerala State Electricity Board Limited has every right to collect the low voltage surcharge from the appellant as per the prevailing rules and regulations. No application was submitted by the petitioner before Kerala State Electricity Board Limited to reduce the contract demand during 2008. Application with relevant documents was submitted on 22.09.2017 and the respondent sanctioned it on the same day itself. Hence the demand raised by the respondent Kerala State Electricity Board Limited is legally due and the appellant is liable to honour it by remitting it.

Analysis and findings:

The hearing of the case was conducted on 11-06-2019 in the Office of the State Electricity Ombudsman, Edappally. Sri S.M. Hamsa and Sri. Mathew T Oommen represented the appellant and Smt. Mahesh Kumar S, Assistant Executive Engineer, Electrical Sub Division, Vyttila 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.

In view of the arguments made by both parties, it appears that the foremost question to be decided in the matter is whether the low voltage surcharge collected from the appellant is sustainable or not.

This Authority has inspected the premises of the appellant on 27-06-2019 and the following facts are revealed. In the year 2005, service connection for common facilities for four towers having the connected load of 124 kW was effected by erecting a internal transformer of 500 kVA at the cost of the builder. In 2008, the common facilities of one tower having the connected load 34 kW was separated from the 124 kW after adhering all formalities by the respondent and the owner of this tower. As per the tariff order dated 18.04.2017, the licensee collected low voltage surcharge from the consumer for Rs. 1,45,700/- for the period from 04/2017 to 09/2017 (29140 x 5) and an additional amount, for Rs. 51,639/- (difference between demand charges payable at HT level and the demand charge/fixed charge payable at LT level).

As per Regulation 9 of the Supply Code 2014, “Consumers availing supply at voltage lower than the one specified in regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff order.”

As per the tariff order dated 17-04-2017, the consumers who are required to avail supply at HT and above as per the regulation of the Kerala Electricity Supply Code 2014, but availing supply at LT, shall pay the low voltage surcharge at the prescribed rates. The maximum connected load permissible for low tension three phase category is limited to 100 kVA.

Regulation 11 of Supply Code 2014 reads as follows:

11. *Limits of connected loads and contract demand for new LT connections.-*

(1)The maximum connected load permissible for low tension three phase category shall be limited to 100kVA:

Provided that a low tension consumer who, as on the date of implementation of the Kerala Electricity Supply Code, 2005, had a sanctioned load exceeding the limit of 100kVA, may be permitted, subject to realisation of low voltage supply surcharge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer.

(2) The maximum contract demand permissible for low tension consumer who avails power under demand based metering shall be 100kVA, irrespective of his connected load.

(3) An applicant occupying multi-storeyed building may be given service connection at low tension on his application, even if his connected load or contract demand is more than 100 kVA, by providing bus ducts or cables of adequate current carrying capacity and complying with the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, provided the developer or builder of the multistoreyed building, installs and maintains at his cost, the transformer station of adequate capacity and associated apparatus including the internal distribution system for this purpose and enhances the capacity of the transformer to meet the load growth if any.

It is pertinent to note that the regulation says realisation of low voltage supply surcharge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer. In this case, there is no upward revision of connected load, but a reduction in the connected load which was effected in 2008 itself.

The appellant’s argument is that his premises having only 90 kW since 2008 onwards and low voltage surcharge was demanded from him on basis of the regulation of Supply Code 2014 and Tariff Order dated 17-04-2017. According to the appellant, the separation of one Tower by the KSEBL was done in 2008, on getting

application from M/s Eastern Group and without intimating the Appellant. Appellant being an Association was not a party to the said proceeding for separation of one Tower.

The version of the respondent is that the consumer did not comply with Regulation 100 and 103 (2) of the Supply Code 2014 and this is the main cause for the dispute and issuance of short assessment bills. Regulation 100 and 103(2) read as follows:

100. Reduction of connected load or contract demand.-

(1) Any application for reduction of connected load or contract demand shall be accepted only after six months from the date of original energisation for LT connections and only after one year from the date of original energisation for HT or EHT connections.

2) Request for reduction of connected load or contract demand shall be entertained only once in six months thereafter.

(3) The consumer shall apply for reduction of load or contract demand to the licensee specifying the reasons thereof, in the form specified in Annexure - 11 to the Code and the licensee shall process the application form in accordance with relevant provisions of the Code.

(4) For site inspection as well as for issuance of demand note for the estimated cost of work, if any, and payment thereon, both the licensee and applicant shall follow, mutatis mutandis the procedure and timelines as laid down in regulations 77 to 83 of the Code.

(5) The licensee shall consider the grounds stated in the application, verify the same during inspection and issue order on the application within a period of fifteen days from the date of completion of inspection and intimate the applicant: Provided that the licensee shall issue a speaking order if the request of the consumer is declined.

(6) If the licensee sanctions the reduction in connected load or contract demand, the meter and service line may be changed if required and the expenditure thereof recovered from the applicant.

(7) The licensee shall issue a demand note to the consumer in writing, under acknowledgment, in accordance with the timeline specified in regulation 81 mutatis mutandis and thereafter both the licensee and applicant shall follow mutatis mutandis the procedure and timelines as laid down in regulation 81 to 83 of the Code.

(8) If the consumer pays the required charges and expenditure for modification of distribution system, service line, meter and other apparatus, the licensee shall execute the work and sanction the reduction in the load within the time limit specified in regulation 85.

(9) If the licensee sanctions the reduction of connected load or contract demand, the same shall be effective from the date of inspection and a written intimation thereof shall be sent to the consumer.

(10) If the application is not decided and order is not issued by the licensee within the above mentioned period of fifteen days from the date of completion of inspection, permission for reduction of connected load or contract demand, as the case may be, shall be deemed to have been granted with effect from the sixteenth day.

(11) Any difference in security deposit arising out of load reduction shall be adjusted in the subsequent two bills of the consumer.

103. Execution of agreement.- (2) The consumer shall execute a supplementary agreement for enhancement or reduction of sanctioned load.

The respondent has admitted that the whole complex was under the ownership of Kerala State Housing Board, later they handed over one tower to M/s. Eastern Group and Kerala State Housing Board was responsible for the reduction of the connected load by revising the approved scheme after reducing the connected load of the one tower which was handed over to M/s. Eastern Group. But it is found that the respondent has not issued a notice to the appellant directing to execute a supplementary agreement on the basis of separation of the connected load of one tower owned by the Eastern Group which was initiated on proper application and procedure. It is an admissible fact that the appellant was not a party to the said proceeding for separation of one Tower.

In short, it is revealed that the demand for low voltage surcharge issued was not for the usage of connected load above 100 kVA, but the appellant had not submitted the required application for reduction and not executed a supplementary agreement. The appellant has raised sufficient reasons for the above lapses. The reduction of connected load was done in 2008. The Supply Code 2014 came in force with effect from 1-4-2014 with specific regulations regarding submitting of applications for reduction/enhancement of connected load, executing supplementary agreement etc. The KSEBL did not issue a notice to the consumer regarding the illegality if any on the part of the consumer during the year 2008 or in 2014. Hence the application of regulations 100 and 103 (2) of Supply Code can not be implemented in its strict sense in this case. The appellant has not gained any unlawful enrichment in this said issue. It is pertinent to note that the appellant has submitted the required application on 22-09-2017 for reduction of connected load on getting the demand notice on 20-07-2017 for low voltage surcharge.

Decision

It is not all proper to issue a bill for low voltage surcharge alleging the appellant had been using 124 kW connected load, of which the licensee had already removed 34 kW in 2008 itself without the knowledge of the appellant. In this case variation of connected load was done by the respondent, not by the appellant at his request.

From the conclusions arrived at as detailed above, I decide to quash the short assessment bills amounting to Rs. 1,45,700/- and Rs. 51,639/- issued to the appellant. The amount collected shall be refunded by adjusting it in appellant's future bills. Interest at bank rate from the date of remittance to the date of transfer of the amount shall also be credited as advance payment. This shall be done within a period of 30 days from the date of receipt of this order.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is allowed as ordered and stands disposed of as such. The order of CGRF in OP No. 86/2018-19 dated 30-03-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/031/2019/_____ /Dated:_____

Delivered to:

1. Sri. S.M. Hamsa, Secretary, Trikkakara NRI Flats Allottees Association, Opposite NPOL, Trikkakara P.O., Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Vyttila, 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.