

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/14/2016
(Present: V.V. Sathyarajan)
Dated: 27th June 2016

Appellant : Rev. Sr. Jossy Maria FCC,
Warden, Alphonsa Hostel,
Arunapuram P.O.,
Pala, Kottayam.

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

ORDER

Background of the case:

The appellant is a consumer having service connections with consumer Nos. 2240 and 2367, under Electric Section, Pala issued for conducting a women's hostel. The tariff assigned to the connections was under LT VI B with connected load of 16581 Watts and 8619 Watts respectively. While so, the premises was inspected by the KSEB officials on 07-08-2015 and found that the premises was accommodated with a large number of students of a private entrance coaching institution in addition to the regular students of Alphonsa College and St. Thomas College. Alleging misuse of tariff, provisional assessment was made amounting to Rs. 2,97,984.00 and 70,397.00 respectively under LT VII A - commercial tariff, as per Section 126 of Electricity Act, 2003.

Aggrieved against the above bill the appellant filed an objection before the Assistant Engineer, who confirmed the provisional bill and issued a final order. Consequently, the appellant filed a complaint before the CGRF (South) Kottarakkara which was disposed of with a direction to change the tariff to VII A and issue short assessment by arriving at the difference in tariff between VII A & VI B for the period of one year, vide order OP No.1573/2015 dated 22-01-2016. Still aggrieved against the decision of CGRF, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

The appellant has raised the following issues.

The appellant is a consumer of electricity with consumer Nos. 2240 and 2367. The appellant is conducting women's hostel in the premises. The students of Alphonsa College and St. Thomas College are staying in the hostel and the said Alphonsa College and St. Thomas College are recognized Aided Colleges affiliated to Mahatma Gandhi University which is a recognized University. The tariff applicable to hostels of educational institutions affiliated to University is VI B. The officials of the licensee were regularly visiting the premises and took reading and bills are issued as per meter reading. The appellant had been regularly paying the bill issued by the licensee. The Anti Power Theft Squad inspected the premises on 07-08-2015 and alleged misuse of tariff alleging that certain students of Brilliant institution which is a private institution are staying in the hostel. They have prepared a site mahazar and forced the nuns to sign the same under the threat of disconnection of the supply.

As per the mahazar, 200 students are staying in the hostel. The finding of the APTS that students of Brilliant College are staying permanently there is not correct. At the time of inspection itself the authorities of the convent informed this fact to the officials. Only very few students stayed there occasionally and most of them were the relatives of the nuns. So there is no misuse of energy. Even though the officials realized such facts at the time of inspection itself, they issued a provisional penal bill for Rs. 2,97,984.00 and Rs. 70,397.00 respectively applying the tariff as VII A. Against the provisional bill the complainant filed objection and without considering the objection final bill for the same amount was issued by the licensee. The appellant filed complaint before the CGRF against the issuance of the bill and produced documents to show that there is no misuse of energy and no students of Brilliant or any other private institutions are staying there. Without considering the entire facts and documents in the case the alleged order was passed by the CGRF without redressing the grievances of the appellant.

As per the order, the penalty was withdrawn and direction was given to the licensee to issue bill by calculating the difference amount in VII A and VI B tariff for a period of one year. The definite case of the appellant was that no private students were staying in the hostel at the time of inspection and they never used the hostel for accommodating private students. The hostel is always used for accommodating students of Alphonsa College. There is nothing to show that there were private students in the hostel at time of inspection and subsequently. The licensee was also aware of the fact that no students of any private institutions are staying in the hostel and that is why they have not

taken any step for verification of the same at the time of inspection or even during the pendency of the complaint before the CGRF.

The CGRF ought to have found that the tariff of the consumer is not liable to be changed. So the finding of the Forum that the appellant is liable to pay difference in tariff of VII A and VI B is not correct. The Forum ought to have found that the appellant is liable to pay charges only under VI B tariff. The Forum ought to have allowed the appellant to pay bill under VI B tariff after 07-08-2015 also. The licensee has not produced any substantial evidence to prove that students of Brilliant College were staying in the hostel. In fact the licensee has not conducted any verification to ascertain the presence of any private students in the hostel. The facts and evidence in the complaint was not properly appreciated by the CGRF.

The appellant is entitled to get an order that the appellant is not liable to pay the difference amount in VII A and VI B tariff for the period of one year and appellant is liable to pay charges only under VI B tariff during that period and subsequently also. If such an order is not passed, it will cause irreparable injury and substantial loss to the appellant. The appellant is entitled to get cost of these proceedings also.

Arguments of the respondent:

Per contra the respondent raised the following arguments.

1. The Consumer Grievances Redressal Forum (S) Kottarakkara has no jurisdiction to try the cases pertain to section 126 of the Act, 2003 in view of the decision of Supreme Court of India in U.P. Power Corporation Limited Vs Anis Ahamed 2013 (8) Section 491.
2. The Supply Code 2014 clause 97 (5) states “provided that in the case of reclassification consequent to change of purpose of supply by the consumer without, due authorization the licensee may examine each case and initiate proceedings under Section 126, of the Act if found necessary”. Here in this case the tariff applied was LT VI B for accommodating students of Alphonsa College an aided educational institution affiliated to Mahatma Gandhi University. During the surprise inspection conducted on 07.08.2015 by the A.P.T.S wing of KSEB it was established beyond doubt that large number of students of private entrance coaching institution viz. M/s Brilliant Study Centre, Mutholy, Pala were accommodated and electricity supplied at the lower tariff rates of LT VI B were misused for running hostel for private educational institution for which tariff at higher rates under LT VII A is applicable.
3. This respondent raised the primary question of jurisdiction of C.G.R.F in interfering with the 126 proceedings initiated by the licensee. But on overlooking the above objection the C.G.R.F (South) Kottarakkara as per order

dated 22-01-2016 directed to revise the bill for short assessment by calculating the difference amount in LT VII A & VI B tariff for the period of one year. There is an error apparent on the face of records for the reason that as admitted by the appellant the C.G.R.F have come to the conclusion that the tariff to be applied is LT VII A instead of LT VI B there by endorsing the findings in the site mahazar that there is misuse of tariff resulted deliberately by the omission on the part of the appellant. In such a situation the C.G.R.F should have considered the question of jurisdiction and directed the petitioner to approach the Section 127 (Indian Electricity Act, 2003) Appellate Authority in case of any grievance on due compliance of all procedural formalities stipulated in the Indian Electricity Act 2003.

4. The petitioner have approached this Hon'ble Ombudsman in suppression of fact that large number of students of private educational institution are provided hostel facility purely on commercial basis and energy supplied under subsidised rates for running hostel of a government aided institution were misused for running this commercial business for which energy under higher rates of LT VII A tariff is applicable. The site mahazar prepared was duly signed by Rev. Sr. Jossy Maria, on fully convinced about the findings of the inspection. The action initiated by this licensee under Section 126 of Indian Electricity Act, 2003 holds good and only Section 127 appellate authority have jurisdiction to dispose the matter.

The orders passed by C.G.R.F (South) Kottarakkara is ultra vires and beyond jurisdiction and ought to be quashed. Under the circumstances narrated above it is humbly prayed that this Honourable Ombudsman may either kindly quash the orders passed by the C.G.R.F., Kottarakkara in due appraisal of the question of jurisdiction raised by this defendants or keep in abeyance the operation of the appeal as the matter is under the consideration of the Hon'ble High Court of Kerala on the appeals filed by this licensee.

Analysis and findings

The hearing of the case was conducted on 26-05-2016 at Kizhathadiyoor Service Co-operative Bank Auditorium, Pala and the appellant's side was represented by Advocate Francis George and the respondent's side by Sri Anil V, Assistant Engineer, Electrical Section, Pala and Sri. Baiju Sebastine, Nodal Officer (Litigation), Electrical Circle, Pala and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellant, the statement of facts of the respondent, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings, leading to the decisions thereof.

The respondent has raised the primary question of jurisdiction of CGRF and Ombudsman in interfering with the 126 proceedings initiated by the

licensee against the appellant in this case. He has also requested to keep in abeyance the operation of the appeal as the matter is under the consideration of the Hon'ble High Court of Kerala on the petition filed by the licensee against the orders issued by CGRF.

The appellant has declared in the appeal petition that the subject matter of the present complaint has not been pending / decided by any Forum/Court/Arbitrator/any other Authority and also stated that he has not received any notice from the Court regarding the case if any, filed by the licensee. The respondent has neither produced a copy of the Writ Petition nor furnished a number of Writ Petition of the case filed by him. He has produced a copy of an order received from the licensee to file a Writ Petition against the order of the Forum before the Hon'ble High Court of Kerala. Except for a copy of the sanction issued by the licensee to take up the matter before the Hon'ble High Court, the respondent has not produced any document to substantiate its contention that the matter is pending consideration before the Hon'ble High Court. In this circumstance there is no bar for this Authority to consider the issue in question and to pass appropriate order.

Further as per Regulation 22 (1) (d) of the KSERC (CGRF and Ombudsman) Regulation, 2005, no representation to the Ombudsman shall lie in cases where a representation for the same grievance by the complainant is pending in any proceedings before any Court. The appellant has not raised any complaint on the same grievance before any Court. Considering the above facts, the objection raised by the respondent in this regard is not sustained and hence rejected.

Regarding the jurisdiction of the CGRF and Electricity Ombudsman on the issues relating to the proceedings under Section 126, the following aspects have to be examined. The said provision, along with the explanation, reads as under: - ***"126. Assessment – (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.***

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under subsection (2), shall be entitled to file objections, if any, against the provisional assessment before the Assessing Officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of

assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the Assessing Officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection,

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in subsection

(5). Explanation : For the purposes of this section,-- (a) "Assessing Officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government; (b) "unauthorized use of electricity" means the usage of electricity – (i) by any artificial means; or (ii) by a means not authorized by the concerned person or authority or licensee; or (iii) through a tampered meter; or (iv) for the purpose other than for which the usage of electricity was authorized; or (v) for the premises or areas other than those for which the supply of electricity was authorized."

The important observation made by the Hon'ble Supreme Court of India in paragraph 61 of the judgment in Seetharam Mills case (Civil Appeal No. 8859 of 2011) is quoted below:-

"Unauthorized use of electricity cannot be restricted to the stated clauses under the explanation but has to be given a wider meaning so as to cover cases of violation of terms and conditions of supply and the regulations and provisions of the 2003 Act governing such supply. "Unauthorized use of electricity" itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act"

The main dispute is on the change of the appellant's tariff from LT VI B to LT VII A commercial category. The KSEB Limited is supposed to assign the tariff to the consumer, based on the guide lines, directions and notifications issued from time to time, by the Hon'ble KSERC, which is the statutory empowered body to classify the appropriate tariff of a particular class of consumers. Accordingly, the tariff of a consumer is fixed based on the purpose or the activity for which the electrical energy was utilized. In this case, originally the tariff assigned to the consumer was under VI B General Tariff. Later, it was detected, pursuant to an inspection carried out on 07-08-2015 that the premises were used for accommodating private students from outside. The respondent hence changed the tariff of the appellant and issued a short assessment bill. The respondent alleges it as 'misuse of tariff' given for a general purpose, which was utilized for a commercial purpose.

The appellant has challenged the penalization for misuse of tariff levied from her as per Section 126. According to the appellant, the service was originally issued for the purpose of running hostel for students and there is no additional load in the premises and as such the assessment made under Section 126 of the Electricity Act is not sustainable under law. It is also contented by the appellant that no private students were staying in the hostel at the time of inspection and never used the hostel for accommodating private students. The tariff applicable to hostels of educational institutions affiliated to university is VI B. The Alphonsa College and St. Thomas College are recognized aided colleges affiliated to Mahatma Gandhi University and the students of these colleges are staying there.

On going through the site mahazar, it is found that no documentary evidences were examined and any records which are relevant to prove the case were found during the inspection or were seized by the Assessing Officer. It is not mentioned in the site mahazar, how it was convinced the stay of private college students in the hostel and the details of number of such students staying in the hostel, the period of stay etc are not furnished. As per Regulation 151 of the Supply Code 2014, description of evidence and documents seized shall be incorporated in the mahazar. This was not done in this case.

It is the responsibility of the inspecting officer to examine the records of inmates of the hostel and to verify the details of rent, if any, collected from the private students accommodated from outside. Without such details, it cannot be ascertained whether the hostel is used for commercial purposes. In short, in the absence of conclusive evidence for renting out the hostel facilities for the accommodation of other private students on commercial purposes, the penalization under Section 126 cannot be sustained and the change of tariff from LT VI B to LT VII A is also stands not correct.

Admittedly, the institution is a hostel run for accommodating the students of Alphonsa College and St. Thomas College both recognized aided

colleges affiliated to Mahatma Gandhi University and the tariff applicable is LT VI B. The site mahazar prepared by the inspection team on 05-08-2015 after inspection is seen acknowledged by the appellant, even though it is asserted that the signature was obtained by exerting threat of disconnection. The officers of the licensee conducted the site inspection is bound to collect all the materials for proving the misuse of tariff as stipulated in Regulation 151 (5) of Electricity Supply Code, 2014, which reads as:

“All material evidences [thondi] such as tampered meter, tampered meter seal and artificial means used for illegal abstraction of energy and the documentary evidences such as production records, personnel engagement records, electricity bills, records relating to sales and taxes, daily attendance registers, shift duty records and muster rolls which are relevant to the case and found during the inspection shall be seized.”

Admittedly, on inspection the respondent has not taken any details of the registers maintained by the appellant for the inmates. They have not even attempted to find out the receipt book for collecting the hostel fee from the students. If these documents were examined it would have been easily assessed how many private students were admitted in the hostel at the time of inspection. In the absence of any such materials to prove that private students are admitted in the hostel, there is no justification for treating this as misuse of tariff under Section 126 of Electricity Act, 2003.

It is also found that while disposing the petition the CGRF also detected that the respondent has not stated anything in the site mahazar regarding the date on which the appellant provided admission to the private students, number of students staying in the hostel and their period of stay etc. and hence held that there is no need of penalizing the appellant for misuse of tariff. At the same time the appellant admitted during hearing before the CGRF that certain students from the Brilliant College which is a private entrance coaching institution were accommodated in the hostel. So, it can be presumed that occasions existed where students from outside were admitted in the hostel. The specific argument of the appellant is that no private students were staying in the hostel at the time of inspection. In the above circumstances I don't find any reason to interfere with the orders passed by the CGRF in OP No. 1573/2015 dated 22-01-2016.

Decision

In view of the above discussions the short assessment bills issued for Rs. 2,97,984.00 and Rs. 70,397.00 are hereby quashed. The respondent is directed to revise the assessment by calculating the difference amount in LT VII A and VI B tariff for a period of 1 year under normal rate. This shall be done at any rate within 15 days from the date of receipt of this order.

It is also directed that the respondent may conduct a proper inspection in the appellant's premises and verify whether the appellant is admitting students other than those of Alphona College and St. Thomas College and in case the appellant is functioning in accordance with the tariff norms applicable under LT VI B, it is open to the respondent to allow to continue the appellant under LT VI B tariff.

Having concluded and decided as above the appeal is disposed of accordingly. The CGRF order in OP No. 1573/2015 dated 22-01-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/14/2016/ _____ Dated: _____

Delivered to:

1. Rev. Sr. Jossy Maria FCC, Warden, Alphonsa Hostel, Arunapuram P.O., Pala, Kottayam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Pala, Kottayam.

Copy to:

3. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
4. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
5. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.