

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P /231 /2011.

(Present: T P Vivekanandan)

APPELLANT : Sri. Muhammed Kunju T
Metro Digitals, Thykoottathil buildings,
Vazhakala, Ernakulam District

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, Vyttila
Ernakulam

ORDER.

Background of the case: -

The appellant is said to be engaged in the business of 3-D animation, editing and various other services related to digital technology using various software's. His industrial Firm is a small scale unit named 'Metro Digitals', with consumer No. 8172 of Electrical section, Thrikkakkara having a registered connected load of 36 KW. The tariff assigned for the unit was LT IV-industrial initially and from 3/2010 onwards stands under LT VIIA-commercial tariff. Earlier the premise had been inspected by the Board officials on 6th June 2007 and detected 12 KW load, as additionally connected there. The penal bill issued for the said irregularity was remitted by the consumer.

However in 12/2010, the consumer was served with a short assessment bill dated 5.12.2010 for Rs. 2, 40, 328/- with a letter stating that the bill represents the proportionate energy charges for the UAL availed by him for the period 7/2007 to 11/2010, as it was not collected from him earlier. Aggrieved by the same, the appellant filed a complaint dated 14.12.2010, before the CGRF requesting to set aside the short assessment bill issued by the respondent. The CGRF in its order reclassified the consumer under LT VIIA instead of LTIV from the date of giving connection and directed reassessment of the bills already issued. Still aggrieved on this, the appellant has filed this Appeal Petition before this Authority against the above orders of the CGRF, on 30.6.2011.

Arguments of the Appellant: -

The contentions raised by the appellant in his Appeal Petition are the following. The appellant states that the Electric connection was provided under LT IV-tariff till March 2010. Thereafter the consumer himself applied for a change of tariff as he was wrongly informed that the relevant tariff

applicable to his industrial unit is LT VIIA. But, as a matter of fact, going by the nature of activities being conducted in the premises it cannot be said as a commercial establishment. All the activities in the premises belong to manufacturing activity with the aid of Software and using Computers. Therefore the change of tariff made by the KSEB was totally unwarranted even though it was done on the basis of the request made by the consumer on a mistaken notion. The consumer reserves the right to move the respondent for changing the tariff.

The next contention is that on 6.6.2007 an inspection was conducted by the respondent in his premises and prepared a mahazar alleging that the consumer has installed additional load of 12 KW and the penalty of Rs.4860/- was imposed. As the amount involved was low, the consumer had remitted the said amount, as he was under the bonafide belief that, by paying the said sum, the alleged irregularity shall stand regularized. However, during the month of December 2010, the consumer was served with a short assessment invoice dated 5.12.2010 for Rs. 2, 40, 328/-, along with a letter dated 4.12.2010, stating that the bill correspond to the proportionate energy charges for the unauthorized additional load, that has not been collected from the petitioner.

The appellant argues that the order passed by the Hon CGRF is without any jurisdiction and hence liable to be set aside. The powers of CGRF are defined under the KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. The jurisdiction of the CGRF is dealt with in Regulation 6. Regulation 2 (f) defines the complaint as a grievance made by a consumer in writing in the matters enumerated in sub clause (i) to (vii). Complainant is defined under Regulation 2 (e). He points out that, CGRF has jurisdiction to entertain any complaint in respect of the grievances, made by the complainant. In this case the grievance highlighted by the petitioner i.e. a complaint as defined under Regulation 2 (e) (i), was with respect to a short assessment bill issued. None of the parties had any grievance regarding the wrong tariff alleged to have been applied. Therefore the finding regarding the tariff was unwarranted and without any jurisdiction.

The next point is that the finding of the CGRF is unsustainable on facts as well. No materials were placed before the Forum as to the activity of the consumer by the respondent, as it was not relevant to the issue under adjudication.

Another argument is that, the sole reason relied by the Hon CGRF for holding that the tariff of the consumer as commercial, is that the name of the petitioner's institution is " Metro Studio". The finding of the CGRF is that the name conclusively shows the activity of the petitioner as a cinema studio and therefore LTVIIA tariff is applicable. According to the appellant, it is pertinent to note that this finding is a patent error as the name of the petitioner's institution was never "Metro Studios" instead it was "Metro Digitals". Even in the cause title of the order the name of the petitioner is shown as "Metro Digitals".

The other point is that the CGRF had decided an issue which was never pleaded or otherwise brought before the Forum for adjudication and is totally beyond the scope of powers of the CGRF, that too without conducting any enquiry and without giving an opportunity to explain the reasons for the same. Even if it is assumed for argument sake, without conceding that the Forum had the jurisdiction to decide the issue, the finding of the Forum is unsustainable. According to appellant, he is not carrying out any of the activity so as to attract LT VIIA tariff. None of activities contained

in LT VIIA classification, is conducted by the consumer and even the respondent do not have a case that, the consumer is entitled to be classified under LT VIIA for the period prior to 3/2010.

Lastly, the appellant argues that the CGRF do not have any power to order review/revise any of the invoices already issued unless a grievance in respect of the same is highlighted by the consumer or even the Licensee has not raised any dispute as to the regular bills. Therefore the CGRF at any rate could not have directed for revision of those regular bills.

The reliefs which the Appellant sought are;

To set aside the order of CGRF dated 18/5/2011 to that extent it is directed to revise the regular bills issued to the appellant for the period prior to 3/2010.

During the hearing the appellant expressed his desire for a settlement as follows;

- 1). Set aside the CGRF order to revise the tariff to LT VIIA prior to 3/2010.
- 2). Reduce the load of Power plugs rated 5.5 KW and the back assessment may be done, for the balance UAL for the period 7/2007 to 2/2010, under LT IV tariff.

Arguments of the Respondent: -

The respondent has denied all the averments and allegations contained in the petition.

The Respondent states that the tariff applied for, by the appellant for his Firm, at the time of availing the electric connection was LT IV-industrial. But considering the nature of business of the consumer, the eligible tariff to be applied was, LT VIIA-commercial. The CGRF also admitted this fact during the hearing.

Another contention is that on 6/6/07, the official of the KSEB had conducted an inspection in the premises of the consumer and found that an excess of 12 KW load, over the sanctioned connected load, was being used by the consumer. A penal bill was issued, following the inspection for this anomaly done by the consumer, as per existing rules and was remitted.

The respondent has contended that the wrong tariff applied, was noticed only during the time of hearing conducted on 22.2.2011 and the CGRF has only pointed out the applicable tariff, as LT VIIA from the date of connection and further argues that the finding of the CGRF is sustainable. The consumer had remitted the bill amount issued on 6.6.07 under tariff VII A. It is also argued that the name of the Firm has no relevance here but only the commercial purpose or activity conducted there, on the premises of the institution, was considered while revising the tariff.

Analysis and Findings: -

On examining the Petition, the argument note 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 final decisions.

The Hearing of the case was conducted on 10.01.2012 in my chamber at Edappally and Learned Advocate, Mr Ziaur Rehman and Manoj T G, Partner, Metro Digital, represented the Appellant's side and Smt. Telsy George, Asst. Exe. Engineer, Electrical Sub Division, Vytilla, represented the Respondent's side.

The consumer has approached the CGRF with the request to set aside the short assessment bill dated 5.12.2010 for Rs. 2, 40, 328/-. The cause of the disputed bill is as follows.

The respondent has conducted a surprise inspection in the consumer's premises in 6/2007 and have detected 12 KW unauthorized additional load (UAL), and a penal assessment was made and the same remitted by the consumer. The appellant states that the penal amount was meager and so he remitted the bill without raising any contentions. But the action of the consumer in readily paying the penal bill, issued for the irregularity of connecting the excess load of 12 KW (UAL), as alleged by the respondents, without raising any objection on the quantum of excess load, if any, can be taken only as the acceptance of the UAL detected as correct by the consumer, that is to say, he has added 12 KW load extra without Board's sanction.

The next question arises is, whether the CGRF has the jurisdiction to decide, on a matter that the appellant has neither put in any grievance in his complaint nor the respondent has raised an issue before the CGRF. According to the appellant, none of the parties had any grievance on the fixation of tariff, alleged to have been applied from the date of connection of electric service. His grievance is the short assessment bill issued based on the inspection conducted on 6/6/07. Therefore, he argues that the finding of CGRF that the applicable tariff is, at commercial rate, from the date of availing connection, was unwarranted and without any jurisdiction.

The respondent has not a case that the tariff of the consumer should be changed with retrospective effect from the inception date. In such a situation I am of the view that the CGRF should not have ordered a change of tariff to commercial category, with effect from the date of connection. It was a conclusion arrived at by the CGRF from the facts of the Case/ documents or from the averments made during the hearing. The consumer should also get an opportunity to defend his part and state why the assumption is correct or not. I think this opportunity was not available to the consumer since the CGRF has made the assumption in its order only. Hence it is not justifiable. But without prejudice to anything contained in the Regulations, the Forum has the responsibility to point out the error occurred, if any, that is connected with the grievance of the consumer. However, I am not inclined to accept the decision of the CGRF that the tariff is to be revised to commercial rate, from the date of availing the electric connection and hence I feel the Order needs to be quashed.

The disputed bill is seen raised as shown below;

(A) : Fixed charges for the UAL:

1). Under LT IV from 7/2007 to 2/2010,

12KW x Rs 45 x 2 times x 32 months	= Rs. 34560.00
Less already remitted in 7/07	= Rs. 2430.00
Balance	= Rs. 32130.00

2). Under LT VII A from 3/2010 to 12/2010.

12 KW x Rs.100 x 2 times x 10 months	= Rs. <u>24000.00</u>
Total fixed charges	= Rs. 56130.00

(B) : Proportionate energy charges:

(a) LT IV Consumption from 7/07 to 2/2010	= 151060 units
Charges= 151060 x 12/48 x Rs. 3.25	= Rs 122736.00
(b) LT VII A consumption from 3/2010 to 12/2010	= 30540 units.
Charges= 30540 x 12/48 x Rs. 8.05	= Rs. 61462.00
Total energy charges	= Rs. 184198.00
Total bill amount = Rs. 56130.00 + Rs. 184198.00	= Rs. <u>240328.00</u>

The examination of the bill shows that, there is no change in tariff prior to 3/2010 and the consumer was billed under LT IV-industrial for the period up to 3/2010, when the consumer himself has opted to come over to LT VII A-commercial tariff, for his own reasons. So there is no room for grievance for the consumer on the issue of tariff as far as the disputed bill is concerned.

Further, the name of the Firm or Company has no relevance in fixing the applicable tariff of the unit, though sometimes it may suggest or reveal the activity that is taking place there. Actually, it is the business activities that is going on in the Firm or the purpose for which the energy is being used there, determines the eligible tariff of the Unit. The CGRF had mentioned the name of the Firm as Metro Studio, and treating as equal to as a cinema studio function, has decided the tariff as LT VIIA- commercial, and is found to be not reasonable or justifiable. Similarly, the appellant himself had applied for the tariff change in 3/2010. But claims that he was wrongly informed that the relevant tariff applicable to his firm is LT VII A and hence gone for the tariff change. This claim or version of the appellant also does not appear to me as believable.

DECISION: -

From the analysis done and the Findings and conclusions arrived at, which is detailed above, I take the following decisions.

The consumer shall remain under LT VII A –commercial tariff, from 3/2010 onwards, as he himself had applied for the tariff change, till it is revised by the respondents as per rules, on filing application by the consumer. But, there is no evidence to suggest before me so as to revise the tariff of the consumer to LT VIIA-commercial, from LT IV- industrial, with retrospective effect, i.e. from the date of availing electric connection. For the same reason, the CGRF order CGRF-CR/ Comp.71/ 2010-11 dated 18.05.2011 stands quashed.

The surprise inspection done in 6/2007, the detection of unauthorized additional load (UAL) of 12 KW and the preparation of the site mahazar are not seen to be challenged by the consumer, at that time. Once it is accepted and paid the penal bill thereof, there is no point in the argument now, that the UAL was less than the actual. Further, the same anomaly falls under Section 126 of the IE Act, 2003, and is debarred from the purview of the CGRF and the Electricity ombudsman vide 2 (1) (f) (vii) of the KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. And hence the said matter of, the true quantum of UAL availed by the consumer, is not considered for decision at this Forum.

However, I find that the disputed bill dated 5.12.2010 for Rs 2, 40, 328/-, was raised, for availing the UAL of 12 KW and in continuation of an earlier bill and therefore I feel it is maintainable and liable to be paid by the consumer. The respondent may allow up to 15 installments, if requested for the same by the consumer, for making the payment. The installments will carry the applicable interest. No interest to the bill is payable by the consumer, for the Appeal pending period, before this Forum. The consumer may remit the bill in full or 1st installment with in 21 days of this order.

Having concluded and decide as above it is ordered accordingly. The Appeal Petition filed by the consumer, is found having some merit and therefore is allowed to the extent, it is ordered as above. No order on costs. Dated the 15th of January, 2013,

Electricity Ombudsman.

Ref . No. P/ 231/ 2011/ 1534/Dated 15.01.2013.

Forwarded to : 1. Sri. MuhammedKunju T
Metro Digitals, Thykoottathil buildings,
Vazhakala, Ernakulam Diistrict
2. The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Vytila, Ernakulam.

Copy to : 1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum,
Power House Buildings, Ernakulam-682018.