

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/277/2012.

(Present: T.P. Vivekanandan)

Appellant : 1). JOYACHAN.K.ERINJERY.  
Everest Drugs, Vakayil Road,  
Chiyaram, Thrissur. Pin-680 026.

Respondent : 2).The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Koorkkancherry, Thrissur Dt.

ORDER.

Background of the Case: -

The appellant Sri. Joyachan K Erinjery, M/s Everest Drugs, Vakayil Road, Chiyaram, Consumer No. 6778, under Electrical Section, Kuriachira, has filed this Appeal Petition before this Forum against the orders of CGRF, Ernakulum, dated 2.02.2012. The appellant is an industrial consumer under LT IV tariff, with a connected load of 36.138 KW. Earlier, the APTS wing of KSEB had inspected the premises of the consumer on 30.4.2003 and detected 13 KW unauthorized additional Load and was penalized for the same. It is alleged by KSEB that the consumer did not regularize the UAL nor removed it and the party's version is that he has sent a letter in 5/2003 to the AE intimating the removal of the UAL. However, the penalization for continued availing of this 13 KW UAL, was included in the subsequent bills from 5/2003 and the consumer remitted the same without any objection. The penalization was done on the fixed charge portion and continued till the regularization of the additional load. Mean while the APTS had again inspected the premises of the consumer on 27-2-2004 and found that his connected load has not exceeded but did not furnish the electrical load details separately.

During 2/2010, the Audit Wing directed KSEB to recover the short assessed portion of the energy charges for the period from 7/2007 to 3/2008 and also the shortage in meter rent for the period from 6/2002 to 6/2008. Accordingly bills for Rs.46441/- and Rs.730/- respectively were served on the party for the above. The consumer filed complaints against the said bills and since he did not get any reliefs either from the Assessing Officer or from the Deputy Chief Engineer, Electrical Circle, Thrissur, he filed a petition before the CGRF, Ernakulam, on 2.12.2011 which was dismissed vide Order No. CGRF-CR/Comp.58/2011-12 dated 2.2.2012. Being aggrieved by the said order the appellant has submitted this Appeal Petition.

Argument of the Petitioner.

The arguments advanced by the appellant in his petition are the following.

The appellant has got the electric connection on 03.01.1997 (consumer No. 6778) under industrial -LT IV tariff. On 30.04.2003, the APTS Palakkad had inspected his industry and detected an additional load of 13 KW. On 14.05.2003, the appellant have submitted a letter to Assistant Engineer, Electrical Section, Kuriachira, after removing the additional load of 13 KW. During 19.01.2004, AE, Kuriachira, inspected and issued a meter sealing certificate, marked as Ex (P3). On 27.02.2004, the Assistant Exe. Engineer, APTS, Palakkad inspected his industry again and had written in his site mahazar that there is no additional load (marked as Ext. P4). On 30.06.2004, the Sub Engineer, Electrical section Kuriachira has issued a meter sealing certificate for the industry at Kuriachira (marked as Ext P5).

The appellant submits that he was regularly paying the current charges. While so, on 06.05.2010, he received a bill dated 06.05.2010 for Rs.71,292.00. Due to some doubt regarding the huge billing, he took the matter with the Assistant Engineer and consequently the amount was reduced to Rs.34, 982.00. The connected load in the bill was seen entered as 36.138 KW, which was correct.

The appellant found that even after removing the additional load of 13 KW (as per Ex (2), the KSEB was charging UAL and was continuously collecting it from his regular current charge bill till 04/2010. It is learnt that the audit party, as per note 39, has asked the AE to collect the penal current charges for the period from July 2007 to March 2008, as the consumer was paying penal charges for which he is not liable. The bill raised dated 28.06.2010 was for Rs.46, 441, for which he sent a letter to Assistant Engineer, for the cancellation of AG Audit report and the bill. (marked as Ex (8).

On 16.02.2011, the consumer had asked the Assistant Engineer, for issuing a copy of the first test report filed at the date of connection under Public Information Act. The AE was unable to give a copy of the said test report. The reply was "Searched for the test report in the office, but could not found out ". Till now the AE has not issued a copy of the test report. In the mean time, the AE informed me to submit a test report for verifying the complaint of the additional load. Hence the appellant filed a test report of actual load of 36.138 KW on 17.07.2010, to the AE, Kuriachira, who inspected the site. But the AE neither prepared any site mahazar nor made any comments of the additional load.

Another contention of the appellant is that he had submitted a petition to the AE for which the AE has issued a Proceedings vide no: DB/Complaint/2011-12 dated 24.06.2011- Ex (13). The order was highly injustice to him. In the AE's findings and decision, it is written "as per site mahazar dated 30.4. 2003, by Assistant Executive Engineer, Palakkad, it is clear that UAL of 13 KW existing". This means the consumer has not regularized the connected load even during the next inspection dated 27.02. 2004. This is false. According to the appellant, he had submitted an application (marked as Ex (2) on 14.05.2003, after removing the additional load and is accepted by the AE, Kuriachira.

Again the consumer had approached the Deputy Chief Engineer, Electrical Circle, KSEB, Thrissur for getting justice to his Appeal Petition. The Deputy Chief Engineer, as per his Proceedings No: GB1/ Appeal/6778/KRA/2011-12/2515/dated 04.11.2011 also stated that the load was not regularized. The appellant claims that he had removed the additional load before 14.05.2003 itself, then how can he

regularize the load later? Hence the findings of the Deputy Chief Engineer, Electrical Circle, Thrissur was also false and cannot be accepted. The short assessment bill dated 20.06.2010, Ex (14), raised due to the AG Audit report for the period July 2007 to March 2008 for Rs.46,441/- and shortage of meter rent for the period from June 2002 to June 2008 for Rs.730/- cannot be accepted.

As per the IE Act, 2003, rule 56 (2) states that "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 the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply". In this case this was not followed, hence cannot be recovered.

The consumer then approached Hon: CGRF, Central Region, Ernakulum but that Forum believed the statement of the KSEB, especially the statement of Mr. Prasad Mathew, the then APTS Assistant Executive Engineer, Palakkad, (2003-04), and did not consider the petition. The statement given by Mr. Prasad Mathew, before the Forum is not acceptable because the said inspection was done during 2/2004. Now, i.e. after a period of 8 years, he had given a statement of additional load detected in the premises, which is unbelievable after this much long period. Mr. Prasad Mathew had given in his statement that "During the starting of each field inspection the APTS team would ascertain the total load in a consumer's premises from the electricity bill available with the consumer. In this case, in the bill with the consumer, the load is mentioned as 36.138 KW and not 49.138 KW. There was no record of the electrical load of the industry at Electrical Section Kuriachira. Hence his contention is absolutely wrong and cannot be accepted. Each time when an inspection is carried out by an authorized Board Officer, if any abnormality is detected, he has to prepare a site mahazar. In this case he had prepared a site mahazar and in this site mahazar, he had specifically mentioned that there is no additional load. This statement itself shows that there was no additional load during the time of second inspection on 27.02.2004 by APTS Palakkad. Hence the statement of Mr. Prasad Mathew, regarding the inspection done on 27.02.2004, may be rejected.

In the analysis and findings of Hon: CGRF, it is mentioned that the first inspection was carried out on 30.04.2003. But he was silent about the application Ex. (2) submitted on 14.05.2003. Only after 14.05.2003, the APTS squad had inspected for a second time in the industry i.e. on 27.02.2004. So they were unable to find out any additional load. There was no recorded evidence in Electrical Office Kuriachira about the industrial load. This was clarified by asking under Public Information Act about the test report of the industry. The AE was unable to issue a copy to the consumer. Considering all these points mentioned above, the appellant has requested to please look into the matter and issue appropriate orders for the following points.

Reliefs sought: -

- 1).The excess amount collected as UAL 13 KW for the period after 14.05.2003 till April 2010 may be refunded.
- 2).The amount of RS.46, 441/- as per AG audit report for the period from July 2007 to March 2008 may be cancelled.
- 3).The meter rent to be remitted after two years may be exempted.

**Argument of the Respondent: -**

The respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following.

1).The APTS, Palakkad, had conducted an inspection in the premises of the consumer on 30-4-2003, and had detected unauthorized additional load of 13 KW and a site mahazar was prepared and a copy was also issued to the consumer. The respondent denies the receipt of consumer's submission of the letter dated 14.5.2003 (Ext.P3) and asserts that no test report was received from the consumer for the load regularization till 9/2010. Only after repeated requests, the appellant had submitted the test report on 23.9.2010. The AEE, Koorkkanchery and the AE, Electrical Section Kuriachira, inspected the site and regularized the connected load of the consumer as 38.755 KW on 29.9.2010. The meter sealing certificate was insisted to confirm that the meter is free from any defects.

Earlier on 27-2-2004, the APTS, Palakkad had inspected the premises and prepared a site mahazar after verifying the records of the consumer. The connected load including the UAL, as per records was 50 KW (36.13 KW+13 KW) and the load found at the premises was also the same. Hence the mahazar carried the sentence 'no additional load was found in the premise' and is in order since the UAL is the load in excess of the present load in his premises and the consumer was remitting penal charge for 13 KW UAL, along with the monthly bills.

The UAL of 13 KW was neither removed nor regularized by the consumer till the regularization of the additional load was done in 9/2010. Hence the penal charges for the UAL availed were continued up to that date and the consumer is liable to pay the penal charges for the entire period, from 4/2003 to 9/2010. As such, penal FC was charged in all the subsequent bills issued to the consumer by KSEB. The AG's audit done during 3/10, had observed that though penal FC has been charged from him for using UAL of 13KW, the proportionate energy charges has not been included in the bills raised for the period 7/07 to 3/08. A shortage in collection of meter rent for the period from 6/2002 to 6/2008 was also reported. Accordingly, the bills for Rs. 46, 441/- and Rs. 730/- were served on the consumer.

Regarding the issuance of the bill for Rs. 71292/-, the respondent submits that, it was an oversight in the meter reading and it was corrected to Rs.35, 005/- and the consumer had paid the bill amount.

Another contention of the appellant is that the application for regularizing the UAL was submitted by the appellant only on 23/9/2010 and accordingly the additional load was regularized on 29.9.2010. The appellant had remitted the application fee of Rs.10/- and Rs.50/- for regularization.

**Analysis and Findings: -**

The Hearing of the Case was done on 26.07.2012, in my chamber at Edappally and Mr. Joyachan K. Erinjery, the appellant and Sri. V Sanal Kumar, Counsel for the appellant and Sri. Byju KK, AEE, ESD, Koorkkanchery, appeared representing for either side. On examining the Petition and 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 findings and conclusions leading to the decisions thereof.

The APTS has conducted a surprise inspection in the consumer's premises on 30/4/2003 and have detected 13 KW unauthorized additional load (UAL) and a penal assessment was made and the same

was paid by the consumer. The KSEB continued the collection of the penal Fixed charges for the UAL of 13 KW availed by the consumer till 4/2010, by charging in the regular monthly bills since 4/2003. It is noted that the KSEB was levying the penal charges on the 'Fixed charges of UAL' only.

As per rules, when the UAL is detected, it is the responsibility of the KSEB to issue a provisional assessment for the offence, with a notice to the consumer, asking to remove the additional load or to regularize the same within a reasonable time. The rule says that the unauthorized load should be got regularized by the consumer within a period of 3 months on application to the AEE and on payment of additional security deposit and other charges, as per rules. It is the responsibility of the respondent to disconnect the connection if not regularized within these 3 months. The respondent states that no disconnection steps were initiated as the party preferred to enjoy the UAL by remitting penal charges and finally the UAL was got regularized in 9/2010.

The consumer does not dispute the fact of connecting 13 KW load extra, without Board's sanction, as on 4/2003. The main contention of the appellant is that he had removed the excess load of 13 KW subsequently and this fact was informed to the AE, Kuriachira, vide his letter dated 14.5.2003. But the respondent has denied the receipt of consumer's letter dated 14.5.2003 (Ext.P3) and further argues that KSEB has neither received any test report for UAL regularization nor its removal till 9/2010.

The APTS had inspected the premises of the consumer again on 27.2.2004 and had recorded in the mahazar that there is no extra load. The appellant argues it as an evidence of no UAL as on that date. But the KSEB's version is that, since the consumer was paying the electricity bills for 50 KW connected load (the sanctioned load of 37 KW plus the UAL of 13 KW), there was no cause for extra load on that date of inspection and hence the reason for recording in the site mahazar, as having 'no excess load'. This Forum feels that the inspecting officer ought to have prepared the mahazar with all the details of the equipments with its rating, found at the premises. But the mahazar was seen written by merely certifying that the connected load of the consumer has not been exceeded. The mahazar lacks clarity in stating whether the connected load mentioned is inclusive of UAL or not, since the party was seen paying the fixed charges for the UAL availed, as on that date.

Moreover, the AEE, Koorkanchery and AE, Electrical Section Kuriachira, inspected the premises and regularized the connected load of the consumer as 38.755 KW (rounded 39KW) on 29.9.2010. Here the additional load comes only 2 KW ( $39 - 37 = 2$ ) as on that date.

The AG's audit done during 3/10 has observed that, the penal FC has been booked in the bills of the consumer (for using UAL of 13 KW) since 7/07, but the proportionate energy charges was not seen claimed in the same bills of 7/07 to 3/08 and has to be preferred. Based on the audit report, two bills were issued including a bill for Rs.730/- as short assessment of meter rent for the period from 6/2002 to 6/2008.

Now the dispute is, over the short assessment bill dated 28.6.2010 for Rs.46441/-, consequent to an Audit report. The respondent states that proportionate energy charges were not included while preparing the bills of the consumer, for the period of 7/2007 to 3/2008. It is argued that as per the provisions of Indian Electricity Act 2003, amended with effect from 15/6/2007, the penalty was also made applicable to the energy charges (EC) based on the consumption, proportionate to the UAL

connected. This revision in respect of proportionate energy charges was not made applicable in the previous bills issued to the consumer, for the period of 6/07 to 3/08. Based on the audit observation, the KSEB made the reassessment and issued the disputed bill to recover the revenue loss.

*The first question to be decided is, 'whether the rules permit the Licensee to penalize the consumer, till the period of regularization of the unauthorized additional load (UAL)?'*

The procedure to be followed in cases of UAL is detailed under Regulation 51 of KSEB Terms and Conditions of Supply, 2005, reads ; "Where a LT consumer exceeds the connected load and/or resorts to UAL and if the connected load exceeds 100KVA the UAL shall be disconnected by the consumer within 24 hours of detection of the unauthorized load by the Board's officers or take action to regularize the UAL. If he fails to disconnect the UAL within the time stipulated, the power supply to the premise shall be disconnected after the expiry of 24 hrs.....".

Further, Regulation 51 (4) says "In case of Low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding UAL, the procedure stated in clause 50 (1) shall be applicable. The UAL should be got regularized by the consumer within a period of 3 months on application to the Asst. Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Asst. Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit". This clause clearly specifies the steps or procedure to be followed after detection of UAL in the premises of the consumer. It is clear that the Licensee can raise the penal bills against the consumer, for the UAL connected, till the time the UAL is removed or regularized. The letter dated 14.5.2003 of the consumer is denied by the KSEB and since there is no corroborative evidence to confirm this fact the argument of the consumer is found as not sustainable. Further, the consumer was seen paying the UAL charges without any objection all along these periods up to 9/2010, it can only be considered as the consumer was enjoying the excess load during this period by paying the penal charges.

The respondent relied upon Section 24 (5) of the Electricity Supply code 2005, to make the short assessment bill claims and argues that no limitation is envisaged under this section. The argument of the appellant regarding the Limitation of the bill period of two years, as stated in section 56 (2) of the Indian Electricity Act, 2003, would run from the date when such a Bill is raised, against consumption of electrical energy and would become due for payment, only after that demand has been raised. In a related case, it has been clarified by Hon High Court that the "Amount of charges would become due and payable only with the submission of the bill and not earlier. The word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Brihanmumbai Municipal Corporation V Yatish Sharma and others-2007 KHC 3784). Here the bill was preferred in 6/2010 only and according to the above ruling of Hon Court, I think the argument of the appellant that the claim is time barred by section 56 (2) of Electricity Act 2003, is found not maintainable.

The cause of dispute is the inspection conducted of the consumer's premises on 30.4.2003. The clause 126(4) of IE Act, 2003, (prior to amendment on 15.6.2007) says that *"once the assessed amount is paid by the consumer, he will be absolved from any further liabilities"*. (This clause was omitted by Act 26 of 2007 w.e.f. 15.6.2007).

It is evident that the above clause was applicable till 15.6.2007. After that date if any additional load was found continuously enjoyed by the consumer, the respondent should give notice for either its removal or its regularization (if feasible). If the direction is not abided or replied properly, other actions like disconnection may be resorted to, if the UAL is found detrimental to the Licensee's Electrical network or System.

**DECISION: -**

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

*The question to be decided is, whether the action of KSEB in preferring the disputed penal bill, based on an audit report in the year 2010, for an anomaly committed by the consumer before 15.6.2007 and the consequent penal bill cleared by him, can be extended further?*

Prior to the amendment effected on 15.6.2007, the clause 126(4) under Indian Electricity Act, 2003, reads as follows; "Once the assessed amount is paid by the consumer, he will be absolved from any further liabilities".

In this particular case, the cause of action has occurred on 30.4.2003 and the penal bills were raised subsequently against the consumer and the party has cleared the bills fully without any demur up to 9/2010. Once the liability is fully paid up by the consumer, the respondent cannot extend the liability, on the same irregularity of unauthorized additional load detected and billed prior to 15.6.2007, as he is absolved from any further liabilities on that account, as per section 126(4) stated above, which was applicable at that time. If the Audit party has made a note or observation later ( in this case in the year 2010), the licensee has to inspect the premises afresh and see whether any irregularities are still existing or are being done there, prepare the site mahazar noting down the anomalies detected and then proceed against the consumer as per rules. But in this case, the consumer was seen issued a fresh short assessment bill for the period of 7/07 to 3/08, as per the audit report, in contravention to the clause 126(4) of the Act, and hence the bill is found not maintainable.

For the above reasons, the questions under the Relief sought are answered as;

1). Connecting and using the Unauthorized additional load (UAL) of 13 KW by the consumer during 4/2003, which was detected in the surprise inspection by the APTS of KSEB, is not disputed by the appellant. Further, there is no evidence to establish that the UAL was removed subsequently, as claimed by the party. At the same time, the fact that the consumer was paying the penal charges (the Fixed Charges portion of the 13 KW) for the usage of UAL continuously without any complaint, can be treated as he was aware of the UAL and was in need of the same. Hence I decline the relief sought, to refund the excess amount collected as penal charges of 13 KW UAL, for the period after 14.05.2003.

2).The short assessment Bill dated 28.6.2010 for Rs.46, 441/- issued to consumer No. 6778 is decided as not maintainable for the reasons stated above and hence is set aside. The said amount or its part collected by the KSEB, if any, shall be refunded to the consumer with applicable interest, by adjusting in his future bills within 60 days of this order.

3).The collection of the meter rent from 6/2002 to 6/2008 vide bill dated 27.3.2011 for Rs. 730/- is found payable by the appellant since the fact is not disputed by the appellant. He may remit the same within 30 days of this order. It is made clear that no interest is payable by the consumer for this amount, during the appeal pending period before this Forum and up to 30<sup>th</sup> day of this order.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition is found having merits and stands allowed to the extent ordered. The CGRF's (Ernakulum) order No. CGRF-CR/Comp.58/2011-12 dated 02.02. 2012 stands quashed. No order on costs.

Dated the 12<sup>th</sup> of March, 2013,

Electricity Ombudsman.

Ref: No. P/277/2012/1623/ Dated 12.03.2013.

Forwarded to : 1). Sri. Joyachan. K. Erinjery.  
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2).The Assistant Executive Engineer,  
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Koorkkancherry, THRISSUR.

Copy to :1).The Secretary, Kerala State Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.

:2).The Secretary, KSEB,  
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4.

:3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEB,Power house Bldg, Cemetery mukku, Ernakulum-682 018.