

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION P-035/2014

(Present Sri V.V. Sathyarajan)

Dated: 2nd March 2015

Appellant : Sri. Suresh Kumar. P.
M/s Viv Trade Internet Cafe,
Oonninmmoodu,
Sarada Junction, Poothakulam,
Pin: 691 302

Respondent : The Assistant Executive Engineer,
KSE Board Electrical Subdivision
Chathannoor.

ORDER

The appellant is having a service connection with Consumer No. 4863 of KSEB Electrical Section, Poothakulam under LT VII (B) tariff. On 02/01/2014 the Assistant Engineer, had inspected the premises and detected an additional load and misuse of the tariff. Accordingly a site mahazar was prepared recording the above details. The registered load of the service connection was 380 Watts and the actual load was verified by the team as 2165 Watts. Based on the site mahazar, provisional bill was issued for Rs. 7,411/-under Section 126 of the Electricity Act, 2003. On receipt of the same the Appellant filed objection before the Assessing Officer and after allowing a personal hearing he issued the final bill amounting to Rs.5059/-. Also sanctioned instalment facilities for the remittances. The appellant remitted two instalments and filed petition before the CGRF, Kottarakara which was disposed as O.P No.1157/2014 on 28/05/2011. Against the order this appeal is filed.

Argument of the Appellant

A petition was filed before the CGRF against the final bill issued by the Assessing Officer under Section 126 of the Electricity Act based on the

inspection conducted by the respondent on 02/01/2014 at appellant's premises. The majority decision of the CGRF was not in favour of the appellant. According to them, it is coming under Section 126 of the Electricity Act and CGRF has no jurisdiction to entertain such complaints. The Forum directed to file appeal before the Appellate Authority under Section 127 of the Electricity Act and allowed one month's time from the date of receipt of the order. The external member of the CGRF issued a dissenting order directing the Licensee to revise the bill under LT VII (A) tariff for the whole consumption of the petitioner for the entire period exceeding the limit of 1000 W, within 15 days from the date of receipt of the order. Hence the appellant requested to set aside the order of the CGRF and to uphold the dissenting Order of the CGRF. He has also submitted that he is ready to remit the whole amount under LT VII (A) tariff.

Argument of the respondent:-

The site mahazar was prepared by the Sub Engineer in presence of the Assessing Officer and the appellant also signed and received the same. The registered connected load of the consumer was 380 Watts under LT VII (B) Tariff. On 02/01/2014 the Assistant Engineer along with the Sub Engineer inspected the premises and verified the connected load as 2165 Watts. The connection will therefore come under the category of LT VII (A). Site mahazar was prepared, and based on that, a provisional bill amounting to Rs. 7,411/- was issued for a period of one year under section 126 of the Electricity Act.

The appellant filed objection and produced the Lease Agreement at the time of hearing before the Assessing Officer as a proof for the date of commencement of the shop i.e. 15/05/2013. Hence the provisional bill issued was revised to Rs. 5,059/- and the final bill was issued. The Executive Engineer sanctioned four instalments for the remittance of the same. The appellant also accepted it and remitted two instalments, and then filed the complaint.

The Hon. Supreme Court's Judgement in Sitaram Mills case reported in 2012(2)SCC 108 has clarified that whenever a consumer connects load other than that is registered, it will attract section 126 of the Electricity Act for unauthorised use of Electricity.

Hence the appellant's argument based on the dissenting Order of the CGRF is not sustainable. Hence it is prayed that the appeal may be dismissed.

Analysis and findings: -

The hearing of the case was conducted in my chamber at, Edappally, Kochi on 15/01/2015. The appellant Sri Suresh Kumar. P. was present for hearing and Smt. B.S. Lekha Das, Assistant Executive Engineer, Electrical Sub Division, Chathannur, Kollam appeared for the respondent. They have argued the case mainly on the lines stated above. On examining the appeal petition and statement of facts and considering the arguments made during the hearing and all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The dispute arose when a final assessment order was issued to the appellant under Section 126 of the Electricity Act, 2003 subsequent to an inspection conducted by the respondent. The appellant's arguments are squarely based on the dissenting portion of the order of the CGRF. In the dissenting order, the question as to whether use of additional load by an LT VII (B) consumer like the appellant herein will attract penal assessment under Section 126 of the Electricity Act, 2003 has been examined in deep. The dissenting order has extracted a portion of the Tariff Order which reads as follows: -

“When contacted load exceeds 1000 watts, the consumers shall be charged under LT VII (A)”

After discussing the matter in further detail, the dissenting Order comes to the conclusion that an LT VII (A) consumer, who uses loads exceeding 1000 watts, cannot be said to be indulged in unauthorised use of electricity by way of additional load under Section 126 of the Act.

In short, the dissenting Order has looked into the merits of the case by examining whether the bill under question will attract Section 126 or not. The fact is that the Forum is legally barred from entertaining such a question. The remedy available to the appellant in such cases against the disputed bill is to file an appeal before the statutory authority under Section 127. The said statutory authority can very well examine the contentions raised by the appellant, if he moves such a body. The CGRF, in its majority order, has rightly directed the appellant to approach the Appellate Authority and raised arguments there, so as to limit the unauthorised additional load to 2165 watts for commercial purpose under L VII (A) tariff, if he so desires. Without heeding

the said advice, the appellant approached this Authority by filing appeal here. When the Regulations specifically exclude the jurisdiction of CGRF on all disputes pertaining to bills raised under Section 126 of the Act, on allegations of unauthorised use, the only remedy is to file an appeal under Section 127. As per Clause 2 (f) (vii) (i) of Regulation this Authority is also excluded from the jurisdiction of all disputes pertaining to the bills raised under Section 126 of the Electricity Act on the allegation of unauthorised use of electricity. A Division Bench of the Hon'ble High Court has clarified the law (2011(I) KLT 776) by holding that only remedy available to the appellant against such bill is to file an appeal under Section 127 before the Statutory Authority.

Decisions

In view of the above discussion the appellant will be at liberty to seek remedy as contemplated under Section 127 against the order of the Assessing Officer, if he is aggrieved by the same. The order of the CGRF is upheld. The appeal petition is dismissed. No order on costs.

Electricity Ombudsman

No.P/035/2014/ _____ Dated _____

Forwarded to:

1. Sri. Suresh Kumar. P., M/s Viv Trade Internet Cafe, Ooninmmoodu, Sarada Junction, Poothakulam, Pin: 691 302
2. The Assistant Executive Engineer, KSE Board Electrical Subdivision, Chathannoor, Kollam District.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEBoard Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSEBoard Ltd, Kottarkkara-691 506.