

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P/042/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 19th March 2015

Appellant : Smt. I Rajalekshmi
Kalathil House,
Arinalloor P.O.,
Thevalakkara,
Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSE Board Ltd,
Karunagappally South,
Kollam

ORDER**Background of the case**

The appellant is a consumer with consumer No. 26423 under Electrical Section, Karunagappally (South). On 16/11/2012, the Regional Audit Officer, Kollam with Sub Engineer, Electrical Section, Karunagappally (South) inspected the premises "Sreerangam Tower" and prepared a site mahazar. Thereafter a bill was issued for 8 kW load, at the rate of Rs. 65/- per kW for 240 days under LT VIII tariff. Objection was filed and the bill was finalized for Rs. 1,49,890/-. The appellant filed appeal before the Deputy Chief Engineer, Electrical Circle, Kottarakkara under Section 127 and the Appellate Authority confirmed the final bill for Rs. 1,49,890/-. Thereafter the appellant approached the CGRF praying as follows:-

- i) To declare the final bill, appeal order and the demand cum disconnection notice as illegal and hence to set aside.
- ii) To direct the Assistant Engineer to issue separate fresh bills for the actual period of unauthorized use of electricity.
- iii) To issue orders to the Assistant Engineer to limit the bill for the period from the date of occupation of the firms, in the building.

- iv) To issue orders to refund Rs. 74,945/-with interest at twice the bank rate with effect from 23/01/2013.
- v) To pay the cost and expenses of the petition.

The Forum dismissed the complaint, since it had no jurisdiction to interfere with the findings of the Appellate Authority constituted under Section 127 of the Electricity Act. Aggrieved against the said order, this appeal petition was filed.

Appellant's arguments

The appellant is a consumer under Electrical Section, Karunagappally (South). There is a commercial complex named "Sreerangam Tower" under the ownership of the appellant. HT electricity is supplied to the "Sreerangam Tower". Separate LT consumer numbers are allotted to different individual units in the building and electricity charges are paid by the respective occupants under applicable LT tariff. Consumer No. 26423 is allotted to the common lighting of the building in the appellant's name. The appellant is regular in remitting electricity charges and no electricity charges for electricity consumed is outstanding against the appellant.

The Assistant Engineer, Electrical Section, Karunagappally (South) issued a demand cum disconnection notice applying wrong tariff LT VIII. This bill pertained to unrelated periods on the plea that three occupants in the building, M/s CPAA Cashew, Twinkle Beauty Parlour and Beau Ideal Men's Beauty Parlour had engaged in unauthorised use of electricity from consumer No. 26423 when they had started functioning in the building on dates 01/11/2012, 26/09/2012 and 19/09/2012 respectively. Despite producing documents proving the actual date of occupation and use of electricity in which, unauthorized use of electricity was alleged, the Assistant Engineer issued another notice along with a bill with a consolidated amount of Rs. 1,48,890/- arbitrarily. Since the persons who had engaged in unauthorized use had been well identified, the assessment should have been issued to such persons instead of the appellant. The appellant filed an appeal before the Deputy Chief Engineer, Electrical Circle, Kottarakkara who, after hearing, confirmed the final bill. The demand cum disconnection notice was issued subsequent to the order of the Deputy Chief Engineer, Electrical Circle, Kottarakkara. Thereafter the appellant filed a complaint before the CGRF. The Forum dismissed the complaint without redressing the grievance of the appellant.

Respondent's arguments

On an inspection conducted in the premises it was found that unauthorised extension of electricity from consumer No. 26423 had been effected to three shops in the building. Hence the appellant was indulged in misuse of electricity. The provisional assessment order was prepared under Section 126 of Electricity Act. The provisional assessment was revised after hearing the appeal filed by the appellant and final bill for Rs. 1,49,890/- was issued. The appellant filed appeal before the Appellate Authority on 21/01/2013 and after conducting hearing, the Appellate Authority confirmed the final bill issued by the Assessing Officer. The appellant is liable to remit entire amount as per the revised assessment order dated: 03/01/2013 issued after hearing the objections of the appellant and confirmed by the Appellate Authority.

Analysis and findings

Hearing of the case was conducted on 23/01/2015 in my chamber at Edappally, Kochi. Sri K. Anandakuttan Nair represented the appellant and Sri Abdul Salam, Assistant Executive Engineer, Electrical Sub Division, Karunagappally (South) appeared for the respondent. Hearing the arguments of both parties and perusing the appeal petition, statement of facts and other documents, this Authority comes to the following conclusions leading to the decisions thereof.

It has come to my notice that the assessment was made under Section 126 of the Act. It is seen that the appellant availed of statutory remedy in the matter by filing appeal before the Appellate Authority constituted under Section 127 of the Act. After the pronouncement of the order of the Appellate Authority which was not in favour of the appellant, she filed a complaint before the CGRF requesting to set aside the final bill. It appears that the modus operandi of the appellant was intended to protract the proceedings of payment of the final bill amount. The appellant is well aware that the Appellate Authority constituted under Section 127 is the Forum where her grievance against assessment under Section 126 is to be agitated. She therefore filed a proper appeal before the Statutory Authority under Section 127.

The impugned bill is an assessment made for unauthorised use of electricity. In this connection, Section 126 of the Electricity Act and Clause 2 (f) of Regulations are extracted below.

Electricity Act Section 126

“126 (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 unauthorised 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”.

The KSERC (CGRF and Electricity Ombudsman) Regulations, 2005

“2 (f) “Complaint” means any grievance made by a complainant in writing on:-

- (i) defect or deficiency in electricity service provided by the licensee;*
- (ii) unfair or respective trade practices of licensee in providing electricity services;*
- (iii) charging or a price in excess of the price fixed by the Commission for supply of electricity and allied services;*
- (iv) errors in billing;*
- (v) erroneous disconnection of supply;*
- (vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or*
- (vii) any other grievance connected with the supply of electricity by the licensee except those related to the following:-*

(1) unauthorised use of electricity as provided under Section 126 of the Act.

(2) offences and penalties as provided under Sections 135 to 139 of the Act; and

(3) accident in the distribution, supply or use of electricity under Section 161 of the Act.”

In the present case, the electricity bill was raised under Section 126 against which statutory appeal is provided under Section 127 to Appellate Authority, who is Deputy Chief Engineer. It is specifically provided under Section 127 (i) of the Act that an appeal is maintainable against any proceedings or bills raised under Section 126 of the Act. The appellant herein already availed of the said remedy by filing appeal before the Deputy Chief Engineer. While the bill was confirmed by the Appellate Authority, she filed a complaint before the CGRF also. The above action on the part of the appellant is a clear case of misuse of legal remedies provided under law. Moreover, no complaint is maintainable before CGRF particularly by virtue of prohibition contained in clause 2 (f) (vii) (i) of the Regulations. The CGRF has no jurisdiction because

under sub clause (vii) (i) of clause 2 (f) of the Regulations, electricity bill raised by the licensee against a consumer for unauthorised use of electricity under Section 126 of the Act is specifically excluded from the scope of complaint.

Decision

In view of the above discussion, it is held that the CGRF/EO has no jurisdiction to interfere with the assessment proceedings culminated subsequent to the confirmation by the Appellate Authority under Section 127 of the Electricity Act. The CGRF has rightly dismissed the complaint filed before it. The order of the CGRF is, therefore, upheld. The appeal petition is dismissed. No order as to costs.

ELECTRICITY OMBUDSMAN

P/042/2014/_____ /Dated:_____

Forwarded to:

1. Smt. I Rajalekshmi, Kalathil House, Arinalloor P.O., Thevalakkara, Kollam
1. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Karunagappally (South), Kollam.

Copy to:

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