

THE STATE ELECTRICITY OMBUDSMAN
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REVIEW PETITION No. P/371/2013

(Present: Sri. V.V. Sathyarajan)

Dated: 22nd July 2015

Review Appellant : The Assistant Executive Engineer
Electrical Sub division, KSEB Ltd
Kundara, Kollam

Review Respondent : Sri Ram Kumar
KAP (India) Projects & Constructions (P) Ltd.,
19/65-A, Eravath Lane,
East Fort,
Thrissur – 680 005

ORDER

Background of the Case: -

The Review Appellant, the Assistant Engineer, KSE Board, Electrical Sub Division, Kundara has issued a provisional bill for Rs. 69,632/- and a calculation statement including compounding fee for Rs. 20,000/-, under Section 135 & 138 of Electricity Act, 2003 to the review appellant. Aggrieved by the above, the review respondent filed a complaint before the CGRF, Kottarakkara and the Forum disposed the same vide Order OP No. 916/2013 dated 16.4.2013. Not satisfied by the above decision of CGRF, the review respondent has submitted an Appeal Petition before this Authority in Appeal No.P/371/2013. The appeal petition was disposed of having allowed the plea to the extent it was ordered. Now the Review Appellant has submitted that a factual error occurred in the order issued by this Authority and therefore requested to review the order dated 31/3/2014 and to dismiss the said appeal petition.

Arguments of the review appellant

The main contention of the review appellant on this issue is that on an inspection conducted by the APTS, it was found that an unauthorised load of 1510 w is seen connected from consumer no 6913. In the instant case the power supply is seen extended unauthorisedly from consumer no 6913, having domestic purposes to the temporary sheds having lodging purpose amounting to unauthorised use of electricity intentionally. Since the respondent herein indulged in usage of electricity for the purpose other than for which usage of electricity was authorised and there was dishonest intention on the part of the respondent herein, the Assistant Engineer, Electrical section, Kundara had applied section 135 of the Electricity Act, 2003.

Accordingly a bill amounting to Rs. 69,632/- was issued on 15-11-2012 along with a calculation statement. Compounding fee amounting to Rs. 20,000/- was also included in the calculation statement. The factum of detection of theft was reported to the Station House Officer, Police station, Kundara on 16-11-2012 to register case against the registered consumer, namely Smt. Catherine as well as the occupant namely the review respondent herein. The review respondent remitted the bill amount as well as the compounding fee on 17-11-12 along with request for compounding the offence. On remission of the amounts, intimation letter was given to the SHO, Kundara on 17-11-12 to withdraw the case. Under such circumstances, the review appellant requested this Authority not to interfere in the matter in view of absence of jurisdiction.

The very payment of compounding fee suggests in categorical terms admission of the commission of offence. After remitting the compounding fee and compounding the offence it is not open to the review respondent herein to challenge the levy of the compounding fee before any Forum. It is also submitted that in terms of Regulation No. 2 (f) (vii) (2) of the Kerala State Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005, these Authorities have no jurisdiction to entertain any grievance relating to offences and penalty as provided under Sections 135 to 139 of the Act. In view thereof the finding of this Authority that there is no material evidence to suggest the factor of 'men's rea' upon the respondent i.e. the consumer had a dishonest intention to abstract energy and accordingly engaged in the act of theft of energy is without jurisdiction and authority.

The review appellant is submitted that the further finding of this Honourable Authority to the effect that at least a repetition of the same anomaly from the side of the consumer even after giving him notice informing the consequences under section 135 can only substantiate the 'mens rea' up on the consumer also will not stand scrutiny of law. The said finding is also without jurisdiction. Apart from this there is no such stipulation either in section 135 of the Electricity Act, 2003 or any other provision of the Electricity Act, 2003. Criminal complaint so launched by the competent officer of the Kerala State Electricity Board Ltd, or the licensee as the case may be, cannot be tinkered with or interfered with by this Honourable Authority in view of the provisions of section 482 of the code of criminal procedure, conferring inherent jurisdiction upon the High Courts of the land.

Arguments of the review respondent:

The contentions of the review respondent are as follows:

1. No theft of electricity has occurred as alleged, since there is no illegal intent on the part of the review respondent as detailed and ordered and hence settled by the Hon: Supreme Court of India in Civil Appeal No. 8859 of 2011 (2011 KHC 4978) (2012 (2) SCC 108). Therefore, the compounding, demanding and collection of amounts by the Assistant Engineer are illegal.
2. There was only unauthorized use of electricity and that too for domestic purpose as decided by the Hon: KSERC in the order No. 1996/com. Ex/KSERC/2012 Dated 26-02-2014 and all actions in this matter by the Assistant Engineer,

Electrical Section Kundara and action of ratification of such actions by the Executive Engineer, Electrical Division, Kundara are marred with procedural impropriety and arbitrariness and hence illegal.

3. Even if there is theft of electricity as alleged, the Assistant Engineer has no authority to compound the offence of theft of electricity and collect amounts on that account. Here, he has compounded demand and collected such amounts which is per se illegal.
4. This issue has already been settled by the Hon: KSERC through its order No. 1996/Com. Ex/KSERC/2012 Dated 26-02-2014.
5. In a similar case, which is also a cause for order of the Hon: Commission, No. 1996/Com. Ex/KSERC/2012 Dated 26-02-2014, as per and in compliance with the order of the Hon: CGRF Kottarakara and as per the directions of the licensee, the same Assistant Engineer had refunded the amounts collected towards compounding. The same ratio of actions is applicable to this case also. Therefore, there is no reason for this review appeal.

Analysis and findings:

Hearing of the case was conducted on 30-06-2015 in my chamber at my office, Edappally. Smt. Daisy Jose, Assistant Executive Engineer, Electrical Sub Division, Kundara and Sr. T.R. Rajan, Standing Counsel, KSEB appeared for the review appellant and argued the case on the above mentioned lines. The review respondent in this petition has submitted a detailed argument note for consideration.

The main contention of the review appellant is that the review petition is not maintainable before this Authority as per Regulation 2 (1) (f) (vii) (1) of KSERC (CGRF & EO) Regulations, 2005. This Authority has clearly mentioned in the order dated 31-03-2014 issued in this case that there occurred some serious flaws from KSEB's side, in booking the case under Section 135 of the Act and therefore this Authority admitted the petition for hearing. The matter has been examined in detail in view of the judgment delivered by the Hon'ble Supreme Court in Civil Appeal No. 8859 of 2011. Based on the judgment of the Hon'ble Supreme Court of India and the orders issued by Hon. KSERC vide order no. 1996/Com.Ex/KSERC/2012 dated 26-02-14, this Authority disposed the petition as **"the appellant need be proceeded against, under Sec. 126- unauthorized use of electricity only."**

This Authority has not tinkered or interfered in the criminal complaint in violation of the provisions of Section 482 of the Code of Criminal Procedure as alleged, but only pointed out the failure of the officers in following the statutory procedures envisaged in the Act and Regulations on detection of offences. Further, no glaring mistake or apparent errors on the face of the record, on the order dated 31-03-2014 of this authority, in Appeal No 371/2013, were pointed out by the review appellant here. The arguments now raised cannot be considered for a review, as it was considered, decided and order issued accordingly earlier. Hence there is no cause or sufficient reason established by the review appellant, for the review of the order already issued.

Decision

In view of the fact that in the review petition nothing is pointed out which escaped the notice of this Authority while disposing the petition. I hold that the review petition is not maintainable and hence rejected.

ELECTRICITY OMBUDSMAN

Review petition No. P/371/2013 Dated: _____

Forwarded to:

1. Assistant Executive Engineer, Electrical Sub division, KSE Board Ltd, Kundara, Kollam
2. Sri Ram Kumar, KAP (India) Projects & Constructions (P) Ltd., 19/65-A, Eravath Lane, East Fort, Thrissur – 680 005

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, Kottarakkara - 691 506.