

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P/098/2015

(Present: Sri. V.V. Sathyarajan)

Dated: 27th July 2015

Appellant : Sri M.K. Johns,
Jesso Cottage,
Kizhakkekara,
Kottarakkara,

Respondent : The Assistant Executive Engineer,
KSE Board Ltd.,
Electrical Sub Division,
Kottarakkara,
Kollam.

ORDER**Background ground of the case**

The appellant is running a footwear shop with name and style **Jesso Foot Wear** under the Electrical Section, Kottarakkara (West). Three single phase connections with consumer no. 1029 under LT VII A tariff for the ground floor, 19723 & 19724 under LT VII B tariff for the first and second floor respectively are in the said building. On 20-09-2014, the Anti Power Theft Squad team along with KSEB authorities conducted an inspection in the above premises. A site mahazar was prepared alleging that the appellant is indulging theft of energy as defined in sub section (1)(b) of Section 135 of the Electricity Act, 2003 and consequent to this, disconnected the supply of electricity.

On the basis of the site mahazar, a provisional bill for Rs. 41,336/- was issued to the appellant, under Section 126 of Electricity Act, 2003. The appellant remitted the said amount on 25-09-2014. As per the proceedings of Executive Engineer, Electrical Division, Kottarakkara the appellant remitted Rs. 30,000/- as the compounding fee as per Section 152 of Electricity Act, 2003 and then lodged a complaint dated 30-09-2014 before the CGRF, Kottarakkara which was dismissed vide order OP No. 1292/2014 dated 12-12-2014. Aggrieved by this, the appellant has submitted this appeal before this Authority on 23-02-2015.

Arguments of the appellant

1. The appellant stated that he is running a footwear shop with the name and style, **Jesso Foot Wear** in a building which has three floors and each floor has separate electric connection. The ground floor is provided with consumer No. 1029 under LT VII A tariff for the exclusive use of the footwear shop. The other two floors are provided with separate electric connection with Consumer No. 19723 & 19724, both under LT VII B tariff. The appellant has provided a small generator set to meet emergency situation in the event of outage of KSEB supply. A selector switch was provided in the ground floor near the main board at which, the entire load at the shop, one light for each of the upper floors and the generator was connected and generator supply was used thus in need of emergency. This arrangement was in open and it was seen by the KSEB officials who visited the premises on regular basis and nobody has warned this appellant against this. All the three meters have recorded consumption continuously and the same meters are there still now. The meter reading was taken regularly and bills were issued. This appellant remitted the electricity charges regularly and no amount is outstanding.
2. In the mahazar it was alleged that, separate wires from electric connections of upper floors, consumer No. 19723 and 19724 were taken to the ground floor connected to the manually operated changeover switch and by operating this, the meter at the ground floor is remained non working and the electrical equipments in the ground floor is worked. Thus, in the fully functional meter of consumer No. 1029 the correct consumption could not be recorded and electricity having low tariff is used for the working of the equipments in the ground floor. This intentional act of the appellant (dishonest intension) includes under theft of electricity, and causes monetary loss to KSEB and this falls under Section 135(1) (b) of Electricity Act, 2003.
3. While preparing the above mahazar, they have translated the wires which were taken from the selector switch to the separate tube lights in the upper floors as wires for taking supply to ground floor. However, they never detailed how the terminal connection in the alleged change over switch is given. Taking two source of supply to ground floor and connecting with the change over switch, then connecting it with the generator and load of ground floor and then using electricity is almost infeasible at any rate. However, when the total load in the ground floor is shifted to generator supply, it is quite normal that the meter does not record consumption, since at that point of time KSEB supply is not used. This could never be termed as theft of electricity by using artificial means. Artificial means to stop working of meter can be only termed, when such methods are used to stop function of meter and at the same time KSEB supply is used. Therefore, in this case there is no theft of electricity and hence illegal intention also. Since, one tube light each at the upper floors are connected and used only from generator supply, there is no unauthorised use of electricity. Moreover, in the mahazar the small generator connected to the selector switch is suppressed willfully contravening the principles of preparation of mahazar. While taking custody of

the switch, it was never put in a sealed cover under the signature of the appellant as warranted under Supply Code, 2014. Therefore, there is no base to allege theft of electricity or unauthorised use of electricity.

4. The allegation in the mahazar is also strange. It is alleged that this appellant has used electricity both from Consumer No. 19723 & 19724 of the upper floors at the same time in the ground floor through a change over switch. If the allegation is correct the theft should occur in the meters of Consumer No. 19723 & 19724, but not in the meter of consumer No. 1029. However the allegation is theft of electricity occurred at the meter of consumer No. 1029 of the ground floor.
5. If the allegation in the mahazar is true that, electricity supply is extended from the upper floor connections to the ground floor and is used, it is nothing but unauthorised use of electricity, but not theft of electricity. Therefore, the actions envisaged under Section 126 of Electricity Act, 2003, should have been taken. If the Assistant Engineer has resorted to such course of action, this appellant could have sought for remedies under Section 126 and 127 of Electricity Act, 2003. If the Assistant Engineer and the Executive Engineer have acted in compliance with Regulations under Supply Code, 2014, for theft of electricity, then also this appellant could have sought for remedies under Supply Code, 2014 in the hearing conducted by the Compounding authority.
6. The Compounding authority never heard this appellant before deciding the amount for compounding the offence of theft of electricity. During the hearing before the CGRF (South) the opposite party presented a document claiming that, the Executive Engineer had issued orders of compounding Rs. 30,000.00 towards charges for compounding, which was collected by the Assistant Engineer on 25-09-2014. It is observed that, the Executive Engineer had issued the orders on the same day and that too without hearing this appellant. Therefore, this action of the Assistant Engineer was a premeditated one, and executed in collusion with the Executive Engineer and by the way denied natural justice to this appellant.
7. It is respectfully submitted that, Electricity supply from three electric connections and the load of one connection along with the generator could never be connected and used with a changeover switch and such use is infeasible. Therefore, they have selectively suppressed the fact of the generator connected with the selector switch in the mahazar. Also, the inspection team had confiscated the switch without following the procedures as envisaged under Supply Code 2014 so that they can plant any switch to substantiate their allegation. This appellant was never ever given an opportunity of being heard.

Nature of relief sought for:

1. To hold and declare that, there was no theft of electricity at all, the allegation is false and the Assistant Engineer has flouted statutes under Section 135 of Electricity Act, 2003, and settled position under law in this case.

2. To hold and declare that bill amounting to Rs. 41,336.00 is arbitrary and illegal, hence irrelevant and to set aside it.
3. To hold and declare that order of the Executive Engineer is illegal and hence collection of Rs. 30,000.00 towards amounts for compounding is also illegal.
4. To issue orders to refund all amounts collected along with interest at twice the bank rate.

Arguments of the Respondent

On inspecting the meter of Consumer No. 1029, it was found that the load indication showed zero, meanwhile the electrical equipments of ground floor remained functioning. On detailed inspection it was found that insulated cables were seen extended from Consumer Nos. 19723 & 19724 to premises under Consumer No. 1029 through a hand operated change over switch, by which the functioning of the meter corresponding to Consumer No. 1029 is idled and at the same time the electrical equipments in the ground floor remained operative, thus recording consumption of energy in the meters corresponding to Consumer Nos. 19723 & 19724. A report on the incidence of theft of electricity has been made before the Station House Officer, Kottarakkara Police Station. The appellant had remitted the entire penal amount on 25-09-2014. The Executive Engineer, Electrical Division, Kottarakkara had accorded sanction to compound the criminal offence vide order No. RB/compounding/KTR/14-5/1018 Dated: 25-09-2014 and compounding fees of Rs. 30,000/- was remitted on the same date. Moreover the appellant has admitted that artificial means has been used for operating electrical equipments of ground floor, by non-recording the energy in the concerned meter. Further the appellant has requested in writing to exempt from the criminal proceedings.

1. The averment to the effect that the appellant has been using the change over switch to avail supply from generator is baseless. The inspection team has come to the conclusion only after detailed examination of the service connection in the premises. It had been confirmed that, the appellant restricts the usage of higher tariff LT VII A consumption by taking electricity from lower tariff LT VII B connections bearing consumer No. 19723 (1st Floor) and 19724 (2nd Floor) using a change over switch, found installed behind the seat of the shop owner. Further the electrification has been made in such a way that electricity can be availed for 3 floors of the shop at a time from any of the three connection i.e. from consumer No. 1029 (VII A) 19723 (VII B) and 19724 (VII B). The connection to the premises bearing consumer No. 1029 has been disconnected as mandated in the Electricity Act. The site mahazar was prepared as per the rules and the appellant has signed it in token of acceptance.
2. The inspection was conducted strictly in consonant with the provisions of the Act and the appellant was given detailed information regarding the theft detected in the premises and the civil liability of the appellant to be remitted and facility of compounding as per Section 152 of the Act for the acquittal to enable him to

proceed further in the case. At the time of inspection the appellant was using licensee's supply and no generator was operating. A change over switch was seized as evidence and was sealed properly after preparing a list of sealed evidence and affixing signature of the team leader of the inspection, the assessing officer and the petitioner Mr. Johns in the site mahazar. Also the list has been pasted on the sealed evidence properly. The Assistant Engineer here had carried out her duties as the Assessing Officer as the law stipulates. The reception of energy through the meter installed under tariff LT VII A with consumer no. 1029 has been purposefully stopped with the installation of change over switch to use energy from consumer no. 19723 and 19724 both under LT VIII B tariff. This matter has been prescribed in the site mahazar unambiguously. This act of the appellant falls within the ambit of Section 135 (1) of the Electricity Act and is clearly mentioned in the site mahazar. All steps subsequent to the detection of theft have been made in consonant with the provision of the Act.

3. There was definite dishonest intention on the part of the appellant in installing the change over switch to use energy from a lower tariff to a premise where a higher tariff is operating. All formalities have been followed in this case including hearing of the appellant by the Assessing Officer and issuance of proceeding by the Executive Engineer for compounding etc.
4. The appellant had requested for compounding the criminal offence in writing and the Executive Engineer, Electrical Division, Kottarakkara in compliance with Section 152 of the Electricity Act 2003 accorded sanction to compound the offence of theft of electricity as mandated in the Act. A compounding fee of Rs. 30,000/- was remitted by the petitioner
5. The appellant has approached the Kerala State Electricity Regulatory Commission in this case, and the Commission has ordered vide Letter No. 1991/Com.Ex/2014/KSERC dated 29-01-2015 that as the case falls under Section 135 of the Electricity Act 2003, intervention of the Commission is not warranted. The appellant again filed an appeal petition before the Kerala State Electricity Regulatory Commission in this case and the Commission as per Order No. 254/CEX/KSERC/2015-333 dated 16-03-2015 had dismissed the review petition. As per Clause 2(1)(f)(vii) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, any dispute or complaints pertaining to 'unauthorized use of electricity' under Section 126 or 'theft of energy' under Section 135 of Electricity Act, 2003, are not maintainable before the CGRF and the Electricity Ombudsman .

Further, the Hon'ble High Court of Kerala, reported as 2011(1) KHC 457 in Case No. WA No. 52 of 2011 has also made it clear that, when there is specific provisions in the Act itself, to hear such cases by designated Appellate Authority, the same are excluded from its purview. If there is any allegation of dishonest or illegal abstraction of energy or tampering of the meter against the appellant, then it will attract the provisions under Section 135 of Act, 2003. This fact has been

clarified by the Hon'ble Supreme Court in the judgment in (Civil Appeal No. 8859 of 2011).

Analysis and findings

The hearing of the case was conducted on 15-07-2015, at Inspection Bungalow (KSEB Ltd.) Paruthipara, Thiruvananthapuram and Mr. K. Anandakuttan Nair represented the appellant's side and Mr. G. Anil Kumar, Assistant Executive Engineer, Electrical Sub Division, Kottarakkara represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

On a perusal of the documents it can be seen that the appellant has already approached the Kerala State Electricity Regulatory Commission and the Commission has ordered vide Letter No. 1991/Com.Ex/2014/KSERC dated 29-01-2015 that as the case falls under Section 135 of the Electricity Act, 2003, intervention of the Commission is not warranted. Not satisfying the above order, the appellant again filed a review petition before the Kerala State Electricity Regulatory Commission in this case and the Commission as per Order No. 254/CEx/KSERC/2015-333 dated 16-03-2015, held that the contentions raised by the appellant are devoid of merits for review on the decisions already made and dismissed.

Here, in this case the allegation is whether tapping of electricity from a connection having lower tariff with the help of a change over switch to a premises having higher tariff purpose is coming under theft of electricity or unauthorized use.

The appellant admitted that by extending the electric supply given to a premises or areas other than those for which the supply of electricity was authorized, it is a sure case of unauthorized use of electricity. On the other hand the respondent argued that at the time of inspection the appellant was using licensee's supply and no generator was operating. Further the load on the energy meter installed in the premises of Consumer No. 1029 was zero and no energy was received by the appellant through this connection. But the electrical equipments were operating at the premises of consumer No. 1029. This act on the part of the appellant falls within the ambit of Section 135(1)(b) of Electricity Act and is clearly mentioned in the site mahazar. On going through the above contentions, I feel that going into the merits of the case as per relevant clause under which the appellant was booked, Section 126 or Section 135, does not come under the purview of this Authority. As per Clause 2(1)(f)(vii) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, any dispute or complaints pertaining to 'unauthorized use of electricity' under Section 126 or 'theft of energy' under Section 135 of Electricity Act, 2003, are not maintainable before the CGRF and the Electricity Ombudsman, hence intervention of this Authority is unwarranted and the appeal petition is not maintainable as per the Regulations of KSERC.

Decision

Any such disputes or complaints connected with Section 126, 135 to 139 and 161 of Electricity Act, 2003 are not maintainable before CGRF and Electricity Ombudsman by virtue of Clause 2(1)(f)(vii) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. Hence the appeal petition stands dismissed and ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/098/2015/_____ /Dated:_____

Forwarded to:

1. Sri M.K. Johns, Jesso Cottage, Kizhakkekkara, Kottarakkara,
2. The Assistant Executive Engineer, KSE Board Ltd., Electrical Sub Division, Kottarakkara, 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, Kottarakkara - 691 506.