

Before the Ombudsman

KPFC BHAVAN, C.V.RamanPillai Road , Vellayambalam, Thiruvananthapuram-695 010.

Order Dated. 11th April 2007.

Present: M.Sivathanu Pillai, Ombudsman-in Charge.

Appeal petition No 5 of 2007.

CGRF order.O.P.No.120/2006 dated 17th January 2007.

M/s.Marikar Engineers Pvt Ltd,
Marikkar Buildings,
M.G.Road, Thiruvananthapuram 695 001

Appellant

Vs

Assistant Executive Engineer
Electrical Sub Division, KSEB,
Puthenchanthai, Thiruvananthapuram 695 001.

Respondent

Date of hearing 10th April 2007.

a. Appellant has stated as follows.

Appellant is a consumer of electricity with consumer No, 2086 under Electrical Section, Cantonment, coming under the jurisdiction of the Deputy Chief Engineer, Electrical Circle (Urban), Power House Building, Thiruvananthapuram of K.S.E.Board (herein after called Board).

2. The appellant is engaged in the activity of repairing of vehicles right from 1956. At the time of effecting the electric connection the appellant were assigned industrial tariff LT-IV for assessing the electricity consumption as the appellant is engaged in the activity of repairing vehicles and the appellant's activity is included as industry for fixing electricity tariff as per rules.

3. The monthly bills were being issued to the appellant based on the meter readings taken by the respondent's employees and the appellant has been remitting the bills accordingly without any default.

4. Appellant received a letter No. DB/G1/Tariff/06-07/76 dated 4/7/06 addressed by the Assistant Engineer, Electrical Section, Cantonment, intimating that the tariff to the appellants premises have be changed to LT VII A under commercial tariff, alleging that the appellant is engaged in the activity of motor vehicle repair and motor vehicle servicing combined. It was further informed that the appellant can avail two connections one for motor repair under LT- tariff and the other for vehicle service station activity under LT-VII-A and until segregation of the above consumer number 2086 will be charged under LTVII-A

5. To add to the appellant's surprise and shock the appellant was also issued with an arrear bill for Rs. 1,81,895/- vide Bill No. E5060000393 dated 10/7/06 of the Senior Superintendent of the same Section Office.

6. The Appellant aggrieved by the aforesaid illegal, unilateral and null and void assessment made by the Assistant Engineer preferred appeal before the Deputy Chief Engineer, Electrical Circle (Urban), Thiruvananthapuram of Board.
7. However the Deputy Chief Engineer, Electrical Circle (Urban), without considering the contentions of the appellant nor affording any opportunity of being heard had on 28/9/2006 issued a letter informing that the appellant is not eligible for getting any reduction in the penal amount.
8. Appellant against the decision of the Deputy Chief Engineer, the appellant filed appeal before the Deputy Chief Engineer, Chairperson, Consumer Grievance Redressal Forum (South), Kottarakkara , as OP No.120/2006.
9. The Consumer Grievance Redressal Forum (South) on 17/1/2007 passed an order received by appellant on 1/2/2007 accepting the “ Official version” of the respondent that the appellant is not eligible for getting any reduction from the penal bill.
10. Aggrieved by the order of the Consumer Grievance Redressal Forum, the appellant herein craves leave to file this appeal on the following among others.

GROUND S

1. The order of the Consumer Grievance Redressal Forum (South) Kottarakkara is not sustainable either in law or on facts.
2. The Consumer Grievance Redressal Forum mis- construed and mis - comprehended the fact evidence and law applicable in the case.
3. The appreciation of the documentary and provisions of law by the Consumer Grievance Redressal Forum is faulty.
4. The observation of Consumer Grievance Redressal Forum regarding the hearing on 4.12.2006 is faulty.
5. The Consumer Grievance Redressal Forum ought not have heard the appellant in the absence of the respondent.
6. The notice of so called 2nd hearing alleged to have been held by the Consumer Grievance Redressal Forum on 17/10/2007 (probably 17/1/2007) the date on which the impugned order was passed, was without notice to the appellant.
7. The hearing if at all had been held on 17/1/2007 the same is without notice to the appellant and behind their back.
8. The consumer Grievance Redressal Forum ought to have conducted the proceedings without any bias strictly adhering to the principles of natural justice, equity and good conscience.

9. If at all the Consumer Grievance Redressal Forum had heard the respondent on 17/1/2007, the same should have been in the presence of the appellant with due notice to them.
10. The Consumer Grievance Redressal Forum failed to consider that they were carried away by an order viz. BO (FM) No.1944/04 (DPCI) APTS- /04) dated 9/8/2004, which does not pertain to the parties to the complaint.
11. The order relied on by the Respondent pertains to another institution and the same is not binding on either on the Consumer Grievance Redressal Forum or on the appellant.
12. The contention of the respondent that the appellant has not appealed before the assessing officer (Assistant Engineer) is wrong and against the provisions of the Act.
13. The assessing authority is not the appellate authority as contended by the respondent.
14. The assessing authority cannot be at any stretch of imagination be construed as the appellate authority.
15. The assessing authority did not issue any provisional assessment before issuing the impugned, nor called upon the appellant to show cause as to why the bill should not be confirmed.
16. No opportunity was afforded by the assessing authority before issuing the bill nor were heard by the Assistant Engineer.
17. The provisions of Section 126(3) and 126(4) of the Electricity Act has been mis - quoted.
18. There is no provision in the electricity Act to file any appeal before the Assessing officer.
19. The documents relied by the Consumer Grievance Redressal Forum produced by the respondent is without notice to the appellant and behind the back of the appellant.
20. The relevance of Exhibit A2 purported to be relied also is not known and behind the back of the appellant.
21. The Consumer Grievance Redressal Forum has not considered the evidentiary value of Exhibit A2.

22. The appellant has not been furnished with any copies of Exhibit A2, A4 and A5. The consumer Grievance Redressal Forum ought not have relied upon the same.
23. The reliance of provision of the electricity Act by the Consumer Grievance Redressal Forum is faulty based on his comprehension of fact and law.
24. The Consumer Grievance Redressal Forum ought not have relied on an order which is against the provisions of Electricity Act.
25. The Consumer Grievance Redressal Forum has not considered any of the grounds raised by the appellant and none of the grounds was answered or considered by the Forum.
26. No reason has been attributed by the Consumer Grievance Redressal Forum for not considering the contentions of the appellant.
27. The reasoning given by the Consumer Grievance Redressal Forum forming the conclusions based on surmises and conjunctures.
28. No independent reasoning was given by the Consumer Grievance Redressal Forum while upholding the contentions of the respondent.
29. No sufficient opportunity was afforded by the Consumer Grievance Redressal Forum to the appellant either for hearing or for adducing evidence.

For the hearing on 4.12.06 the petitioner represented by its director Sri. Abdul Sathar and his Council Adv.G.S.Kalkura attended. But the respondent requested another convenient date over telephone as he was to attend another hearing.

b. CGRF has stated as follows.

Petitioner agreed in principle that both units were simultaneously functioning from 1960 utilizing the electric power from the consumer No. 2086 (Ext.P7). Petitioner argued that despite monthly inspection at the time meter readings, no body had directed to segregate electric connections and now electric connections to the 2 units have been segregated as per the directions from the Board authorities. Therefore the mode of back charging for 6 months is not enforceable by law.

The 2nd hearing was conducted on 17.10.2007 and the respondent was heard .He stated that the service connection to the consumer No.2086 was allotted under LT IV tariff for operating motor repair works. But the petitioner was consuming unauthorized power for service station which ought to have categorized under LT VII A tariff, on request of the consumer. Therefore, the consumer was converted into VII A tariff with retrospective effect (for six months preceding inspection) (Ext.A4) as per the provisions of the Electricity Act 2003 and B.O.No.1944/04 dated 9.8.04 Ext. A6 *Petitioner has not*

appealed before the assessing officer (Assistant Engineer) as per the provisions of the 126(3) and (4) Electricity Act.2003.

For contending the arguments of the appellant the respondent has furnished copy of the extra ordinary Gazette dated 8th August 2005, B.O (FM) No.1944.04 (DPC1/APTS-6/04) dated Thiruvananthapuram 9.8.04, report of the area Sub Engineer countersigned by the Assistant Executive Engineer, extra ordinary Kerala Gazettee dated 24th October 2002 and relevant pages of the Electricity Act 2003 .

The respondent demonstrated the relevant pages of Electricity Act 2003 (section 126(5) and (6)) and B.O.No.1944/04 dated 9.8.2004 which states that “ if the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity continuing for a period of 3 months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of 6 months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place. The assessment under the section shall be made at the rate equal to one and half times the tariff applicable for relevant category of services specified under sub section (5)’.

As per the Ext. A3 “ LT VII A tariff will be continued till segregation “. The respondent, in his written statement, started that the segregation was effected on 16.10.2006.

c. The appeal was heard on 10th April 2007. Appellant argued that no prior intimation regarding change in tariff was given by Board. The penal bill was served along with the notice intimating tariff change.

Respondent argued that consumer should have requested for change in tariff when service station was included under LT VIIA.

Appellant argued that no copy of the tariff order was served on them.

Respondent argued that once the order is published in the official gazette, the consumer cannot plead for ignorance.

- d. It is noted that CGRF has accepted the application of Sec 126 of Electricity Act 2003 and has concurred with the penal bill issued by the respondent. But as per clause 2.f.vii.1 of the Regulation on CGRF and Ombudsman issued by the Electricity Regulatory Commission vide gazette notification dated 14th October 2005, issues coming under Section 126 of the Electricity Act 2003 do not come under the jurisdiction of CGRF. Thus CGRF should not have issued an order accepting the action of Board under Section 126 of the Act. CGRF could have decided whether the issue comes under Section 126 and if the conclusion is that the issue is under Section 126, the OP should have been dismissed. Hence the order issued by CGRF is null and void.
- e. Now the issue is to decide whether the use of electricity by the appellant is unauthorized.

- f. Respondent's argument is that once the tariff is notified in the Official Gazette, consumer cannot plead ignorance. This is not acceptable as is clearly seen from the act of CGRF who has not followed the Gazette notification on the jurisdiction of CGRF. Also, consumer cannot be held fully responsible for the implementation of tariff orders. Many consumers may be illiterate also. Licensee when issuing revisions in tariff should also verify whether the correct tariff is applied.
- g. Hence it is concluded that the consumption of electricity by appellant is not unauthorized and hence application of Section 126 of the Act is not correct.
- h. Board order dated 09-08-2004 is applicable in the case of the appellant also. In this Board order, it is mentioned that certain consumers have approached the Hon.High Court on a similar issue. If the issue has been settled in the case of the consumers mentioned in this Board Order the same can be applied to the appellant also.
- i. Hence it is ordered that the appellant's petition should be settled based on the settlement arrived in the case of consumers mentioned in Board Order B.O.No.(FM) No.1944/04(DPC 1/APTS-6/04)849 dated 09-08-2004. If the issue has not yet been settled, the current status should be intimated to the appellant and Ombudsman. A reply should be given to the appellant within 15 days from the date of this order. The appeal is disposed off.

OMBUDSMAN

P5/2007/.....Dated

Forwarded to

M/s.Marikar Engineers Pvt Ltd,
Marikkar Buildings,
M.G.Road, Thiruvananthapuram 695 001

The Chief Engineer(Electrical) Distribution South,
KSEB,Power House Buildings,
Thiruvananthapuram

Assistant Executive Engineer
Electrical Sub Division, KSEB,
Puthenchanthai, Thiruvananthapuram 695 001.

Officer(Engg).