

BEFORE THE ELECTRICITY OMBUDSMAN

(For the State of Goa and Union Territories)

Under Section 42 (6) of the Electricity Act, 2003

3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,
Gurugram (Haryana) 122015,

Phone No.:0124-4684708, Email ID: ombudsmanjerc@gmail.com

Appeal No.119 of 2020

Date of Hearing: 27.01.2020 at Chandigarh

Date of Order: 03.02.2020

Shri Amarjit Singh
SCO 1044-45, First Floor,
Sector 22-B, Chandigarh 160022

....Appellant

Versus

The Superintending Engineer,
Electricity Department, Chandigarh Administration
5th Floor, Deluxe Building, Sector-9D,
Chandigarh-160009
and others

....Respondent

Parties present:

Appellant

1. Shri Shubham Gupta (Representative of Sh. Amarjit Singh)

Respondent(s)

1. Er. Pawan Kumar Sharma,
Executive Engineer
Electricity Department, Chandigarh
2. Er. Khem Raj
Sub Divisional Officer
Electricity Department, Chandigarh



3. Ms. Bhawana Diwan
Assistant Revenue Accountant
Electricity Department, Chandigarh
4. Shri Jagmeet Pal Singh
Lower Division Clerk (CGRF)

Date of Order: 03.02.2020

The Appellant has preferred an Appeal against the order of CGRF Chandigarh in complaint No-A-167/2019 dated 19.11.2019. The Appeal was admitted on 09.01.2020 as appeal No.119 of 2020. Copy of the same as received was forwarded to the respondent with a direction to submit their remarks/ counter statement on each of the points.

Settlement by Agreement

Both the parties appeared before the Electricity Ombudsman as scheduled on 27.01.2020 at Chandigarh and were heard. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleadings on the matter.

(A) **Submissions by the Appellant:**

That Shri Amarjit Singh R/o SCO 1044-45, First Floor, Sector 22-B, Chandigarh 160022 had filed a complaint before the Hon'ble CGRF vide complaints No-A-167/2019 dated 09.10.2019 and the Hon'ble Forum vide



order dated 19.11.2019 has dismissed his complaint without taking into consideration the highly legitimate and strong grounds as per the following details:-

- (i) That he is a consumer of Electricity Department bearing A/c No.101/2253/7236WG of SCO No.1044-45, First Floor, Sector 22-B, Chandigarh 160022 , with sanction load 9.000KW.
- (ii) That the Electricity connection was checked vide ERC No.8/103 dated 24.08.2012.
- (iii) That a notice of Rs.2,73,382/- was issued by the SDO, Electricity Department 'OP' S/Div No.1, under Section 126 of the Electricity Act, 2003 which is wrong.
- (iv) That he has requested to the SDO, Electricity 'OP' S/Div No.1, to waive off the amount but no action is being taken.
- (v) That his case is not covered under section 126 of the Electricity Supply Act, 2003 as number of cases decided by the CGRF, Chandigarh. The details of cases decided by the CGRF, Chandigarh for not charging the unauthorized load under Section 126 of the Electricity Supply Act, 2003 are as under :-

Sr. No.	Name of cases	Date of order of the CGRF Chandigarh
1.	Kashap Industries, Plot No.986, Ind. Area Ph-2, Chandigarh	02.04.2012



2.	Sh. Vipin Kumar, Booth No.201, Sector 37-C, Chandigarh	08.10.2012
3.	Sh. Gian Singh, Booth No.202, Sector 37-C, Chandigarh	08.10.2012
4.	Smt. Mandeep Kaur, Booth No.202, Sector 37-C, Chandigarh	08.10.2012
5.	Sh. Mohan Lal, Booth No.204, Sector 37-C, Chandigarh	08.10.2012

(vi) That his connected load is less than the sanction load as the employees of the Electricity Department wrongly included/ counted the load of unused power plug and light plug in the Enforcement Checking Report (ECR) whereas as per the Note (a) of self-declaration form of the Electricity Department, the unused plug shall not be taken into account.

(vii) The load of heater is also wrongly calculated by the Electricity Department as a load of the heater is not required to be counted as per note-(d) of the self-declaration form of the Electricity Department. If the load of the heater and unused plugs is deducted, their load remained less than the sanctioned load and penalty imposed by the Electricity Department is baseless.

(B) **Submissions by the Respondents :**

The present complaint is not maintainable on the following preliminary objections:-



- (i) That as per Clause 3(f) of JERC (Consumer Grievances redressal forum) Regulation, 2019, any grievances arising out of application of section 126, 127, 135 to 139, 142, 143, 149, 152 and 161 of the Act shall not be considered as the complaint.
- (ii) That as per clause 33(g) of JERC (Consumer Grievances redressal forum) Regulation, 2019, the complaints under Section 126 and 127 of the Electricity Act 2003 are not under the jurisdiction of the Electricity Ombudsman.
- (iii) That on similar facts regarding unauthorized utilization of electricity detected during inspection of the premises of the consumer:-
- a. The Supreme Court in its order dt. 19.03.2010 in Civil appeal No.2538 of 2010 (arising out of SLP (c) No. 4610 of 2009) Punjab State Electricity Board vs. Vishwa Caliber Builders Private Ltd. found that excess load used unauthorizedly by the consumer is beyond the jurisdiction of the Electricity Ombudsman and accordingly the direction issued by the Ombudsman in favour of the consumer in that case, was declared to be a jurisdictional error. The copy of the same is attached as Annexure-A as ready reference.
- b. The Gauhati High Court in its order dt. 09.06.2016 in WP (C) No.1268 of 2011 "ASEB, APDCL Vs. Electricity Ombudsman and Arun Kumar Das" quoted that-



“ this Court has no hesitation in declaring that the exercise of jurisdiction by the Electricity Ombudsman in the present case, was a jurisdictional error. Thus the impugned order passed by the Electricity Ombudsman on 24.12.2010 (Annexure-9) is found to be unsustainable in law and 6 WP(C) No.1268/2011 Page 6 of 6 the same is quashed. ”

On Merits: -

1. It is respectfully submitted that the electricity connection existing in the name of Sh. Amarjit Singh, SCO.No. 1044-45, Sector 22 D, Chandigarh, bearing electricity account No. 2253/72362WQ, under NRS category.
2. That the contents of Para No. 2 are admitted.
3. That it is submitted here that the checking has been done vide ECR No. 8/103 dated 24.08.2012 and the same has been duly signed by the consumer himself. The notice for unauthorized load under Section 126 of the Act along with amount assessed under clause 4.11.2 of chapter IV and as per Chapter 10 of Electricity Supply Code Regulations, 2010 under section 126 of the Electricity Act, 2003 was issued in the year 2012.



5, 6 & 7. That the provisional assessment under Section 126 of the Act for the above checking was made vide this office Memo No. 2814-16 dated 21-09-2012 with opportunity of personal hearing was given to the consumer. Further this office memo No. 269 dated 5-2-2013, in which final Notice has also been given to the consumer and it was also intimated that, "the consumer has the right to appeal against the assessment to the Appellate Authority."

The consumer has approached CGRF on 09.10.2019 at first instance after 6 years from the date in which the cause of action arises. The Hon'ble CGRF dismissed the complaint on account of lack of jurisdiction.

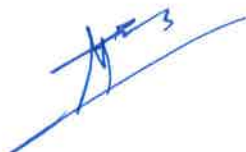
As the instant case pertains to section 126 of the Electricity Act, 2003 and as per the above cited JERC regulations and Supreme Court/high Court orders on similar situated cases, Hon'ble Ombudsman is respectfully prayed to dismiss the present complaint/appeal on account of lack of jurisdiction.

(C) **CGRF order dated 19.11.2019, preferred for Appeal:**

Consumer Grievances Redressal Forum, Chandigarh in its order dated 19.11.2019 has decided as under:-

“

1. **OBSERVATIONS:**



The hearing in the case was fixed for 17.10.2019. The case was adjourned for the next date of hearing on the request of the complainant. On the next date of hearing, on 31.10.2019, consumer had supplied certain facts, CED was asked to give reply on these within 7 days. The case was adjourned for next date of hearing. The next date of hearing was fixed for 18.11.2019, when Sh. Amarjit Singh appeared as complainant and Mrs. Bhawna, ARA represented the Electricity Department, Chandigarh. Shri Amarjit Singh, was made aware about the lack of jurisdiction of this Forum to entertain his complaint as the matter pertains to section 126 of Electricity Supply Act, 2003 (unauthorized use of electricity).

2. **ORDER:**

- a. *This Forum prefers to dismiss the present complain on account of lack of jurisdiction.*
- b. *The Complaint is disposed of with above observations.*

”

(D) **Deliberations during hearing at Chandigarh :**

1. **Appellant submission:**

- a. Sh. Shubham Gupta informed that premises in question has been transferred in the name of his father Sh. Avinash Gupta and one other person namely Smt. Chhaya Gupta vide Estate Officer Chandigarh , letter number -6529/CP-2136/CIA-III/2012



dated-16/5/2012 and therefore he is appearing on behalf of his father and ex owner Sh. Amarjeet Singh. The Appellant reiterated his version as submitted in appeal and requested to refund the excess amount paid with interest.

2. **Respondent submission:**

- a. The respondent reiterated their version as submitted in reply to the appeal and requested to dismiss the appeal due to lack of jurisdiction.

(E) **Analysis & Observations:-**

1. I have perused the documents on record and pleadings of the parties. Following provisions has been provided in the Consumer Grievances Redressal Forum and Ombudsman Regulations, 2019 as notified by the Hon'ble Joint Electricity Regulatory Commission:-

“ 19. Limitations/ pre-conditions for submission of grievance- The Forum may reject the grievance at any stage under any or more of the following circumstances:-

(a) -----

(b) *in cases which fall under sections 126, 127, 135 to 139, 142, 143, 152, and 161 of the Act;*



(c) *in cases where the grievance has been submitted two years after the date on which the cause of action has arisen; and*

(d) -----

33. *Pre-conditions/ limitations for entertaining complainant's representation:-*

1. *The representation may be entertained by the Ombudsman only if all of the following conditions are satisfied that:-*

a) -----

b) -----

c) -----

d) -----

e) -----

f) -----

g) *the representation of the complainant does not fall under sections 126, 127, 135 to 139, 152 and 161 of the Act.*

2. *Subject to the provisions of the Act and this Regulation, the Ombudsman's decision as to whether the representation is*



fit and proper for being considered by it or not, shall be final.

3. *The Ombudsman may reject the representation at any stage if it appears to him that the representation is -*

(a) -----

(b) -----

(c) -----

”

2. Further the Hon'ble Supreme Court in its order dated 19.03.2010 in Civil Appeal No:- 2538 of 2010 titled Punjab State Electricity Board vs "M/S Vishwa Caliber Builders "has decided that Ombudsman has no jurisdiction to hear cases under section-126 of EA-2003. The relevant Para No.10 and 11 of the Judgment is reproduced below: -

“ 10. *We have considered the arguments of the learned counsel and agree with him that in the absence of any provision in the Act or the regulations framed by the appellant, the Ombudsman committed jurisdictional error by directing regularization of unauthorized use of electricity by the respondent and refund of the alleged excess amount charged by the appellant. The fact that the appellant could not release*



connection with a load of 2548 KW on account of non-availability of transformer necessary for transfer of 8 MVA load from 66 KV substation, G.T. Road, Ludhiana had no bearing on the issue of consumption of electricity by the respondent beyond the sanctioned load. Undisputedly, in terms of the request made by the respondent, the Chief engineer had sanctioned connection on the existing system with a load of 1500 KW, but the respondent used excess load to the tune of 481.637 KW and this amounted to unauthorized use of electrical energy. It is also not in dispute that after installation of new transformer, the respondent could not avail the balance load within the stipulated time of six months and when the concerned authority issued notice dated 13.12.2001 and reminder dated 23.05.2002, its representative refused to submit fresh A&A form necessary for release of the balance load. This being the position, the fault, if any, for non-release of the balance load lay at the doors of the respondent and the Ombudsman committed serious error by directing the appellant to refund the alleged excess amount collected from the respondent on account of use of electricity over and above the sanctioned load.

11. In the result, the appeal is allowed. The impugned order of the High Court as also order dated 05.09.2007 passed by the Ombudsman are set aside and the one passed by the DSA is restored. The respondent is



allowed three months' time to deposit the amount payable in terms of demand dated 25.01.2005. The appellant and, if necessary, its successor shall be entitled to charge interest at the prevailing banking rate on the amount which was not paid by the respondent or which may have been refunded by the appellant in terms of the directions given by the Ombudsman and/ or order passed by the High Court . ”

3. Similar views were held by the Hon'ble Gauhati High Court in its order dated 09.06.2016 in WP (C) No.1268 of 2011 titled "ASEB, APDCL Vs. Electricity Ombudsman and Arun Kumar Das" has passed following order -

“ this Court has no hesitation in declaring that the exercise of jurisdiction by the Electricity Ombudsman in the present case, was a jurisdictional error. Thus, the impugned order passed by the Electricity Ombudsman on 24.12.2010 is found to be unsustainable in law and 6 WP(C) No.1268/2011 Page 6 of 6 the same is quashed. ”

The relevant Para No. 13 of the Judgment is reproduced:-



“ 13. When we take into account the well-defined area of jurisdiction of the Electricity Ombudsman specified in Clause (6) of the guidelines and more particularly, consider the limitation on the power of the Ombudsman specified in Sub-Clause (2) of Clause (6), it is apparent that the Electricity Ombudsman do not have jurisdiction to entertain issues arising out of investigation of unauthorized use of electricity and the assessment contemplated under Part-XII of the Electricity Act. Therefore this Court has no hesitation in declaring that the exercise of jurisdiction by the Electricity Ombudsman in the present case, was a jurisdictional error. Thus, the impugned order passed by the Electricity Ombudsman on 24.12.2010 (Annexure-9) is found to be unsustainable in law and the same is quashed.”

4. Further the following provisions were informed to the appellant by SDO, Electricity Department, Sub-Division, No.-1. In the final assessment notice vide Memo No.269 dated 05.02.2013: -

“ However, you have the right to appeal against the assessment to the Addl. S.E. Electy ‘OP’ Divn. No.-1, sec-17, UT Chd. (near Azad Hind Store) ”



The appellant confirmed during hearing that right of appeal envisaged under section - 127 of EA-2003 was not availed by him in 2013.

5. From the perusal of the JERC Consumer Grievances redressal forum Regulation, 2019 it is clear that neither the CGRF nor Electricity Ombudsman has the power to hear the cases which falls under section 126 of Electricity Act, 2003 and the same position has been upheld by the Hon'ble Apex Court and Hon'ble Gauhati High Court.
6. Further the appeal under section 127 of the Electricity Act as intimated to the appellant by SDO, Electricity Department, Sub-Division, No. 1 by memo No.269 dated 05.02.2013 had not been availed in time.
7. Plea of the appellant that in the past CGRF has been deciding the cases under section-126, cannot be countenanced by any court of Law. It has been held by Hon'ble Apex Court in number of cases, one of which is Chandigarh Administration vs Jagjit Singh and anothers - AIR, 1995 SC705 that merely because an illegal or unwarranted order has been passed by an authority in favour of similarly situated person, such action on the part of the authority can never be a ground for issuance of a writ in favour of the petitioner on the plea of discrimination. The courts cannot be a party to such directions which have the effect of compelling the authorities to repeat such illegality or to pass illegal and unwarranted orders. In the case of M/s Faridabad



C.T. Scan Centre vs D.G. Health Services and others-JT 1997(8) SC
171, same view was taken.

DECISION: -

For the reasons discussed above, the order passed by Hon'ble CGRF,
Chandigarh is upheld and appeal of appellant is rejected.

The appeal is disposed of accordingly.



(M.P. Singh Wasal)

Electricity Ombudsman

For Goa & UTs (except Delhi)

Dated 03.02.2020