

**BEFORE THE ELECTRICITY OMBUDSMAN**  
(For the State of Goa and Union Territories)  
Under Section 42 (6) of the Electricity Act, 2003  
3<sup>rd</sup> Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,  
Gurugram (Haryana) 122015,  
Phone No.:0124-4684708, Email ID: [ombudsman.jercuts@gov.in](mailto:ombudsman.jercuts@gov.in)

Appeal No.153 of 2021

Date of Video Conferencing: 25.11.2021

Date of Order: 29.11.2021

Shri Shamsheer Singh,  
Chandigarh

.... Appellant

Versus

The Superintending Engineer,  
Electricity Department,  
Chandigarh and others

.... Respondents

**Parties present:**

**Appellant(s)**

1. Shri Raman Kumar,  
Appellant's Representative

**Respondent(s)**

1. Shri Rohit Sekhri  
Executive Engineer



**Date of Order: 29.11.2021**

The Appellant has preferred an Appeal against CGRF- Chandigarh order No-C-84/2021 dated-18.08.2021. The Appeal was admitted on 08.09.2021 as Appeal No.153 of 2021. Copy of the same as received was forwarded to the respondents with a direction to submit their remarks/ counter reply on each of the points. A copy of counter reply was supplied to the Appellant with a request to file the rejoinder.

**Settlement by Mutual Agreement**

Both the parties appeared before the Electricity Ombudsman through Video Conferencing as scheduled on 25.11.2021 and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. 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:**

**Appellant submitted the brief facts as under: -**

Appellant -Shri Shamsheer Singh, submitted that he is Senior Citizen residing at village, Burail, Chandigarh and running a hotel- Simerbell , having the electricity connection with sanctioned load 28.960 KW. Hotel is a single source of his earnings. Due to COVID-19, the hotel was completely vacant /under lockdown as per instructions of Chandigarh administration. The electricity department has carried out inspection vide ECR No.35/37 dated 22.03.2021 in which they have mentioned that connected load was 44.152 kW against sanctioned load of 25.960 kW. Thus, unauthorized load of 18.192 kW was detected.

He submitted that: -

1. He has already sanctioned load 28.960 kW in the electricity bill. But in ECR they have mentioned sanctioned load 25.960 kW.
2. They have calculated the load of one no. Solar water geezer and two numbers defective air conditioner and not in running condition at the time of inspection.
3. As per rule Solar water geezer should not be calculated in the load calculation in the summer season. After above checking a notice was served by SDO electricity OP Sub Div. No.-9, Chandigarh to deposit the amount of Rs.43943/- against unauthorized load of 18.192 kW. As he was out of Station for medical treatment and lockdown imposed by Chandigarh Administration and public dealing was also closed, he received the above notice on dated 30.05.2021 from the tenant of his neighbor. Immediately, he replied on dated 04.06.2021 with latest test report for further departmental process.
4. But the Electricity department has refused his request and again issued the notice vide Memo no.3995 dated 22.06.2021 to deposit the amount of Rs.43943/-.



5. Then he complained to Chairman, CGRF vide complaint no.C-84/2021 on dated 02.08.2021 and Hon'ble CGRF has passed the order on 18.08.2021 as under: -  
"The hearing of this case was 18.08.2021. Both the parties were heard. The CED is directed to reissue the notice to the complainant as the sanction loan mentioned in the previous notice was wrong."
6. In compliance to CGRF order the Electricity Department issued a new notice vide Memo no.5742 dt.18/8/2021. In his response, he has submitted the fresh test report to the subdivision but sub division has directed him to pay the bill of Rs.21,750 (load surcharge=Rs.3750+ fixed charges=Rs.18,000/-).
7. But as per rule only load surcharge can be charged till the date of test report inspection of consumer.
8. Therefore, he has requested to review the matter and take necessary action.

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

Shri Rohit Sekhri, Executive Engineer on behalf Respondents/Electricity Department-Chandigarh, submitted the counter reply as under: -

- a) That the deponent is working as Executive Engineer, *Electy. 'OP' Divn. No. 4* and is authorised by the Electricity Department, UT, Chd. being Deemed Licensee vide letter No.8539 dated: 29.10.2010 to file the reply and represent on the behalf of Electricity Department, UT, Chd. in the present case of Sh. Shamsher Singh V/S S.E., *Electy. 'OP' Circle, UT, Chd. and others.*
- b) That the deponent is filing the counter reply point wise in the present appeal is as under: -
  - 1) It is admitted as checked from the office record that the sanctioned load of the complainant is 28.960 KW. However, the enforcement team wrongly mentioned the sanctioned load as 25.960 KW in the ECR.
  - 2) The complainant had not objected about the defective appliances at the time of checking and not objected regarding this in ECR. Further, no representation in protest of ECR regarding defective appliances ever submitted by the complainant in this office.
  - 3) The clarification w.r.t. determination of connected load as per Annexure-VIII JERC, *Electy. Supply Code Regulations 2018*, has already been issued by the Hon'ble JERC vide order No. JERC 23/2018 dated 25.06.2021 under point No. 10. In view of the above, it is clear that the higher of the cooling load (Air Conditioners, Coolers etc.) or Heating load shall be taken only for domestic connections and not for commercial connections.
  - 4) The notice regarding compulsory regularization of load against ECR No. 35/737 dated 22.03.2021 amounting to Rs. 43,943/- was served by this office vide Memo No. 2137 dated 06.04.2021. Further, the consumer was given a chance to submit fresh test report after reducing the unauthorized load within 15 days from the issue of notice. It is pertinent to mention here that till the time of issue of notice clarification regarding determination of connected load was not received from Hon'ble JERC. As such the higher of heating or cooling load was taken at that time while compulsory regularization of connected load.



- 5) It is not acceptable that the complainant had not received the notice served by this office. Further, the COVID lockdown was only during 22.03.2020 to 30.06.2020 ( wrongly mentioned as 2020 instead of 2021). It is worth to mention here that the notice was served to consumer through registered post.
- 6) The representation challenging the notice dated 06.04.2021 served by this office, was submitted by the complainant on dated 04.06.2021 wherein the consumer also furnished the fresh test report of 28.960 KW. The said test report got verified by the JE of this office and it was reported by him that the connected load as mentioned by the complainant in the test report is in order. Being the said test report was received after a gap of almost 2 months from the issue of notice by this office, the complainant was informed vide this office Memo No. 3995 Dated 22.06.2021 that his request cannot be considered being he failed to challenge the compulsory regularization of load within 15 days of the issue of notice.
- 7) Thereafter, Hon'ble CGRF by their order dated 18.08.2021 in respect of complaint No. C-84/2021 directed CED to reissue the notice to the complainant as the sanctioned load mentioned in the previous notice was wrong.
- 8) As per directions of the Hon'ble CGRF, the revised notice amounting to Rs. 65471/- was served to consumer vide this office Memo No. 5742 dated 18.08.2021. This notice was prepared in accordance with the clarification w.r.t. determination of connected load as received from Hon'ble JERC vide order No. JERC 23/2018 dated 25.06.2021 under point No. 10.
- 9) Against the above notice served by this office, the complainant again submitted the test report of 28.960 KW on dated 19.08.2021 which was verified by the JE of this office and found the same in order. As such the load surcharge and fixed charges on the unauthorized extension of load as pointed by the enforcement team in the ECR No. 35/737 dated 22.03.2021, was recalculated and accordingly a bill of Rs. 21,750/- was served to complainant. However, the said bill has not been deposited by the complainant yet.
- 10) It is specific to mention here that before submitting the fresh test report, the complainant was using the connected load of 44.152 KW against sanctioned load 28.960 KW. The unauthorized extension of load was removed by the consumer only on dated 04.06.2021 while submitting the test report. As per the provision of the JERC, Electy. Supply code Regulations, 2018 and its amendments thereof, the complainant is liable to deposit fixed charges and load surcharges on account of unauthorized extension of load for the preceding 1 year from the date of checking.

It is therefore, respectfully prayed that the present appeal may kindly be dismissed in view of the above stated facts please.



**(C) CGRF- Chandigarh order No-C-84/2021 dated-18.08.2021., preferred for Appeal:**

Ld. CGRF-Chandigarh, has passed the following order: -

**Order.**

“

**Proceedings of Hearing/ Decision.**

1. The hearing in the case was fixed for 18.08.2021. Both the parties were heard. The CED is directed to reissue the notice to the complainant as the sanctioned load mentioned in the previous notice was wrong.

**Decision**

2. The case is closed with above observation and directions.”

**(D)Deliberations during Video hearing on 25.11.2021:**

**Appellant's Submission:**

- a) Shri Raman Kumar-Appellant's representative, reiterated his version as submitted in the Appeal.

**Respondent's Submission:**

- a) Sh. Rohit Sekhri -Executive Engineer, reiterated his version as submitted in reply to the appeal.
- b) On being asked that notice dated-06.04.2021 has been issued as per clause-4.13 of Electricity Supply Code Regulations-2010, whereas the said Regulations of 2010 has been repealed by the Hon'ble Regulatory Commission vide notification dated-26.11.2018. He submitted that the Electricity Department has taken the action as per clause-7.29 of the Electricity Supply Code Regulations-2018.

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

1. I have perused the documents on record, CGRF orders and pleadings of the parties.
2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. The issues which have arisen for considerations in the present Appeal are as under: -
  - i. Whether the Appellant is entitled to relief for correction of demand notice dated-06.04.2021/18.08.2021 for unauthorized use of load as prayed for?
  - ii. Whether the CGRF order dated-18.08.2021 is sustainable in the eyes of law?



4. (a). Following provisions have been provided in the Supply Code Regulations- 2018, notified by the Hon'ble Commission w.e.f-26.11.2018: -

(i) **Unauthorized Use of Electricity (UUE)**

**Cases to be treated as Unauthorized Use of Electricity**

8.33 The following acts on the part of consumer are to be considered as unauthorized use of electricity for the purpose of assessment under the provisions of Section 126 of the Act;

- (1) By any artificial means; or
- (2) By a means not authorized by the concerned person or authority or Licensee; or
- (3) Through a tampered meter; or
- (4) For the purpose other than for which the usage of electricity was authorized; or
- (5) For the premises or areas other than those for which the supply of electricity was authorized.

8.34 Cases not to be treated as unauthorized use of electricity:

- (1) If connected load of any consumer (including domestic consumer) is found to be at variance from the sanctioned/contracted load as a result of increase of load or due to any replacement of lamps, fans, fuses, switches, low voltage domestic appliances, fittings, etc., it shall neither fall under unauthorized use of electricity (Section 126 of Act 2003) nor under theft of electricity (Section 135 of Act 2003);
- (2) to (6) .....

(ii) **Billing in case of Excess Load**

"7.29 The billing for excess load shall be made as approved by the Commission."

(iii) Following provisions have been stipulated in the Tariff order dated-19.05.2020, as notified by the Hon'ble Commission for Financial Year 2020-21: -

**" 9.3 General Conditions of HT and LT Supply**

The above-mentioned LT/HT Tariffs are subjected to the following conditions, applicable to all category of consumers,



1. The tariffs are exclusive of electricity duty, taxes and other charges levied by the Government or other competent authority from time to time which are payable by the consumers in addition to the charges levied as per the tariffs.
2. Unless otherwise agreed to, these tariffs for power supply are applicable for supply at one point only.
3. If energy supplied for a specific purpose under a particular tariff is used for a different purpose, not contemplated in the contract for supply and / or for which higher tariff is applicable, it will be deemed as unauthorized use of electricity and shall be dealt with for assessment under the provisions of section 126 of the Electricity Act, 2003 & supply Code Regulation notified by JERC.
4. Fixed charges, as applicable, will be charged on pro-rata basis from the date of release of connection.
5. **The billing in case of HT/EHT shall be on the maximum demand recorded during the month or 85% of the contracted demand, whichever is higher. If in any month, the recorded maximum demand of the consumer exceeds its contracted demand, that portion of the demand in excess of the contracted demand shall be billed at double the normal rate. Similarly, energy consumption corresponding to excess demand shall also be billed at double the normal rate. The definition of the maximum demand would be in accordance with the provisions of the Supply Code Regulations notified by JERC. If such over-drawl is more than 20% of the contract demand then the connection shall be disconnected immediately.**

**Explanation:** Assuming the contract demand as 100 KVA, maximum demand at 120 KVA and total energy consumption as 12000 kWh, then the consumption corresponding to the contract demand will be 10000 kWh ( $12000 \times 100 / 120$ ) and consumption corresponding to the excess demand will be 2000 kWh. This excess demand of 20 KVA and excess consumption of 2000 kWh will be billed at twice the respective normal rate. Such connections drawing more than 120 KVA shall be disconnected immediately.

**13. Unauthorized use of Electricity:** The unauthorized use of electricity shall be treated as specified in the Supply Code Regulations notified by JERC. The penalty applicable shall continue unless the unauthorized use is stopped.

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- (b) The checking by the Enforcement team of the Electricity Department was carried out on 22.03.2021 and connected load was found to be 44.152 KW against sanctioned load of 28.960 KW. The contention of the Appellant that as per rule the load of the Solar water geezer or two air conditioner which were defective should not be calculated in the load calculation by the Enforcement team, has no bearing on the case because as per above said Regulations , excess load/unauthorized load can not be treated under section -126 or 135 of the Electricity Act-2003.
- (c) Now let us examine the amount charged to the Appellant by Electricity Department vide notice dated- 06.04.2021/18.08.2021. The notice states that load surcharge, ACD and service connection charges have been calculated as per Regulation 4.13 of Electricity Supply Code regulations-2010 amended in the year 2013. But after the notification of Electricity Supply Code Regulations-2018 wef-26.11.2018, it has been clearly provided under clause 10.13 that JERC (Electricity Supply Code) Regulations, 2010 together with amendments made from time to time, are hereby repealed.

Therefore, the action taken by the Licensee as per the repealed Regulations is not tenable in the eyes of law. Further defence of the Licensee that they have taken the action for unauthorised use of electricity as per as per clause-7.29 of the Electricity Supply Code Regulations-2018 also holds no water as the Hon'ble Regulatory Commission has not approved any procedure/charges either in the Supply Code-2018 or in the relevant Tariff Order. Rather Hon'ble Regulatory Commission has clearly stipulated in the clause-8.34 of the Electricity Supply Code Regulations-2018 that excess load in respect of any consumer **shall neither fall under unauthorized use of electricity (Section 126 of Act 2003) nor under theft of electricity (Section 135 of Act 2003)**. Further **the Hon'ble Regulatory Commission has approved in the Tariff Order as stated above, that the penalty/charges, for excess load recorded through MDI meter , is for the HT/EHT consumers only and not for LT consumers**. Therefore, the action of charging the Appellant as per repealed Regulations is wholly illegal and demand notice dated-06.04.2021 or the demand notice dated-18.08.2021 issued as per the orders of Learned CGRF are required to be quashed.

5. Regarding issue no 3(ii) as above, as to whether the CGRF order dated-18.08.2021 is sustainable in the eyes of law?

In view of the explicit provisions in the Electricity Supply Code regulations-2018 that excess load in respect of any consumer **shall neither fall under unauthorized use of electricity (Section 126 of Act 2003) nor under theft of electricity (Section 135 of Act 2003)** , the Learned CGRF has erred in directing the Licensee to reissue the notice to the complainant as the sanctioned load mentioned in the previous notice was wrong.

Since the order of CGRF is not inconsonance with the Regulations notified by the Hon'ble Regulatory Commission, the same is also required to be set aside.



**(F) DECISION**

- (i) For the reasons discussed above, the appeal of the Appellant is allowed.
- (ii) The demand notice issued by the Licensee dated-06.04.2021 and dated-18.08.2021 are hereby quashed. The original sanctioned load of the Appellant be restored without any penalty/charges.
- (iii) The order No-C-84/2021 dated-18.08.2021. passed by the Learned CGRF-Chandigarh is hereby set aside.
- (iv) The Licensee is directed to refund the amount paid by the Appellant (if any), for excess/unauthorized load along with interest at the Bank rate declared by the Reserve Bank of India prevailing on the 1<sup>st</sup> April for the year, payable annually with effect from the date of deposit/payment with the Electricity Department.
- (v) In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
- (vi) The Electricity Department/Licensee should submit a compliance report to the office of Electricity Ombudsman on the action taken in this regard within **30 days** from the issuance of this order by email.
- (vii) The appeal is disposed of accordingly.

  
29/11/21

(M.P. Singh Wasal)  
Electricity Ombudsman  
For Goa & UTs (except Delhi)

Dated 29.11.2021