

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: ombudsman.jercuts@gov.in

Appeal No.184 of 2022

Date of hearing :19.12.2022

Date of Order: 22.12.2022

Sh. Prem Kumar Mehta,
Chandigarh.

.... Appellant

Versus

The Superintending Engineer,
Electricity Department,
Chandigarh and others

.... Respondents

Date of Order: 22.12.2022

The Appellant has preferred an Appeal for Non-redressal of his grievance by Ld. CGRF- Chandigarh. The appeal/representation received in this office on 16.11.2022 by email and the same was admitted for examination and consideration on 23.11.2022. Since it appeared from the Appeal that it arised out of the application of Section-126 of the Electricity Act-2003 and the Appellant was insisting that Section-126 has been wrongly applied, it was considered necessary to grant a personal hearing before admitting the Appeal for its logical conclusions.

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

Appeal No.184 of 2022



Appellant submitted the brief facts as under: -

1. FACTS OF THE CASE: -

That the office of Electricity Department has issued a provisional notice by wrongly considering the case under Section 126 of Electricity Act, 2003. I had also filed an appeal before the Hon'ble Consumer Grievances Forum but the same has not been considered on ground of Jurisdiction. Wrongly interpretation of the law does not warrant to make a common man to suffer. The brief facts relating to the case are mentioned herein under: -

1. That I am the bonafide holder of 02 Nos. Electricity Connections against the subject cited house having Account No. 307/3343/063103G with sanctioned load 8.240 KW and 307/3343/063104H with sanctioned load 4.240KW under domestic category.
2. That I am a law binding person and is regularly paying for electricity bills issued by the Department from time to time.
3. That in the recent past during the year 2021 the house had undergone renovation work/minor internal repair work of the house.
4. During the aforesaid period of time the department has conducted the checking of the premises, vide ECR No. 43/37-24 dated 11.11.2021 thereby contravening the provisions provided under Section 163 of Electricity Act 2003 and has further issued me a notice-cum- bill of provision assessment for unauthorized usages of electricity as per Section 126 of Electricity of Act 2003 Clause No. 8.42 for a sum of Rs. 88,032/-
5. That later on the said amount of Rs. 88,032/- was diverted in the regular Electricity Bill without offering any opportunity in my defence to prove my innocence.
6. That it is relevant to add that on investigation it has come to the notice that Department has levied the above charges by computing the same on the basis of commercial supply for a period of complete 01 year whereas the renovation work lasted only for 02-03 months.



7. That from the factual matrix based on the record of the department it is quite evident that during the relevant period of time total Electricity consumption undertaken is to the extent of approximately 5000 units only i.e. at the rate of 400 unit per month, it is not understood on what basis and terminology the Department has charged me for a huge sum of Rs. 88,032/-.
8. That it is relevant to add that for the above purpose the electricity supply was consumed through a regular existing electricity meter which has recorded the desired quantum to consumption which transpires of no misuse of electricity supply in any shape in the said premises.
9. That as per Section 5.60 of Supply Code Regulation 2018 the Electricity Department usually provides a temporary Electricity meter or undertaking construction activities i.e. building up of the house or floor as provided under whereas the word renovation exists nowhee.
10. That as confirmed from the resources no other office of Electricity Department has so far released any electricity connection for the purpose of undertaking renovation of the house.
11. Your kind intention is invited on the fact provided under Section 8.33 & 8.34 of the Supply Code Regulation where is has been categorized cases to be treated unauthorized use of electricity which transpires my innocence beyond any doubt.
12. That I am very much surprised by the action of the department to charge me for such a hefty amount whereas the Electricity consumption during that relevant period of time has been actually utilized through the existing electricity meter which has shown the net usages.
13. In view of the facts and circumstances as explained in the forgoing paragraphs it is earnestly prayed to kindly intervene in the matter and issue the direction to the concerned Sub Division for withdrawing illegally in the electricity bill to meet me with end justice in the matter please.



14. Further, as a remedy I had filed an application before the Hon'ble CGRF dated 01.07.2022 but the Hon'ble Forum has rejected the same on the ground of jurisdiction. The Hon'ble Forum has not even examined the contents of the application/request and straightway rejected without any reasonable justice. I hope if your goodself will go through the detailed contents will agree to my opinion that the department has caused grave injustice to me. It is also brought to your kind notice that I am retired Naval Officer and is at the age of 68 years. Due to my age factor I could not file the application before your goodself within the prescribed time period as allocated under Rules. In view of the grave difficulty being faced by me your goodself will definitely come to my rescue and will also regularize the inordinate delay in filling the application. I shall be highly grateful to you.

(B) Submissions by the Respondents: -

Since it appeared from the Appeal that it arised out of the application of Section-126 of the Electricity Act-2003 and the Appellant was insisting that Section-126 has been wrongly applied by the Electricity Department. Therefore, it was considered necessary to grant a personal hearing before admitting the Appeal and no counter reply was called from the Respondents.

(C) CGRF- Chandigarh's Order preferred for Appeal:

Learned CGRF vide their letter dated-12.08.2022 has replied the Appellant as under: -

" In this regard, it is submitted that your case fall under Section 126 of the Electricity Act 2003/Clause 8.42 of the Electricity Supply Code Regulations 2018, where the jurisdictions of this Forum has been barred by the authorities and the complaint of yours for "Unauthorized use of Electricity" does not fall under the jurisdictions of this Forum, hence you are advised to take up your matter with the concerned/appropriate authority for your complaint.

With the reasons stated above, your case is not maintainable before this Forum and hereby dismissed, no further order/action is required on your complaint by this Forum."



(D) Deliberations during hearing on 19.12.2022 at Chandigarh :-

1. Appellant's Submission:

- (a) Sh. Prem Kumar Mehta-Appellant, reiterated his version as submitted in the Appeal and requested for withdrawal of Notice and a refund of Rs.88,032/-.
- (b) On being asked by this court as to why the Provisional Assessment Notice issued by the Assessing Officer cum SDO was not replied. He informed that they were out of the country and the receipt of notice was not in their knowledge.
- (c) On being asked by this court as to why the Appeal against the Final Assessment Notice was not preferred to the SDM(South), Sector-42 as mentioned in the Final Notice. He replied that they were out of the country and the receipt of notice was not in his knowledge, and further informed that matter came to their knowledge only when the electricity connection was disconnected. Had the matter was in their knowledge they would have taken appropriate action being a law abiding and defence personnel/ citizens.
- (d) He further submitted that after the matter came to his notice, he immediately contacted the office of the SDM(South) and submitted a representation/Appeal, but the PA of the SDM(South) informed him that they have nothing to do in the matter of Electricity Department. Therefore, he has filed a representation before CGRF and Ombudsman.

2. Respondent's Submission:

- a. Sh. Surinder Kumar -Executive Engineer for the Respondents submitted that a surprise checking was conducted on the premises of the Appellant and it was found that domestic connection is being misused for construction purposes. Accordingly, the due procedure was followed as per Electricity Supply Code Regulations-2018. Before passing a Final Assessment Notice, Provisional Notice was issued giving opportunity to the consumer to put up his defence, however no reply was received. Accordingly Final Assessment Notice was issued, which can be appealed before the SDM(South) under section -127 of the Electricity Act-2003.



- b. He further submitted that as per CGRF and Ombudsman Regulations, grievances arising of the application of Section-126,127 of the Electricity Act are beyond the jurisdiction of the CGRF and Ombudsman and requested to dismiss the Appeal.
- c. As requested by the Appellant and on the intervention of this court, copy of the Notification issued under Section-126 , Section -127 of the Electricity Act-2003 and copy of the Checking Report was supplied on the WhatsApp of the Appellant by the Respondents.

(E) Findings & Analysis: -

1. I have perused the documents on record 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 is under: -
 - i. Whether the Appellant is entitled to relief for refund and withdrawal of Final Assessment Notice under Section -126 of the Electricity Act-2003, claiming a demand of Rs.88,032/- as prayed for?
4. (a) Regarding the issue no 3(i) as above, as to whether the Appellant is entitled to relief for refund and withdrawal of Final Assessment Notice issued under Section -126 of the Electricity Act-2003, claiming a demand of Rs.88,032/- as prayed for?



(b) Following relevant provisions have been provided in the **CONSUMER GRIEVANCES REDRESSAL FORUM AND OMBUDSMAN REGULATIONS- 2019**, as amended thereof, as notified by the Joint Electricity Regulatory Commission: -

3. Definitions .- (1) In these Regulations, unless the context otherwise requires, -

(a) to (e)

(f) "Complaint" means an application made by consumer before the forum seeking redressal of any grievance with regard to supply of electricity by the licensee;

Provided that the following shall not be considered as the complaint namely,

(i) any grievances arising out of application of Sections 126,127, 135 to 139, 142, 143, 149, 152 and 161 of the Act;

(ii) and

(iii).....

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) in cases where proceedings in respect of the same matter and between the same Complainant and the licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;

(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) in the case of grievances which are -

(i) frivolous, vexatious, malafide;

(ii) without any sufficient cause; or

(iii) where there is no prima facie loss or damage or inconvenience caused to the Complainant or the consumers who are represented by an association or group of consumers.

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) it has been filed by the complainant being the aggrieved consumer or the association representing the consumer/s;

(b) the complainant has, before making a representation to the Ombudsman, approached the Forum constituted under sub-section(5) of section 42 of the Act, for redressal of his grievance;

(c) the representation by the complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority or a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority;

(d) the representation is not in respect of the same cause of action which was settled or dealt with on merits by the Ombudsman in any previous proceedings whether or not received from the same complainant or along with one or more complainants or one or more of the parties concerned with the cause of action;

(e) the complainant is not satisfied with the redressal of his grievance by the Forum or the Forum has rejected the grievance or has not passed the order within the time-limit specified; or the licensee has not implemented the Forum's Order ;

(f) the complainant has filed the representation before the Ombudsman within 30 days from the date of receipt of the decision of the Forum or the date of expiry of the period within which the Forum was required to take the decision or the date of expiry of the period within which the distribution licensee was required to implement Forum's order whichever is applicable:

Provided that the Ombudsman may entertain a representation after the expiry of the said period of thirty days if the Ombudsman is satisfied that there is sufficient cause for not filing it within that period;

(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) frivolous, vexatious, malafide;

(b) without any sufficient cause;

(c) there is no prima facie loss or damage or inconvenience caused to the complainant :

Provided that the decision of the Ombudsman in this regard shall be final and binding on the complainant and the distribution licensee:

Provided further that no representation shall be rejected in respect of sub-clauses (a), (b) and (c) unless the complainant has been given an opportunity of being heard.

5. **Further the following provisions of Appeal were informed to the appellant by the Assessing Officer cum SDO vide his Final Assessment Notice dated-21.12.2021: -**

" An Appeal may be preferred by you against the amount of the assessment bill to the Appellate Authority namely SDM (South) , Sector-42, Chandigarh. "

6. The Hon'ble High Court of Judicature at Allahabad, Lucknow Bench vide Order dated -19.07.2012 in Misc.Writ Petition No-6088 of 2009 titled M.D. Pakshimanchal Vidut Vitran ... vs Ombudsman has also examined the issue as to whether the orders passed by the Assessing Officer under Section-126 of the Electricity Act-2003 can be reviewed by the CGRF or Ombudsman and relevant part of the judgement is reproduced as under:-

"17. It is evident from record that assessment proposed by Executive Engineer i.e. petitioner No. 2, whether vide provisional assessment notice dated 09.05.2005 or the later one communicated by letter dated 03.09.2007, are the assessments on the ground of " unauthorized use of electricity" and therefore are referable to Section 126 of Act, 2003. The "Assessing Officer" competent to make assessment under Section 126 of Act, 2003 is a statutory authority. His order is appealable before an authority under Section 127 of Act, 2003.

18. When the statute itself creates an adjudicatory forum as well as the appellate forum, a parallel forum by means of a subordinate legislation is not permissible. Therefore, CGRF and Ombudsman constituted under Regulations, 2007 by UPERC cannot have jurisdiction to have a review of orders passed by Assessing Order under Section 126 or the appellate order(s) under Section 127 of Act, 2003. In my view CGRF in such matters has no jurisdiction at all".



7. 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" and has passed the following order -

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."

8. From the perusal of the **CONSUMER GRIEVANCES REDRESSAL FORUM AND OMBUDSMAN REGULATIONS- 2019**,, it is clear that neither the CGRF nor Electricity Ombudsman has the jurisdiction to hear the cases which falls under section 126 of Electricity Act, 2003 and the same position has been upheld by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench and Hon'ble Gauhati High Court.
9. Therefore, in my considered opinion, the contentions of Appellant are legally not sustainable due to lack of jurisdiction, in view of explicit provisions in the Electricity Supply Code Regulation 2018 and dictum of the Hon'ble Courts.

(F) DECISION

1. For the reasons discussed above, the appeal of the Appellant is hereby dismissed , being not maintainable due to lack of jurisdiction.
2. 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.
3. The appeal is disposed of accordingly.



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

Dated: 22.12.2022