

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road  
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph.0484 2346488 Mob: +91 9567414885  
Email:ombudsman.electricity@gmail

---

APPEAL PETITION NOS: P/258/2012 and P/259/2012.

(Present: T P Vivekanandan)

APPELLANT : Mr. Mohammed Siddique  
Proprietor, Hotel Moidu's,  
Palarivattom, Kochi-25.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Palarivattom, Kochi 25.

ORDER.

Background of the Case: -

The appellant is a consumer of electricity under commercial tariff and has three electricity connections with consumer numbers 9647, 9648 and 10849 in the premises, under Electrical Section, Palarivattom. The consumer No.9647 is for a Hotel Restaurant, consumer No. 9648 is for the building for employee's stay and consumer No.10849 is used for a Lodge. The APTS wing of KSEB inspected the premises on 6<sup>th</sup> April 2006 and detected unauthorized additional load (UAL) to the tune of 12 KW and 3 KW, in the cases of consumer No's 10849 and 9647 respectively in addition to other anomalies. The following irregularities were detected by the APTS wing.

Consumer No.9647: - (1). The energy meter of consumer No. 9647, Hotel (Restaurant) was found tampered and meter was taken into custody.

(2). Unauthorized additional load – The consumer was found using UAL of 3 KW ie. a total of 8 KW instead of 5 KW.

Consumer No. 10849: (1). The meter was changed on 30-3-2006 due to anomalies.

(2). Unauthorized additional load - the consumer was found using UAL of 12 KW ie. total 20 KW instead of the sanctioned connected load of 8 KW. Short assessment bills for Rs. 3, 45,935/- and Rs. 1,40,685/- were served on the consumer, towards the charge for unauthorized additional load and other abnormalities detected in respect of consumer numbers 10849 and 9647.

Aggrieved by the bills issued, the consumer filed Appeal dated 7.4.06 before the Deputy Chief Engineer, (APTS) Central Region which was retransmitted to Deputy Chief Engineer, Electrical Circle, Ernakulum, for disposal. The Dy. CE disposed of the petition vide order No. AB/APP/2006-07/84/dated 4-12-2006, by reducing the diversity factor calculated for assessing the bills. Thereafter the consumer had challenged the said assessment relating to consumer No. 10849 and consumer No. 9647 before the Hon. High Court of Kerala in W.P (C) 5247/2007. The Hon. High Court directed the petitioner vide interim order dated 15/2/2007, to remit 50% of the outstanding amount, which the petitioner remitted accordingly. Thereafter the writ petition was disposed of

directing that if the petitioner remits the remaining outstanding and all accruals thereon, in five equal monthly installments, payable on or before the 20<sup>th</sup> of every month, commencing from October, 2007, all coercive steps for enforcement of such demand would stand dropped.

While so, a short assessment bill for Rs. 1, 20,743/- was issued on the consumer No.9647, on 8.10.2010 and another short assessment bill for Rs. 47495/- was issued on consumer No.10849 on 4.3.2011, based on the audit report of the KSEB's Audit wing. These bills were raised due to the fact that (1) the proportionate current charges for the unauthorized additional load were left out due to oversight, (2) the fixed charges payable according to the Connected load, raised in the bills were less than the actual and (3) the assessment done during the meter faulty period was wrong. Though the appellant filed objections against the said short assessment bills, the Asst. Engineer, Electrical Section, Palarivattom, directed him to approach the CGRF for presenting the grievances, as the case does not fall under Section 126 of IE Act 2003. Accordingly the appellant filed petition before the CGRF seeking to set aside the short assessment bills for Rs.1,20,743/- on consumer No. 9647 and Rs. 47495/- on consumer No. 10849. The CGRF has disposed the petitions as follows.

Consumer No. 9647: - "the penal assessment issued to the petitioner shall be based on the actual recorded consumption of the energy meter. The revised assessment shall be issued within 15 days from the date of receipt of this order. The petitioner shall be given 6 equal installments to remit the revised short assessment. No interest shall be charged during the petition pending period."

Consumer No. 10849: - "Action to be taken by the respondent within 15 days from the date of receipt of this order such that the disputed short assessment bill amounting Rs. 47,495/- shall be remitted by the petitioner in seven equal installments. No interest during the petition pending period before this Forum."

Aggrieved by the orders of CGRF, the appellant had submitted this Appeal Petitions dated 27-1-2012 before this Authority.

Arguments of the Appellant: -

The arguments of the Appellant are based on the brief facts and circumstances which are narrated above. Further the Appellant has adduced the following arguments.

The CGRF, Central Region, Ernakulum, has passed the orders without any proper application of mind of the facts and circumstances of the case, and the documents produced by the appellant.

The very reason for preparing a short assessment bill of Rs.1, 20,473/- dated 08.10.2010 was that the complainant's electric meter was faulty, and as such he was short assessed for the said amount. However since the CGRF has now found that the said electric meter was not faulty at all, and when the KSEB has admitted before the Forum that the said meter was never faulty during the said period, there is no reason at all to make a further assessment in the matter and to compel the complainant to pay the said amount in installments or otherwise.

According to KSEB, the short assessment bills dated 08.10.2010 for Rs.1,20,473/- and dated 4/3/2011 for Rs.47,495/-, were preferred, since the audit party found that the said amount was not assessed earlier against the complainant. It may be noted that audit in KSEB is conducted every year, and as such there is no reason for preparing a short assessment bill after a period of 4 years, after the disputed period. Therefore it is humbly submitted that the said short assessment bill is clearly hit by limitation, since the same has been assessed against the complainant after a period of 4 years after the period assessed.

The short assessment bills relating to consumer no: 9647 and 10849 are totally illegal, as the same has been passed after the entire matter has been settled, and the entire amounts have been paid, as per the directions of the Hon High Court, in WP (C) 5247/2007. The Court has observed in its judgment that the appellate authority in issuing Ext. P-27 has concluded that the bi-monthly consumption arrived at by applying the diversity factor, is not much at variance from that energy consumption recorded after the meters were replaced. The Hon Court also observed that it is not in dispute that the bi-monthly bill issued in November 2006 reflects the consumption as stated in Ext.27. The appellate authority had reduced the diversity factor from that which was applied by the original authority, and that it was also not in dispute that the connected load exceeded the sanctioned load. Hence as such there is no scope for a short assessment bill relating to the said consumer no: 9647 and 10849, and that too after a period of four years after the disputed period.

The short assessment bill now issued to consumer no: 9647 and 10849, and that too taking the periods of 2006, 2007, 2008 into consideration, is totally illegal, as the restaurant occupied by the tenants had vacated during the said period, and HDFC bank is functioning there from the year 2008, who are using increased load, after the said additional load has been sanctioned by the KSEB. Therefore the said increased load availed by HDFC bank in the year 2008 cannot be alleged to be used by the complainant in the previous years, during the disputed period.

In the case of consumer No.10849, new five rooms have been added and air conditioners have also been introduced in the year 2008 in the lodge. And therefore the consumption of electrical energy of the lodge in the year 2008 cannot be taken into consideration for calculating the assessment bill for the disputed period, as done by the KSEB.

For these grounds, the appellant has prayed to set aside the order of the CGRF dated 09.12.2011, wherein the Respondent, Assistant Executive Engineer, Electrical Sub Division, Palarivattom, has been directed to reverse the assessment relating to consumer no: 9647 and also directing the complainant to pay the amount fixed in six equal monthly installments, in the interest of justice.

Arguments of Respondent: -

The respondent has filed the counter statement against the contentions raised by the appellant.

It is submitted that whenever unauthorized additional load (UAL) is detected, the penalty as per rules is required to be billed till regularization or removal of the load. It is submitted that there was an omission from the part of KSEB while issuing the bill at the relevant periods. The present short assessment bills were issued to the consumer no: 9647 and 10849 is based on the audit report of KSEBoard. The copy of the audit report is marked as Exhibit P2. It is only when auditors pointed out; the error in billing was noticed. The UAL is to be billed under section 126 and section 126 stipulates to charge@2 times (earlier 1.5 times) of tariff. As the revision was effective from 15.06.2007, proportionate energy charges for the period after that date, were to be billed. This omission was detected by the audit wing and hence the short assessment bill was served to the consumer. It is further submitted that there was no deliberate action from the respondent for not finding these facts earlier. No interest was levied on the bills issued also.

The Assistant Engineer has acted as per rules and according to the Electricity Act 2003, these types of disputes come under the purview of CGRF and hence he directed the consumer to file objections there. It is submitted that this is to be treated as a positive step taken by the AE.

The Hon CGRF after conducting detailed hearing passed orders revising the bill passed on the recorded consumption. In the case of consumer No. 9647, the audit party observed that consumption showed a decreasing pattern during the period from 11/2007. The meter was replaced on 17.04.2008. Three bills which showed lower consumption need to be revised based on previous average. The energy consumption after replacement of meter was 2592 units (12.06.2008), 2492 units (12.07.2008), 2239 units (12.08.2008) etc. As per rules, if meter is not correctly recording the consumption, the previous six month's average are to be taken for billing. KSEB has the right to realize the shortfall and the bill was issued as the audit team's findings were correct.

The Hon CGRF after analyzing the facts has observed that the bill issued is as per rules and the order passed by the Hon CGRF is true to facts. The Section 24 (5) enables KSEB to issue any short assessment bill noticed on a later stage. The present bills were issued when an omission is noticed by the audit wing. The present bill for Rs.1,20,473/- and for Rs. 47,495/- were issued since proportionate current charges for the UAL, is effective from 15.06.2007, as per Board Order dated 07.02.2008. There occurred some delay for 'audit', which is beyond the control of the respondent.

No commitment was made by KSEB, during the hearing at the Hon CGRF about the healthiness of the meter. The CGRF has not recorded anything to that effect. It is submitted that the appellant has never approached the Assistant Engineer, Electrical Section, Palarivattom, for permission to do the modification work for accommodating the Bank and hence the argument that the lower consumption is due to modification work of building for Bank cannot be accepted.

The Section 24 (5) of Electricity Supply code enables KSEB to make short assessment bills, and no limitation is envisaged in this section. The Hon: High Court of Kerala has also observed in the case 'Sunderdas Vs. KSEB' that section 56 (2) limitation is applicable only when the bill is issued.

The bill under consideration of the Hon: High Court was the bill issued as back assessment for six months as on the APTS inspection. The present bill is for the omission in continuing the penalty till regularization of UAL. The consumer's statement that he paid more than Rs.5 lacs in consumer No. 9647 is to mislead facts. The consumer remitted the amount as per Court direction. The Hon: Court has only considered the bill issued at that time while pronouncing the said order and has never considered the present bill or its period and hence it has no relation with the said order. The bills now issued are as per law. The period under the two bills is entirely different. The order referred by the consumer is the inspection bill issued to him during 4/2006 for the back assessment of six months. The present bill is issued for a period different from inspection date and till regularization of the UAL. The meter was also faulty, but the average charged by the meter reader was not correct at the time of issue of each bill. Hence the respondent has no other option than to issue the short assessment bill.

The Hon: High Court earlier has confirmed that there was no dispute about connected load. The mahazar was well acknowledged and Hon: Court decided to confirm the penal bill issued. Hence it is clear that Hon: Court is also of the view that there was UAL. The delay in finding out the error in bills was not deliberate. The mistake is noticed only when auditing was done. It is submitted that the statement of petitioner that "that too after a period of four years "is to mislead facts.

No bill was issued on the increased load of the Bank. The bill was issued for the UAL detected during inspection and has to continue till its regularization. The UAL was regularized in 3/2008 and the present bill is raised for the previous period up to regularization date and no bill was issued

thereafter. It is also submitted that the connected load as per inspection dated 06.04.2006 only is taken for the billing purpose. Any equipment connected after that date is not considered in the present short assessment bill, issued now.

Analysis and Findings: -

The Appeal Petitions numbered, P/258/2012 & P/259/2012, are filed by the same consumer against the reassessment bills issued, on two of his electric connections, but deals almost similar issues of complaint and cause of action and hence decided to hear together. As such, the hearings of the Petitions were conducted in my chamber at Edappally, on 24.07.2012. Sri. PM Mohammed Siddique and his counsel, Sri. Sajan Mannali appeared for the petitioner and Sri. Gopi NK, the Asst. Exe. Engineer, Palarivattom, for the respondent and argued the case on the lines stated above.

On perusing the Appeal Petition, the statement of facts filed by the Respondent, the arguments of both sides in the Hearing done on 24.07.2012 and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

Earlier, the officials of KSEB had inspected the consumer's premises on 6.4.2006 and detected some abnormalities in these two connections and prepared a Mahazar on the same. Accordingly, KSEB raised penal bills on the consumer for Rs.1, 40,685/- and Rs. 3, 45,935/- on 4-6-2006 for the said two connections. The consumer filed Petitions before the Deputy Chief Engineer, Electrical Circle, Ernakulum against the bills, which were heard and disposed of by reducing the assessment. Accordingly revised bills for Rs1, 20, 142/- and Rs. 2, 20, 284/- were issued. The consumer then filed Writ Petition before the Hon High Court which was dismissed and directed to remit the outstanding amounts and all accruals thereon in five equal monthly installments. Subsequently the consumer remitted the bill amounts completely. The KSEB states that the UAL, unauthorized additional load, in the premises of the consumer was not regularized till 31/3/2008.

Now the dispute is, over the short assessment bills for Rs.1, 20,743/-, on consumer No.9647 and for Rs.47495/- on consumer No10849, issued on 8.10.2010 and 4.3.2011 respectively, consequent to an Audit report. The respondent states that an omission has occurred, while preparing the bills on the consumer, for the period after 6/2007. The extract of the Audit report is as follows. "As per the provisions of Electricity (Amendment) Act 2007, with effect from 15/6/2007, the penal rate for unauthorized load was enhanced from 1.5 to 2 times and the penalty was also made applicable to the energy charges (EC) based on the consumption, proportionate to the UAL. This revision in respect of proportionate consumption was not made applicable in the previous bills issued to the consumer, from the month of 6/07 to 3/08." Based on the audit observation, the KSEB made the reassessment and issued bills to recover the revenue loss.

The first question to be decided is, 'whether the rules permit the Licensee to penalize the consumer, till the period of regularization of the unauthorized additional load (UAL)?.

The procedure to be followed in cases of UAL is detailed under Regulation 51 of KSEB Terms and Conditions of Supply, 2005. "Where a LT consumer exceeds the connected load and/or resorts to UAL and if the connected load exceeds 100 KVA, the UAL shall be disconnected by the consumer within 24 hours of detection of the unauthorized load by the Board's officers or take action to regularize the UAL. If he fails to disconnect the UAL within the time stipulated, the power supply to the premises shall be disconnected after the expiry of 24 hrs.....". Further, Regulation 51 (4) says "In case of Low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding UAL, the procedure stated in clause 50 (1) shall be applicable. The UAL should be got regularized by the consumer within a period of three months on application to the Assistant Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Asst. Exe. Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit." Hence it is clear that it is the responsibility of the consumer to remove or regularize the UAL within three months from the date of detection of the UAL. These clauses clearly enunciate the procedure to be followed after detection of UAL in the premises of the consumer. Hence it is clear that the Licensee can raise penal bills against the consumer, for UAL availed, till the time the UAL is removed or regularized.

The bills in question are the penal bills issued for not regularizing the UAL detected. The KSEB argues that, there occurred some omission in preferring the penal bills correctly. The respondent relied upon the provisions of Section 24 (5) of the Supply code Act 2003 to make the short assessment bills, and argues that no limitation is envisaged in this section.

The inspection was conducted on 6.4.2006. During that time, the rule for the penal assessment under section 126 was for a period of six months at 1.5 times for unauthorized use of electricity. The consumer was issued penal bills for the irregularity committed by him and he remitted the same as per judgment of the Hon High Court. After 4 years, the respondent has issued bills stating to be the balance amount payable towards the proportionate energy charges, based on an audit report findings of the error occurred in the billing of the appellant.

Now, the clause 126(4) also says that "once the assessed amount is paid by the consumer, he will be absolved from any further liabilities". (This was omitted by Act 26 of 2007 w.e.f. 15.6.2007).

It is evident that the above clause was applicable till 15.6.2007. In this particular case, the penal bills were issued on 6.4.2006. If additional load was found continuously enjoyed by the consumer, the respondent should give notice for either its removal or its regularization (if feasible). If the direction is not obliged by the consumer, the penalization must be continued and other actions like disconnection may be resorted to, if the UAL is found detrimental to the Licensee's Electrical network or System.

The argument of the appellant regarding the Limitation of the bill period of two years, as stated in section 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board, against consumption of electrical energy and will become due for payment, only after that demand has been raised. In a related case it has been clarified by Hon: High Court that "Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Brihanmumbai Municipal Corporation V Yatish Sharma and others-2007 KHC 3784). For the above two reasons, I think the argument of the appellant that the claim is time barred by section 56 (2) of Electricity Act 2003, is not sustainable.

The other contentions raised by the petitioner in the Appeal petition with regard of the occupation of the building by a Bank since 2008 etc. have no relevance in issuing the short assessment bills for the period from 6/07 to 3/08 and hence is not relied upon.

*The crucial question to be decided is, whether the action of KSEB in preferring the disputed Bills against the appellant, in this case, is in order?*

DECISION: -

Prior to the amendment effected on 15.6.2007, the clause 126(4) under Indian Electricity Act, 2003, reads as follows; "Once the assessed amount is paid by the consumer, he will be absolved from any further liabilities".

In this particular case, the cause of action has occurred on 6.4.2006 and the penal bills were raised subsequently against the consumer and the party has cleared the bills fully, after the Hon High Court order in WP(C) No.5247/2007 dated 4.10.2007. Once the liability is fully paid up by the consumer, the respondent cannot extend the liability, on the same irregularity of unauthorized additional load detected and billed prior to 15.6.2007, as he is absolved from any further liabilities on that account, as per section 126(4), prevailing at that time. If the Audit party has made a note or observation, the licensee has to inspect the premises afresh and see whether any anomalies or irregularities are being done there or exists and if so, prepare the mahazar and then proceed as per rules against the consumer. But in this case, the consumer was seen issued Short assessment

bills, as per the audit report only, in contravention to the clause 126(4) of the Act, in case of both consumer Nos. 9647 and 10849 and hence is found not maintainable.

The respondent also has a case of under billing during meter fault i.e. the consumer was seen having recorded low energy consumption, during 11/2007 to 3/2008, compared with the previous period and assumes that it might be due to Meter's fault and hence reassessed the consumer. The respondent has failed to establish this allegation of meter fault conclusively and so the same is not acceptable. It is noted that the CGRF has also found the reassessment done, during the so called meter faulty period, as not sustainable. The respondent has not produced any evidence to prove the Meter was faulty at that period.

For the above stated reasons, the question is answered that, the short assessment Bill dated 04.03.2011 for Rs.47,495/- of consumer No.10849 and the Bill dated 8.10.2010 for Rs. 1,20,743/-, relating to consumer No. 9647, are decided as not maintainable and hence has to be set aside.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition Nos. P/258/ 2012 and P/259/2012 are found having merits and stands allowed. The related CGRF's order dated 9.12.2011 stands quashed. No order on costs.

Dated the 3<sup>rd</sup> of December, 2012,

Electricity Ombudsman.

Ref: No. P/258/2012 and P/259/2012/ 1477 Dated 03. 12. 2012.

Forwarded to : 1). Mohammed Siddique  
Proprietor, Hotel Moidu's,  
Palarivattom, Kochi-25.  
2).The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,Palarivattom,  
Kochi -25.

Copy to :1).The Secretary, Kerala State Electricity Regulatory Commission,  
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.  
: 2).The Secretary, KSEB,  
Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.  
: 3).The Chairperson, Consumer Grievance Redressal Forum,  
KSEB,Power house Bldg, Cemetery mukku, Ernakulum-682 018.