

## **THE STATE ELECTRICITY OMBUDSMAN**

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### **APPEAL PETITION No. P/070/2022**

**(Present: A. Chandrakumaran Nair)**

**Dated: 2<sup>nd</sup> December, 2022**

Appellant : Sri. Abdul Kader Naina,  
Palmshade Hospital,  
Mannancherry,  
Alappuzha Dist. 688538

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
S.L. Puram, Alappuzha Dist.

### **ORDER**

#### **Background of the case:**

The appellant Dr. Abdul Kader Naina is the owner of the hospital named as “Palmshade Hospital” at Mannanchery in Alappuzha Dist. Appellant is a consumer of the Licensee (KSEBL) with consumer number 1155194016742 with a connected load of 43.91 kW under Electrical Section, Muhamma. The appellant applied for grid connected solar plant during the year 2017 to become power neutral. The Licensee has permitted for 22 kW solar plant during 09/2018. The work was executed by the approved agency of KSEBL and under the direct supervision of the officials of the Licensee. There was a major delay in commissioning of solar plant. The hospital was started functioning since 2011 having 20 rooms, OP, IP etc. After the commissioning of the solar plant, the energy consumption from KSEBL was zero. The appellant has received solar incentive from the Licensee for three years. On 21-12-2021, APTS conducted an inspection and found that the CT connection to the import and export meter was interchanged. Then the respondent raised a short assessment bill for Rs.11,89,077/- for a period from 10-09-2018 to 31-12-2021. This includes, the solar incentive he received from the Licensee amounting to Rs.1,72,731/-. The appellant has challenged the short assessment bill.

The appellant filed petition to the Consumer Grievance Redressal Forum, Central Region and the CGRF(CR) vide order dated 12-08-2022 ordered that the appellant is liable to pay the short assessment bill. Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

**Arguments of the appellant:**

The appellant is conducting a hospital by name 'Palmshade Hospital' at Mannanchery. Appellant is KSEBL consumer with consumer no. 1155194016742 having a connected load of 4390W under the Electrical Section, Muhamma. Though appellant's electricity consumption was modest, appellant opted to avail renewable energy source and for that purpose, applied for solar energy grid provisioning to KSEBL in March 2017. Appellant purchased high quality and high efficiency ABB make inverter and solar panels for installation in March 2017 itself. However, permission for solar energy grid provision was granted to the appellant by KSEBL only in August 2018 due to which the high efficiency equipments purchased by the appellant remained idle for nearly 17 months. This caused loss in their efficacy and the warranty cover to expire even before it was put to use.

On 21.12.2021 APTS unit of Alappuzha conducted inspection of the installation of the appellant. It was alleged by them that net meter had wrong CT cable connection right from the time solar unit was installed and this led to interchanging of export and import energy. The CT cable connection was done by KSEBL and if there is any error or mistake the same is attributable to them only. Alleging that there has been short assessment of Rs. 10,16,346/- for the period from 10.09.2018 to 31.12.2021 due to such interchanging of export and import energy demand for that amount was raised. Further, demand for refund of Rs.1,72,731/- paid to the appellant as solar incentive was also raised. Hence, a total amount of Rs.11,89,077/- was demanded from the appellant.

The appellant submitted complaint to CGRF, Central Region. By Order No. CGRF-CR/OP. No. 23/2022-23/197 dated 12.08.2022, the complaint was dismissed holding that the appellant is liable to pay the demand and directing the licensee to extent vigorous training for their employees to avoid recurrence of such type of mistakes.

CGRF(CR) has failed to appreciate the complaint in the proper perspective and to grant relief to the appellant. The following relevant aspects have not been taken note of by the CGRF:

i. The alleged wrong CT cable connection in the net meter was attributable only to the lapse of the licensee and it was not due to any fault of the appellant that it occurred. If the appellant had been informed that the actual power consumption was higher, the appellant would have taken remedial measures to reduce the consumption and he would not have been mulcted with such huge additional liability. The appellant cannot be penalized for the fault attributable solely to the licensee.

ii. The very purpose of solar energy grid provisioning was to avoid or at least substantially reduce the dependence of the appellant on the KSEBL power supply. Due to the alleged wrong CT cable connection, the appellant was given the erroneous impression that his KSEBL power consumption had been reduced and that he is having excess solar energy generated. The entire electricity consumption and management by the appellant has been on the basis of such an impression. The appellant should not be made to suffer liability for no fault of his and for that purpose adequate relief should be granted.

iii. As per Section 56 (2) of the Electricity Act, 2003 no sum due from any consumer shall be recoverable after the period of 2 years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. The impugned demand is for a period of 39 months and the demand raised is in violation of Section 56(2) of the Electricity Act, 2003.

iv. Regulation 153 (3) of the Supply Code of 2014 restricts the demand up to a period of 12 months and hence, no demand for a period more than that could have been made by KSEBL.

v. The solar incentive for each year is credited in September but the appellant was not granted the solar incentive payable in September 2021. The failure to tabulate and process the banked units for the year up to September 2021 and thereafter till 31.12.2021 and grant the solar incentive for that period is unjustified and improper.

vi. There is no provision enabling KSEBL to recover the solar incentive already assessed and paid to the consumer. That being so, the demand for refund of solar incentive of Rs. 1,72,731/- is illegal and unjustified.

vii. The CGRF has erred in relying upon the decision in Ajmer Vidyut Vitharan Nigam case which was one relating to bills being raised under the wrong tariff code and was not a case regarding demand alleging interchanging of export and import energy. It should have been found that the said decision is inapplicable to the facts of the case. Further even in that case it was held that the licensee is barred from taking recourse to disconnection of supply. Even that benefit has been denied to the appellant.

viii. The appellant had installed high efficiency ABB make inverter and solar panels but it could not be used for merely 17 months due to the delay of KSEBL to grant solar grid provisioning. For ABB make equipments 5 unit per KW per day could have been produced but due to the idling of equipment there was only lesser production as per the meter reading. As the lesser production is attributable solely to the default of KSEBL it is only just and proper that they are directed to calculate export of solar energy at the rate of 5 units per KW per day and give credit accordingly.

ix. The amount demanded from the appellant is calculated without any basis and it is excessive and incorrect.

For these and other grounds to be urged at the time of hearing it is requested by the appellant that the impugned demand towards short assessment and for refund of solar incentive are set aside.

**Arguments of the respondent:**

The Consumer No 1155194016742, registered in favour of Sri.Abdul Kader Naina M/s. Palmshade Hospital under Electrical section Muhamma with a tariff meant for Private institution/Hospital category with a connected load of 43910W, had installed a 22KWP solar power generating unit and executed an On Grid Solar agreement on 17.08.2018 with KSEB Ltd. A bidirectional energy net meter was installed to measure the Import and Export reading. Energy transmitted from the Solar unit to the grid of KSEB is measured as Export and energy drawn by the

consumer from the Utility grid is measured as Import. The difference between Export and Import is calculated and monthly bills are issued. When import is greater than export, the value of the difference is to be remitted by the consumer, as net bill amount. On the other hand, when the export is greater than import, the difference is termed as banked unit. The value of banked unit accumulated till the end of September of each year will be given to the consumer as solar incentive.

A combined inspection was conducted by the Anti Power Theft Squad of KSEB and the officials of Electrical Section Muhamma on 21.12.2021, and the appellant was present there. During the inspection it was detected that, right from the beginning i.e., 17.08.2018, export reading had been mistakenly recorded as import reading and vice versa due to connection- mistake of CT cable. Appellant was convinced by the findings of the inspection team and he acknowledged the receipt of the copy of the site mahazar.

The connection-mistake in the CT cable was rectified by the Staff of Electrical Section in the presence of appellant on 31.12.2021. Thereafter, this disputed Short Assessment bill for Rs.1189077/- (including short assessment amounting Rs.1016346/- for the period from 10.09.2018 to 30.12.2021 and the solar incentive amounting to Rs.172731/-, disbursed mistakenly during the period on account of this interchange of export-import readings) was issued on 13.01.2022. As the consumer filed objection, a hearing was held by the Assistant Engineer on 11.03.2022 and a Short Assessment bill amounting to Rs.1189077/- was issued to the appellant vide proceedings dated 12.04.2022. Challenging the same, the appellant filed complaint before CGRF Ernakulam, as C No.23/2022, which was disposed on 12.08.2022, deciding that the disputed bill was lawful and the consumer liable to remit the same. KSEB complied the order by issuing fresh notice with fresh Calculation Statement. Though the consumer received the notice, there is no mentioning of the same in this appeal. The appeal, filed by the consumer, fails to submit any valid grounds against the order of the CGRF.

The appeal is not maintainable either on facts or in Law. All the averments in the appeal are false, except which are admitted hereunder.

1. M/S Palm Shade Hospital, Mannanchery has been availing electricity from KSEB Ltd. by obtaining a service connection bearing consumer number

1155194016742, registered under the ownership of the appellant, with effect from 22.02.2011. In between the Hospital installed a solar power generating unit of 22KWP on, by executing an on Grid Solar Agreement on 17.08.2018. It is submitted also that some private enterprises are listed as approved developers for the installation of Solar plants, and the applicants are at liberty to select one among them and deal with them for the installation. In this case KSEB had satisfied all procedures bound to. But there was no deficiency of service on respondents' part in the installation of the Solar plant in the premises of the Hospital. Installation of solar panels and Inverters are done by the appellant, through approved developers. Only meter-installation and its testing are done by KSEB. The contention of the appellant, that the lapses on the part of KSEB caused a hike in expenses incurred for arranging change in position of meter, is baseless. Initially, the position, proposed for the installation of the new meter was much close to 3phase line. Later, the appellant requested to install the same to back side of the building. As the clearance with the Hospital buildings is not at all sufficient, the purchase of that much of ABC (up to metering point) became essential. Though the appellant was asked to purchase ABC, he instead brought UG cable. So, it had to be replaced with ABC. Without prejudice to these facts, it is submitted also that the appellant later made use of the same UG cable purchased for making connection beyond the metering point.

2. A combined inspection was conducted by the Anti Power Theft Squad of KSEB and the officials of Electrical Section Muhamma on 21.12.2021, and the appellant was present there. During the inspection it was detected that, right from the beginning ie., 17.08.2018, export reading had been mistakenly recorded as import reading and vice versa due to connection-mistake of CT cable. Appellant was convinced by the findings of the inspection team. The connection-mistake in the CT cable was rectified by the Staff of Electrical Section in the presence of appellant on 31.12.2021. Thereafter, the disputed Short Assessment bill for Rs.11,89,077/- (including short assessment amounting Rs.1016346 for the period from 10.09.2018 to 30.12.2021 and the solar incentive, amounting to Rs.1,72,731/-, disbursed to him mistakenly during the period on account of this interchange of export-import readings) was issued on 12.04.2022.

3. The appellant had filed a complaint against bill, before CGRF numbered as 23/2022. As admitted by the appeal itself, the CGRF disposed the same as the consumer was liable to pay the amount.

4. The contention of the appellant that he was penalized for a mistake identified in the CT Cable connection, is not sustainable. In this case, the appellant was not penalized, but was issued with a short assessment bill, demanding short collected amount in succeeding months, owing to a mistake, which was identified later accurately. So, the connected argument of the appellant, that he could have adjusted/reduced consumption, if the billing mistake had not been occurred, too is not sustainable, as it is against the spirit of Reg. 134 of the Supply Code 2014, as upheld by the CGRF.

5. The appellant quoting Sec.56(2) of Electricity Act, that the disputed amount cannot be realized due to the barring of limitation period of 2 years. But here, as admitted by the appellant himself, the bill was issued only on 12.04.2022, and there is no question of 'realization after 2 years'. Here the appeal repeats merely the contention in the original complaint, which was dismissed by the CGRF. No fresh points are seen incorporated in the appeal, in this respect. Further more, the appellant, relying on Reg.153(3), argues that there cannot be a short assessment beyond 12 months. The reliance on Reg153(3), in this respect, is out of context, as it discusses regularization of unauthorized additional load, rather than short assessment.

6. The contention of appeal, that the eligible solar incentive' of the appellant was not disbursed to him, is false. First up all, the appellant was not eligible for solar incentive, as the respondents submitted above. Nevertheless, a total amount of Rs. 172731/- was disbursed to the consumer in different years, owing to a mistake in CT connections and consequent error crept in calculation.

7. As submitted above, the disbursement of Solar *incentive was the result* of a mistake committed in CT connections and consequent error crept in calculation. Therefore, the appellant becomes liable to refund the same to KSEB. Thus, that much of amount too becomes part of the short assessment bill. Hence, the averments of the appellant challenging the realization of that much of amount, is not standing, as ordered by the CGRF.

8. It is argued that the 'Ajmer Vidyut Vitharan Nigam case' relates to the issue of short assessment owing to misspecification of tariff, and therefore citation of the same by the CGRF in this case is out of context. It is submitted that this contention is not sustainable. The Forum relied up on the case only to address the question of 'Limitation', and not the grounds of short assessment.

9. The appellant contents that there were lapses/undue delay on the part of KSEB in the installation of the Solar plant in the premises of the Hospital, causing loss to the consumer. It is not sustainable. Installation of solar panels and Inverters are undertaken and completed by the consumer, through approved developers, and KSEB is no way responsible for the delay, if any, in installation.

10. The argument of the appellant, terming the estimation of the disputed bill baseless, is not standing. It seems the appellant raises such an argument experimentally, without pinpointing any drawbacks in billing process.

In the light of the above facts, the respondent requested to this Authority to dismiss the appeal, and permit the respondents to realize the undercharged amount from the appellant.

**Analysis and findings:**

The hearing was originally posted for 17-11-2022 and shifted to conduct on 28-11-2022 as per the request of the advocate of the appellant. The case was heard on 28-11-2022 at 11 AM in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Appellant Dr. Abdul Kadar Naina along with Advocate Sri. Philip T. Varghese were attended the hearing from the appellant's side and Sri. Rajeshmon. K., Assistant Executive Engineer, Electrical Sub Division, S.L. Puram was attended the hearing from the respondent's side. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The appellant is a doctor and running a 20 bedded hospital at Mannanchery in Alappuzha Dist. He is a consumer under the Muhamma Electrical Section of the Licensee and tariff applicable is for private institution has applied for the Grid

interactive solar to achieve power neutral status during 2017 and the Licensee permitted for 22 kW solar plant. The agreement executed in this connection on 17-08-2018 and it was commissioned. The Import & export meter readings were taken regularly since 10-09-2018 on monthly basis. The CT meant for export of power was wrongly connected to import side and that of import side was connected to export side. The meter readings shows that the export is higher than import and bills were raised accordingly. As per the record of Licensee, the export was higher, i.e. the excess power is banked to the Licensee and hence, the Licensee paid the solar incentive for three years amounting to Rs.1,72,731/- (Rs.3,325/- + Rs.91,143/- + Rs.78,263/-).

On 21-12-2022, the APTS of Alappuzha unit conducted an inspection in the premises of the appellant's hospital and found that the connection from CTs were connected wrongly by interchanging the export and import. Then in the real scene the import was higher than the export meter reading, which means that the appellant is consuming more than the generation in the solar panel.

Section 2 (57) of Kerala Electricity Supply Code 2014 states :“meter” means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose;”. This includes the CT and PT and other accessories necessary for the purpose.

Section 105 of Kerala Electricity Supply Code 2014 states on “Option of the consumer to purchase the meter” as follows: -

Section 105 (1) At the time of seeking a new connection the consumer shall have the option to either;

- (a) purchase the meter and associated equipment himself from a vendor; or
- (b) require that the meter and associated equipment be supplied by the licensee:

Provided that the meter and associated equipment purchased by the consumer shall be of a make and specification approved by the licensee from time to time.

Section 105 (2) The consumer shall indicate his option in the application form and licensee shall supply him with the list of approved vendors and makes.

Section 105 (3) Once the consumer has procured the meter, the licensee shall test, install and seal the meter.

Section 105 (4) The testing shall be done in an accredited laboratory or in an approved laboratory on realization of fee as approved by the Commission.

Section 105 (5) The testing shall be got completed by the licensee so as to effect service connection within the time line specified.

This Section is very clear about the responsibility of the Licensee to test and seal the meter. This is to be done by a responsible official of the Licensee. In this case whether the authorized official of the Licensee is not aware about the proper way of connection or not taken any seriousness in handling such responsibilities.

The Section 9 of KSERC (Grid interactive distributed solar energy system) Regulation 2014 clearly spelt about the responsibility of the Licensee.

Section 9 (4) The meters shall be tested, installed and sealed in accordance with the provisions of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

Section 9 (5) The meter reading shall be taken by the distribution licensee and a copy of the statement of reading of the net meter and the solar meter shall be handed over to the eligible consumer under proper acknowledgement, as soon as meter reading is taken.

Section 9 (6) Commercial settlement of the drawal and injection of electricity by the eligible consumer during a billing period shall be made based on the statement of readings of the net meter.

The Section 15 of KSERC (Grid interactive distributed solar energy system) Regulation 2014 deals with how the energy accounting is to be done.

Section 15 (1) The accounting of electricity generated, consumed and injected by the eligible consumer in the ToD billing system, shall be done on the basis of readings taken for the billing period applicable to him.

Section 15 (2) The total electricity generated during a billing period shall be assessed using the readings in the solar meter.

Section 15 (3) The quantum of electricity drawn from the distribution system of the licensee for the use of the eligible consumer, the quantum of electricity injected into the distribution system of the licensee by the eligible consumer and the net quantum of electricity drawn from or injected into the distribution system by the eligible consumer during a billing period shall be assessed using the readings in net meter.

Section 15 (7) If the electricity injected into the system by the eligible consumer as measured in the net meter, is less than the total electricity drawn in all the premises owned by him within the area of supply of the licensee, during any billing period, the licensee shall recover from such eligible consumer, the electricity charges at the rates applicable to each premises as per the tariff order issued by the Commission, for the net quantum of electricity drawn by him from the distribution system, after taking into account any balance electricity banked in the previous billing period.

As per these clauses, if the consumer draws more energy than the generated/ injected power to the Grid, then the consumer has to pay the charges to the Licensee for the excess energy consumed. The facility of banking the solar power to the Grid of the Licensee is ensured by the Section 7 of this regulation i.e., the obligation of the distribution Licensee to provide banking facility.

Section 134 (1) of Kerala Electricity Supply Code 2014 “Under charged bills and over charged bills” states, “If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.”

Section 152 of Kerala Electricity Supply Code 2014 states on “Anomalies attributable to the licensee which are detected at the premises of the consumer” as follows: -

- 152 (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.
- 152 (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.
- 152 (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:

Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months.

This Section gives the right of Licensee to recover the undercharged amount or amount due to Licensee due to the anomalies detected in the premises of the consumer.

The audit or inspection conducted is the review which establish that the consumer was undercharged. In the installation like this the technical audit, site inspection etc. only could establish the anomalies if any arise due to this.

Another contention of the appellant is about the applicability on 'limitation period' for charging this undercharged bill.

The Section 152 (3) states that the maximum period is limited to 24 months. In this aspect it is very important to refer the order of the Apex Court in a Civil Appeal No. 7235/2009 pronounced on 05-10-2021 in the matter of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitaran Nigam Ltd.

The Court clearly define (i) the meaning of first due under Section 56(2) of the Act (ii) in the case of wrong billing tariff having been applied on account of mistake when would the amount become first due.

“On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the Licensee and that therefore, electricity charges would become first due only after the bill is issued, even though the liability would have arisen on consumption. The period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56 (2). This Court also held that Section 56 (2) does not preclude the Licensee from raising an additional or supplementary demand after the expiry of the period of limitation in case of a mistake or a bona fide error.” Again, the order states “Once it is held that the term “first due” would mean the date on which bill is issued and once it is held that the period of limitation would commence from the date of discovery of mistake, then the question of allowing the Licensee to recover the amount by any other mode, but not take recourse to disconnection of supply would not arise.”

There are mainly two lapses happened from the Licensee: -

(1) The CT has been wrongly connected by the officials which resulted to the revenue loss to the Licensee.

(2) When the consumers monthly consumption was around 3500 units, the

22-kW solar plant never generate that much units, on yearly average the generation per month would be much lesser than the consumption. The officials in the Section Office never interested to review or cross check before billing. Then this would have been detected much earlier.

**Decision: -**

From the analysis of the arguments and the hearing, following decisions are hereby taken:

- (1) The appellant is liable to pay the short assessment bill amount issued by the Licensee.
- (2) The Licensee shall grant instalment facility of 30 monthly instalments without interest for making the payment.
- (3) The Licensee has to fix the responsibility to the officials who is responsible for this revenue loss to the Licensee and take suitable action.
- (4) The Licensee has to provide proper training to the field officers to avoid the recurrence of such mistakes.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/070/2022/ \_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sri. Abdul Kader Naina, Palmshade Hospital, Mannancherry, Alappuzha Dist. 688538
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., S.L. Puram, Alappuzha Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.