

THE STATE ELECTRICITY OMBUDSMAN

D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

www.keralaeo.org Email: ombudsman.electricity@gmail.

APPEAL PETITION No. P/001/2023

(Present: A. Chandrakumaran Nair)

Dated: 17th February, 2023

Appellant : Smt. Ciji Jiji
Proprietrix, RMG Movies,
Pottassery. P.O.,
Kanjiram, Mannarkkad,
Palakkad Dist. 678598

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Mannarkkad, Palakkad Dist.

ORDER

Background of the case:

The appellant Smt. Ciji Jiji is an owner of a cinema theatre named "P.M.J Movies" and a consumer of the Licensee (KSEBL) with consumer number 1167717013563 under the Electrical Section, Kanjirapuzha. The appellant availed connection on 24-04-2019 with the connected load is 98.437 kW and the contract demand is 80 kVA under the tariff LT 7C. The connection was disconnected on 15-04-2021 due to the default in payment and the notice is served for dismantling. The consumer approached to the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode and CGRF (NR) issued order dated 02-12-2022, stating that the respondent can realize the outstanding from the petitioner including the fixed charges after disconnection up to 180 days from the date of disconnection and also respondent is directed to give instalments for the arrear payments as per the request of the appellant.

Aggrieved by the decision of the Forum, the appellant filed appeal petition before this Authority.

Arguments of the appellant:

a) Appellant owns a theatre/multiplex by name "P.M.J Movies" situated in the 70.5 cents of property comprised in Survey no: 110/462 in Pottassery Village in Mannarkkad Taluk, Palakkad District. The said theatre was issued

with electrical connection from Kanjirapuzha Electrical section with consumer No: 1167717013563. The theatre/Multiplex was inaugurated only on 14.4.2019 and the same could function in its full strength only till 10.3.2020 on account of Covid 19 pandemic and the nationwide lockdown thereafter. The theatre has not functioned after 10.03.2020. Even though there were relaxations declared by the government for operating the theatre the Appellant was unable to resume the functioning of the theatre for reasons beyond her control. One that as part of the drainage and retarring work commenced by the PWD at Chirakkalpaddy-Kanjirapuzha 8km main road which is the road through which the public had access to the theatre/multiplex, works were undertaken for increasing the drainage on both sides of the road and accordingly all slabs in front of Appellant's theatre were removed and the drain therein was kept open. Thereafter the work of PWD did not proceed further as the Contractor abandoned the work. Even now the work of drain and road has not commenced. Hence the access of public to the theatre is blocked and complainant was not in a position to operate the theatre It is only upon completion of the drainage and tarring work that complainant will be able to run the theatre. Second reason that on 15.04.2021, the electric connection was disconnected by the Licensee for non-remittance of the bill.

b) Appellant submitted before CGRF that the action from the part of the licensee disconnecting the electrical connection was highly improper and illegal especially taking into account the covid-19 pandemic situation and the relaxations extended by the government to remit the electricity charges in installments.

c) The Kerala State Electricity Board Limited had initially issued B.O(FTD) No: 363/2020(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2020- 202 dated 30.05.2020 granting the relaxation of 25% of waiver on fixed charges for the Month of March, April, May, 2020 and balance 75% to be paid by December 2020. Thereafter by B.O(FTD) No: 118/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2020- 2021dated 10.02.2021, granted waiver of 50% in fixed charges for 10 months from March 2020 to December 2020 and to remit the balance amount in 6 installments. Hence the balance amount was to be paid in installments running till June 2021. It is in between this period that the licensee disconnected the electric connection of the theatre of the complainant on 15.04.2021.

d) Thereafter on account of the second wave of covid-19 pandemic, the KSEBL issued B.O(FTD)No:11/2021(KSEB/TRAC-D/Covid Pandemic- Tariff Concession/ 2021-2022 dated 02.07 .2021 granting rebate of 50% of the fixed charges for the month of May 2021 for theatres and to allow three installments to remit the balance amount. The Kerala State Electricity Board Limited has issued B.O(FTD) No: 36/2022(KSEB/TRAC-D/Covid Pandemic-Tari Concession/2021 -2022 dated 12.01.2022 granting 50% waiver on fixed charges from June 2021 to October 2021 and six-monthly installments to remit the balance amount.

e) The electrical connection to consumer No: 1167717013563 was disconnected on 15.04.2021 and even thereafter fixed charges have been assessed on the complainant which is highly improper and illegal.

f) Appellant produced as document No: 2 replies issued to the Appellant for the application submitted under Right to Information Act wherein it was stated that the Appellant was extended exemption for an amount of Rs 72500/-as per the Board Orders. To state more specifically Rs 9900 on 27.06.2020, Rs. 56100/- on 19.02.2021 and Rs 6600/- on 20.07.2021. Appellant also provided a calculation sheet as to the amount charged for each month. From Document No: 2, the fixed charge for consumer No: 1167717013563 is Rs 13235/-. Further it is clear from the calculation sheet provided by the licensee that the entire fixed charge has been computed against the complainant for the period from April, 2020 to December 2020, the period during which 50% fixed charge waiver was *offered* as per B.O(FTD) No: 118/2021(KSB/TRAC-D/Covid Pandemic-Tariff Concession/ 2020- 2021dated 10.02.2021. Similarly, the entire fixed charge have been computed against the complainant for the period from May,2021 to October 2021, the period during which 50% fixed charge waiver was *offered* as per B.O(FTD)No:511/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2021-2022 dated 02.07.2021 and B.O(FTD) No: 36/2022 (KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2021-2022 dated 12.01.2022. Similarly, fixed charge is computed even after the disconnection. In document No: 2, it is by computing the entire fixed charges for the period after disconnection also that the licensee had arrived at the conclusion that Rs 2,50,381/- is due from appellant to Board as on 14.1.2022. Like the claim for surcharge is also against the Board Orders.

g) On 4.3.2022 as evident from document no: 3 produced along with the

complaint, the appellant was served with dismantling notice stating that electric connection will be dismantled if the complainant fails to remit the amount of Rs2,30,616/- with the licensee within 15 days. the dismantling notice now served on to the complainant is highly illegal and unsustainable.

h) Admittedly the electric connection was disconnected on 15.4.2021. Hence, no amount under fixed charge can be claimed after April 2021. Similarly, the collection of Surcharge for the period during which waiver was *offered* is illegal and unsustainable. Thus, the complaint was filed before the CGRF. Northern Region, Kozhikode.

i) CGRF, Kozhikode though granted reliefs to the appellant the same suffers illegality on the following counts [challenge to the order of the CGRF, Kozhikode limited to the following grounds]:

- The total amount calculated as outstanding is not correct.
- The CGRF, Kozhikode ought to have granted the installments rather than relegating the matter to the respondents in general.
- The CGRF, Kozhikode failed to answer the grievance as to the surcharge claimed from complainant.

The amount calculated as waiver amount on 19/2/2021 for the month from March 2020 to December 2020 is not correct. It is submitted that for the month of March, 2020-May 2020 as per B.O (FTD) No:363/2020(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2020-2021 dated 30.05.2020, 25% waiver was offered. Thereafter for the month of March, 2020- May 2020 again another 50% waiver was granted by B.O(FTD) No: 118/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2020-2021dated 10.02.2021. Thus, the total waiver granted for the month of March,2020-May 2020 is 75% which comes to Rs. 29700/-. Thus, the deduction of Rs. 9900 from the amount of Rs 66000/- is not correct. Further the amount of Rs.9900/- ought to have been added to Rs 66000/-, thus making the total waiver amount as Rs.75900/-.

Similarly, as per B.O(FTD)No:36/2022(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2021-2022 dated 12.01.2022 as understood from the order of CGRF, Kozhikode, waiver of 50% was *offered* for the month of May 2021. However as per Board Order B.O(FTD) No: 511/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2021-2022 dated 02.07.2021 May 2021 was granted waiver of

50%. So, in effect there is complete waiver of fixed charges for the Month of May 2021. Hence, the total waiver amount ought to have been calculated as:-

27/06/2020	---	9900/-
19/02/2021	---	66000/-
20/07/2021	---	13200/-
9/02/2022	----	<u>33,000/-</u>
		<u>Rs.1,22,100/-</u>

Further, the CGRF, Kozhikode committed error in computing the outstanding amount in the order. The outstanding amount arrived should be Rs 2,06,711- Rs 1,22, 100/- = Rs 84,611/-. The CGRF, Kozhikode ought to have granted 20 installments for remitting the said amount.

Relief sought:

1. The surcharge claimed from the appellant ought to have been waived.
2. To grant installment facility [20 installments] to the appellant to the amount payable by the petitioner after offering the waiver as per Board Orders viz B.O(FTD)No:363/ 2020(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2020-2021 dated 30.05.20.20; B.O(FTD) No: 118/2021(KSEB/ TRAC-D/Covid Pandemic-Tariff Concession/2020-2021dated 10.02.2021; B.O(FTD) No:511/2021(KSEB/ TRAC-D/Covid Pandemic-Tariff Concession/ 2021-2022 dated 02.07.2021 and B.O(FTD) No:36/2022(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2021-2022 dated 12.01.2022.
3. To waive the surcharge claimed from the appellant.
4. Not to dismantle the transformer and other electrical equipment's from the premises of the appellant without her consent.

Arguments of the respondent:

At the outbreak of Covid 19 Pandemic and the resultant lock down, theaters and other establishments are closed and Government announced various relief measures for the public at large. The relief provided in electricity charges by KSEB Ltd based on the directions of the State Government are duly passed on to all the consumers. The relevant Board Orders allowing relief to cinema theaters are as follows:

- (i) BO(FTD)No:363/2020(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2020-2021) dated 30.05.2020 allowing 25% rebate on fixed charges for the months of March, April and May 2020 and to defer the balance fixed charges till 15.12.2020 without interest during the deferred period.
- (ii) BO(FTD)No:118/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2020-2021) dated 10.02.2021 allowing additional relief of 25% on fixed charges for the months of March, April and May 2020 and providing 50% relief on fixed charges for months from June to December 2020 and also to allow six equal monthly installments for the balance amount.
- (iii) BO(FTD)No:511/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2021-2022) dated 02.07.2021 allowing 50% rebate on fixed charges for the month of May 2021 and to allow three equal installments without interest till 30.09.2021 to remit the balance dues.
- (iv) BO(FTD)No:36/2022(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2021-2022) dated 12.01.2022 allowing 50% rebate on fixed charges for the months from June to October 2021 and to allow six equal monthly installments to remit the balance dues.

The waiver as per the above said Board Orders were allowed to the consumer as follows:

- (i) Rs 9900/- allowed as relief on 27.06.2020 being 25 % rebate as per BO dated 30.05.2020.
 Fixed charge per month = 60 kVA (being 75% Contract Demand) X Rs 220/kVA (as per Tariff Order dated 08.07.2019) =Rs 13200/-
 Relief 25%FC =Rs 3300/-
 Hence for 3 months (March to May 2020) =Rs 9900/-
- (ii) Rs 56100/- allowed as relief on 19.02.2021 as per BO dated 10.02.2021.
 Fixed charge per month =Rs 13200
 Additional 25% for above three months (March to May 2020) =Rs 9900/-
 Relief of 50 % FC per month =Rs 6600/-
 Hence for 7 months from July to December 2020 =Rs 46200/-
 Total =Rs 56100/-
- (iii) Rs 6600/- allowed as relief on 20.07.2021 as per BO dated 02.07.2021.
 Fixed charge per month =Rs 13200
 Relief of 50 % FC during May 2021 =Rs 6600/-

- (iv) Rs 33000/- allowed as relief on 09.02.2022 as per BO dated 12.02.2022
 Fixed charge per month =Rs 13200
 Relief of 50 % FC per month =Rs 6600/-
 Hence for 5 months from June to October 2021 =Rs 33000/-

As such, relief as per the Board Orders have been passed on to the appellant. The following facts are submitted on the statements made by the appellant.

The connection was disconnected for non-payment of dues by consumer even after allowing all relief provided under Board Orders. The connection was disconnected on 15.04.2021. The appellant has not remitted any amount till date. The appellant stated that installments are running till June 2021, but has not stated anything about the non-remittance of any amount till April 2021, when supply was disconnected.

The fixed charge rebate for the period from May to October 2021 was allowed during disconnected period also. The connection was disconnected due to non-remittance of earlier bills. Fixed charges are payable during disconnected period also. KSEB Ltd has allowed the rebate in FC during the same period also to the consumer. The Regulation 141 of the Kerala Electricity Supply Code, 2014 provides that fixed charge is payable during the period of disconnection also. The connection was not dismantled since the appellant filed disputes and were pending before the Forum.

The FC for the appellant is Rs 13235/- which includes the meter rent of Rs.30/- as per Tariff Order dated 08.07.2019 and the service tax thereon. Since the appellant is not willing to remit any amount whether disputed or undisputed, KSEB Ltd has no other option than to disconnect the service connection.

The calculation provided by KSEB Ltd on rebate is correct and there is no period with 75 % rebate or with complete waiver of FC as per the above Board Orders. Regarding the prayers of the appellant, KSEB Ltd humbly submits the following:

- (a) Regarding the first prayer of the appellant, it is submitted that the consumer has not approached KSEB Ltd for availing installment facility, as directed by the CGRF. The appellant has not taken any efforts to remit any charges to KSEB Ltd. for the last two years. The appellant has disputed only on the amount of rebate

applied during the Pandemic period as per Board Orders. The appellant has not taken any efforts to remit any undisputed amount also.

(b) Regarding the second prayer of the appellant, it is submitted that the surcharge claimed by KSEB Ltd is after considering the prevailing Board Orders. Moreover, applicable rebate is applied in time even though the appellant has not remitted any previous amount and hence no interest will be accrued. As such, the surcharge accrued is only due to the non-remittance of the current charges in time.

(c) Regarding third prayer, the appellant is an LT consumer and the Transformer is the property of KSEB Ltd. The installation and rearrangement of the transformer therefore vests the KSEB Ltd and will be decided based on the load requirements and other technical parameters. Hence, consent of Smt. Ciji Jiji cannot be a criterion for removal of the transformer. However, at present the said transformer is being utilized by KSEB Ltd for serving other consumers and hence, the prayer is not relevant now.

From the above, it is clear that the averments of the appellant are without any merits. It is requested by the respondent that this Authority may consider the facts submitted by KSEB Ltd as above while disposing t/he matter by rejecting the complaint and allow relief to KSEB Ltd that it deems fit.

Analysis and findings:

The hearing was conducted on 07-02-2023 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Sri. Jiji Joseph, the husband of the appellant was attended the hearing on behalf of the appellant and on the respondent side, Smt. Savitha. K.S., Assistant Executive Engineer, Electrical Sub Division, Mannarkkad of Licensee was attended the hearing. 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 the owner of the "P.M.J Movies", the cinema theatre in Pottassery Village in Mannarkkad availed the power connection on 24-04-2019. The theatre was inaugurated on 14-04-2019 and could function only till 10-03-2020 and then it was closed due to the nationwide lockdown. The appellant could not make the theatre functional on withdrawal of the lockdown due to the road

work and drainage work of PWD in Chirakkalpaddy-Kanjirappuzha Road. The work was not completed and hence, the access of the public to theatre is blocked.

The Licensee has extended relaxation of waiver of fixed charges to the cinema theatre as below: -

Sl. No.	Board order reference	Period	Concession
1	BO(FTD)No:363/2020(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2020-2021) dated 30.05.2020	March, April & May 2020	25% of FC
2	BO(FTD)No:118/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession/ 2020-2021) dated 10.02.2021	March, April & May 2020 June to December	25% of FC (additional to order 4) 50% of FC
3	BO(FTD)No:511/2021(KSEB/TRAC-D/Covid Pandemic-Tariff Concession / 2021-2022) dated 02.07.2021	May 2021	50% of FC
4	BO(FTD)No:36/2022(KSEB/TRAC-D/Covid Pandemic-Tariff Concession / 2021-2022) dated 12.01.2022	June to October 2021	50% of FC

In the first order, the balance fixed charge was deferred till 15-12-2020 and instalments six, three and six respectively given for paying the arrear fixed charges vide the order (2), (3) & (4). Accordingly, the relief were granted to the appellant by the Licensee totaling to Rs.1,05,600/- (Rs.9900/- + Rs.56,100/- + Rs.6,600/- + Rs.33,000/-) as per the orders referred above. The amount calculated as the waiver by the appellant amounting to Rs.1,22,100/- is not correct and the eligibility of the appellant is only Rs.1,05,600/-. As per the order referred (2) above the total rebate offered for the months March to December was only 50%, then 25% rebate calculated as per the order (1) above for the months March to May 2020 @ 25% is to be reduced from amount arrived as per order (2) and there is no 75% waiver for March 2020 to May 2020 as appellant claimed. There is no 100% waiver for May 2021 as she claimed as per the order (3) & (4) above. It is noted that the appellant has not remitted the power charges in spite of giving the waiver and instalments granted by the Licensee. The appellant has not started any instalment till April 2021 and accordingly the respondent disconnected power on 15-04-2021.

The Section 138 (1) (a) as per the Kerala Electricity Supply Code 2014:-

Section 138 (1) The Licensee shall not disconnect the supply of electricity to any consumer except:

- (a) if the consumer defaults in payment of the dues payable to the licensee as per the bill or demand notice or any order issued by a competent authority, within the period stipulated therein;

The Section 139 as per the Kerala Electricity Supply Code 2014:-

Section 139 (1) “The licensee shall, in the case of disconnection proposed on the grounds mentioned in clauses (a) and (b) of subregulation (1) of regulation 138 above, issue a disconnection notice in writing, as per Section 56 of the Act, with a notice period of not less than fifteen clear days, intimating the consumer about the grounds for disconnection and directing him to pay the dues with penal charges within the notice period.”

Section 139 (2) “If the consumer fails to remit the dues within such notice period, the licensee may disconnect the service of the consumer on the expiry of the said notice period, by cutting off the supply in the manner as the licensee may deem fit:

Provided that the licensee shall not disconnect the supply to a consumer under this sub-regulation, if the consumer deposits under protest, an amount equal to the sum claimed from him or equal to the electricity charges due from him for each month, calculated on the basis of the average charge for electricity paid by him during the preceding six months whichever is less, pending disposal of any dispute between him and the licensee:

Provided further that the supply shall not be disconnected after 1:00 PM on any day or on holidays so that the consumer is not deprived of a chance to remit the dues on the same day and get reconnection.”

The Section 141 as per the Kerala Electricity Supply Code 2014 on Charges payable during the period of disconnection: “The consumer is liable to pay the charges if any as approved by the Commission, during the period of disconnection also:

Provided that no charge shall be due to the licensee for the period which is in excess of one hundred and eighty days from the date of disconnection if the connection remains continuously disconnected for one hundred and eighty days except on the request of the consumer.”

The Section 56 of Indian Electricity Act 2003 also states about the disconnection of supply in default of payment.

The above Sections are clearly explained about the procedure is adopted for disconnection. Here the appellant was not making payment of arrear till April and hence, disconnected. Even after the disconnection, the fixed charges are to be payable by the consumer. However, this could be charged only up to 180 days from the date of disconnection, then it will be treated as deemed dismantling.

One prayer of the appellant was not to dismantle the transformer and connected electrics as the same was installed as a deposit work. During the hearing also, the appellant stated that the Licensee has installed a transformer for providing connection to their theatre and cost of the same was borne by the appellant. The appellant was not requested to dismantle the supply fearing that the transformer is also dismantled. There are some connections from this transformer for some other installations.

The appellant's request is that the same transformer is to be utilized for providing the power connection to the new theatre as the appellant was already spent the cost of this transformer. The appellant also mentioned that there is a plan to build a new highway along the site of the theatre and then the theatre is to be demolished. Then the appellant is planned to construct another new theatre near the available land, then the power supply is required, the existing transformer needs to be utilized for the same. The respondent has already stated that the transformer will not be dismantled while dismantling the power supply of theatre as there is other loads connected to this. The transformer could be utilized for the future power connection as per the availability.

Another prayer of the appellant is for the waiver of surcharge billed on the appellant. The surcharge is charged to compensate the revenue loss of the Licensee due to the delay in making the payment. The rate of interest is fixed by the Kerala State Electricity Regulatory Commission. However, the Licensee should not charge the surcharge during the lock down period and concession period.

Decision: -

From the analysis of the arguments and the hearing, following decision is hereby taken:

- (1) The appellant is liable to pay the arrear outstanding including the fixed charge after disconnection up to 180 days from the date of disconnection.

- (2) The Licensee shall give instalment facility at least 12 monthly instalments for paying the outstanding amount.
- (3) The request of the appellant for utilizing the existing transformer for the future connection to the new theatre may please be considered favourably by the Licensee.
- (4) The Licensee shall not charge surcharge during the lockdown and the period of which concession is offered.

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

ELECTRICITY OMBUDSMAN

P/001/2023/ _____ dated _____.

Delivered to:

1. Smt. Ciji Jiji, Propreitrix, RMG Movies, Pottassery. P.O., Kanjiram, Mannarkkad, Palakkad Dist. 678598
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Mannarkkad, Palakkad 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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode