

## STATE ELECTRICITY OMBUDSMAN

Thaanath Building Club Junction Pookkattupadi Road Edappally Toll

KOCHI 682024

[www.keralaeo.org](http://www.keralaeo.org)

Phone 04842575488 +919447226341 Email : info@keralaeo.org

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### REPRESENTATION No: P 126/10

Appellant : M/s Sree Padmanabha Theatre  
East Fort, Thiruvananthapuram

Respondent: Kerala State Electricity Board  
*Represented by*  
The Assistant Executive Engineer  
Electrical Sub Division, FORT ,Thiruvananthapuram

### ORDER

M/s Sree Padmanabha Theatre, East Fort, Thiruvananthapuram submitted a representation on 22.2.2010 seeking the following relief:

1. *Set aside the order of the CGRF South on OP 401/2008 dated 21.12.2009 to the extend it direct the petitioner to remit the amount of Rs 7,28,314/-*
2. *Set aside the demand dated 22.6.2009 in whole issued by the Assistant Engineer, Fort, Thiruvananthapuram for an amount of Rs 10.00,861/- towards arrears of Electricity Charges for the period from 9/2001 to 3/2004 (Electricity charges Rs 7,28,314/- and surcharge Rs 2,72,547/-)*
3. *Direct the Assistant Executive Engineer Fort Thiruvananthapuram to allot HT Tariff to the petitioner*

Counter statement of the Respondent was obtained and hearing conducted on 22.05.2010.

The Appellant is an LT 3 phase consumer, cinema theatre, with connected load around 143KVA .They had been classified as Deemed HT consumer with Consumer Code 22/2232 up to 31.3.2004. They could not convert them selves as HT consumer within the prescribed time limit and hence were being billed under LT VII tariff since 1.4.2004 . As per the KSEB Order number BO (FB) 280/2003 (Plg.Com.3776/96) dated 07.03.2003 Cinema theatres, where there were no independent transformers and there is no space for the installation of HT equipments, shall be allowed to continue under HT tariff by installing required capacity TOD meter and CT on the LT side by 30.6.2003 subject to certain conditions related to positive correction on the recorded consumption to take care of the transformer losses. This date was subsequently extended up to 31.3.2004.

Based on a request dated 2.12.2003 by the Appellant, the Deputy Chief Engineer, Urban Circle, Thiruvananthapuram approved the proposal to install the TOD meter and CT on the LT side of the connection and to execute HT agreement by the Appellant. The Appellant purchased TOD meter and CT and installed the same by May 2004 and submitted the HT agreement on 18.6.2004. During August and September 2004 KSEB officials asked for documents like Installation completion report, test report, approval from Electrical inspector etc even though it was clear that the Board Order on the conversion had envisaged only installation of TOD meter and CT after getting them duly tested. More over the Executive Engineer asked the consumer on 13.9.2004 to clear arrears to the tune of around Rs 26.6 Lakhs ( Rs 9,35,822/- for the period 2/97 to 6/01 as furnished by SOR, Rs 10,32,251/- for the period from 8/2001 to 3/2004 as furnished by Section office, and Rs 6,99,703/- related to APTS inspection) as a precondition for conversion of tariff. Aggrieved by this the Appellant moved the Lok Ayuktha with a petition number 1871/2005. During the review of the matter by the Lok Ayuktha it was revealed that the demand of Rs 6,99,703/- related to APTS inspection was already withdrawn earlier by KSEB and the demand of Rs 9,35,822/- for the period 2/97 to 6/01 as furnished by SOR was erroneous. It was also admitted that arrears due to part payment of invoices from 9/01 to 3/04 was only outstanding from the consumer. The Lok Ayuktha directed the Respondent on 31.5.2006 to reassess the charges to be paid by the Appellant. The Respondent KSEB did not take any action on the directives of the Lok Ayuktha for 3 years. Later the Appellant approached the Respondent to settle the arrear issues during an Adalath in February 2009. Consequently the Respondent sent a notice to the Appellant on 22.6.2009 asking them to remit an amount of Rs 10,00,861/- being the current charges at deemed HT rates from 9/2001 to 3/2004 (Rs 7,28,314/-) and 'surcharge' at 6% rate from 1.4.2004 (Rs 2,72,547/-) . The Appellant challenged this notice before CGRF Kottarakkara . CGRF quashed the demand for the 'surcharge' and held that the demand of Rs 7,28,314/- towards the arrears of current charges only are payable by the consumer.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The issues/pleas shall be examined below:

1. The demand dated 22.6.2009 issued by the Assistant Engineer, Fort, Thiruvananthapuram for an amount of Rs 10,00,861/-

As mentioned earlier the Executive Engineer in his letter dated 13.9.2004 had 'fastened a liability of Rs 26,67,776/- and refused to process the application of the petitioner for converting to HT connection'. This demand was found to be wrong subsequently. The officers of Fort section had raised demands against the consumer under LT VII A tariff from 9/2001 to 3/2004 even though the KSEB had allowed HT Tariff up to 31.3.2004. Against this demand the Appellant had remitted the bills as per the old HT tariff on their own calculations. Surprisingly the anomaly was not corrected for years together. The billing branch of Fort section showed criminal negligence on the matter.

Only in February 2009 , probably during the Adalath, the error was 'discovered' and rectified. It is seen that the KSEB had foregone all other claims fastened on the consumer earlier in September 2004.

Along with the notice dated 22.6.2009 the Assistant Engineer had attached a statement showing the calculation of arrears . I have carefully gone through the statement. The statement shows monthly demand under deemed HT tariff , which the consumer is bound to pay as per the relevant Board Orders , the amounts remitted by the consumer every month based on their own calculations, and the balance due every month. Hence the Respondent has arrived on the total figure of Rs 7,28,314/- as arrears.

The Appellant has objected to this demand mainly based on Section 56(2) of the Electricity Act 2003 .They claim that the amount claimed is the balance after remittance of the amounts claimed as per HT for the period from 9/2001 to 3/2004.This is a factual mistake. The Respondent had raised demands and issued invoices under LT VII earlier for the period, as shown in the work sheet enclosed as page 58 of the Appeal representation. The letter dated 22.6.2009 of the Assistant Engineer also shows that demand for the period under HT tariff had been raised consequent to the Adalath in February 2009.Hence it is also clear that the demand under HT tariff became 'first due' only when an arrear notice was sent on 22.6.2009. So the claim of the Appellant that the amounts under question had become first due from 9/2001 to 4/2004 can not be accepted. I am inclined to conclude that the Section 56(2) of the Electricity Act 2003 can not bar the claim dated 22.6.2009 of the Respondent.

The Respondent has calculated 'surcharge' at 6% from 1.4.2004 onwards. But no where it has been claimed that the KSEB had earlier raised demand at HT tariff for the period 9/2001 to 3/2004. Consumer had paid amounts at HT rates of his own calculation , while KSEB continued to raise demands illegally at LT VII. Hence consumer is not responsible for the non payment of this demand till June 2009.So I am inclined to agree with the verdict of the CGRF that KSEB shall not be eligible for the 'surcharge' claimed. But the Appellant shall be liable to pay the interest as per rules from 22.7.2009 , that is , after one month from the date of raising the revised demand.

The Appellant shall be free to verify the details , if necessary with the help of the records available in Billing Branch of the Fort section of KSEB and convince him self on the correctness of the calculations. The Respondent shall make every arrangement for convincing the Appellant about the correctness of calculations.

Based on the above analysis , the demand dated 22.6.2009 issued by the Assistant Engineer, Fort, Thiruvananthapuram for an amount of Rs 7,28,314/- towards arrears of Electricity Charges for the period from 9/2001 to 3/2004 is upheld , and the claim for 'surcharge' is disallowed .

The order of the CGRF South on OP 401/2008 dated 21.12.2009 to the extend it direct the petitioner to remit the amount of Rs 7,28,314/- is upheld.

## 2. The question of allotting HT Tariff to the petitioner

The Cinema theatres whose connected load was above 100KVA but less than 150KVA were treated as deemed HT consumers and billed under HT tariff up to 31.3.2004.Such consumers were to convert as HT consumers by installing necessary equipments. In cases where there was no independent transformers and there was no space for the installation of HT equipments, such consumers were allowed to continue under High Tension tariff if they install required capacity TOD meter and CT on the LT side .The cut off date was 31.3.2004 after which theses consumers were to be billed under LT tariff.

The Appellant had submitted an application for conversion to HT tariff on 2.12.2003 .The Dy Chief Engineer, Urban Circle, Thiruvananthapuram approved the proposal to install the TOD meter and CT on the LT side of the connection and to execute HT agreement by the Appellant on 30.3.2004 . It has been established that the Appellant had purchased TOD meter and CT and installed the same by May 2004 and submitted the HT agreement on 18.6.2004 .The correspondence between the Appellant and the KSEB officials show that the certain documents had been submitted on 28.7.2004 and 31.8.2004 . Finally on 13.9.2004 the Executive Engineer asked him to clear an arrear of around Rs 26.6 Lakhs as a precondition for executing the agreement for HT tariff. . On verification of the various documents presented before me it can be seen that the conversion of the consumer to HT tariff had been blocked by this demand for clearing arrears . The Respondent has admitted that the request for conversion to HT was not processed since the consumer had not cleared the arrears. They claim that the applicant was addressed on 3 occasions to clear the arrears.

But as explained earlier it was subsequently proved and agreed by the Respondent that majority of the arrear claims, around 70% of the claims, were erroneous or bogus. On judicial review , two major claims were practically withdrawn. The remaining claim for the period upto 3/2004 was seen based on wrong application of LT VII tariff earlier. The Respondent had not cared to apply correct tariff , namely HT, for the period ending 3/2004. As pointed out by the CGRF *'all these shows the callous indifference and culpable lapses on the part of the officials of the Board in raising a correct demand for the electricity supplied to a consumer'*. Even after obtaining directives from a judicial body like Lok Ayuktha the officials did not care to reassess the arrears .

In short , the KSEB officials including the then Executive Engineer of Electrical Division Thiruvananthapuram, the then Special Officer (Revenue), the then Assistant Executive Engineer of Fort subdivision and officials in charge of Billing in Fort section are found to be responsible for the following lapses :

1. Fastened a wrong and bogus liability of Rs 26,67,776/- on the Appellant and refused/blocked the processing of the application for converting to HT tariff .
2. Failed in reassessing the actual dues from the consumer , sleeping on the issue for more than 3 years ,with utter disregard to the orders of Lok Ayuktha dated 31.5.2006.
3. Failed in realizing an amount of Rs 7,28,314/- from the consumer between 9/2001 to 3/2004 by wrongly applying LT tariff to the consumer contrary to the Orders of the KSEB.

It is the management of the Licensee KSEB to decide how the above lapses are to be treated.

Any way the Appellant consumer had suffered irreparable losses by way of denial of an opportunity to convert to HT tariff some times in 2004 .Hence I feel that the consumer is eligible for the relief even though it is delayed for years. The Respondent KSEB has to provide HT tariff to the Appellant once they clear the dues as mentioned above after testing the present condition of TOD Meter , and CT , and executing the HT agreement .The Appellant may have to submit the essential documents required for executing the agreement.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The demand dated 22.6.2009 issued by the Assistant Engineer, Fort, Thiruvananthapuram for an amount of Rs 7,28,314/- towards arrears of Electricity Charges for the period from 9/2001 to 3/2004 at HT tariff is upheld but the claim for 'surcharge' is disallowed . The Appellant shall be liable to pay the interest as per rules from 22.7.2009 , that is , after one month from the date of raising the revised demand.*
2. *The order of the CGRF South on OP 401/2008 dated 21.12.2009 to the extend it direct the petitioner to remit the amount of Rs 7,28,314/- is upheld.*
3. *The Appellant shall be eligible for HT tariff in accordance with the BO (FB) No: 280/2003 (Plg.Co.3776/96) dated 07.03.2003 and BO (FM) No:588/2004 (Plg.Co.3776/96) dated 05.03.2004 if the arrears as noted above are remitted.*
4. *No order on costs.*

Dated this the 24th day of May 2010,

P.PARAMESWARAN  
Electricity Ombudsman

No P 126 /2010/ 567 / dated 24.05.2010

Forwarded to: 1. M/s Sree Padmanabha Theatre  
East Fort, Thiruvananthapuram

2. The Assistant Executive Engineer  
Electrical Sub Division, FORT ,Thiruvananthapuram

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,  
VaidyuthiBhavanam,KOTTARAKKARA

