

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/033/2023
(Present A. Chandrakumaran Nair)
Dated: August-23-2023**

Appellant : Smt. Jelsy Shaji,
Kunnilakkat House,
Thykoodam People's Road,
TPRA 119A, Vyttila P.O.,
Ernakulam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Vyttila, Ernakulam.

ORDER

Background of the case

The appellant Smt. Jelsy Shaji is a consumer of the licensee (KSEB) of the Section Vyttila with consumer number 115356017209. The consumer also installed solar plant of capacity 3.43 kw. The complaint is that the fixed charges were collected for the total consumption. They have to pay the fixed charges even when the consumption is zero. The appellant also raised the complaint about the charging Electricity Duty for the generation electric power from the Solar plant. The charges for the net electricity banked to KSEB has not been paid and demanding the interest for the late payment of the banked energy. The appellant filed petition to the CGRF (Central Region) and CGRF issued order dated 16/05/2023. Aggrieved by the decision of the CGRF, the appeal petition has been filed to this office.

Arguments of the Appellant

1. Earlier Fixed charge was collected on billed energy consumption (export energy- import energy) as per KSERC order, but recently KSEB is calculating the Fixed charges in a different way neglecting the KSERC Tariff regulations, adding Generated energy from Solar also which is not mentioned in website. CGRF order and RTI information giving contradictory statements without referring any KSERC Tariff regulations. As such the CGRF order is not logical without any proof. Considering the above points request to return of excess charge collected by KSEB so far with interest.
2. Also, recently KSEB is levying Generation duty of 1.26 paise on total consumption as per 1963 act, when solar energy was not found and not reasonable as per CGRF order. Request to refund the same with interest.
3. Also, the reimbursement of export energy charges is not paid within one month as per KSERC order and if delayed no interest is paid. Also, the details of reimbursement of export energy bill are not provided to the consumers. Request to pay interest if delayed and provide proper bill.
4. KSEB is increasing energy charges and surcharges to all the consumers, but at the same time they are decreasing the solar energy rate paid to the prosumers every year with unreasonable justification as solar production expense is less than previous years, which is no way reasonable.
5. We have lodged complaint regarding the monthly fixed charges calculation of for the solar consumers to KSEB section office. The RTI reply from A. Exe was illogical and not justified. We escalate the complaint to CGRF and included other inappropriate charges levied from the solar power producing consumers. Their answer is also not proved by any evidence.
6. As per RTI received the Fixed Charges of Solar consumers is calculated as follows, that is Generated Energy + Imported Energy — Export energy. The above regulation. As per the regulation it should be calculated on Billed consumption. Please note our billed consumption & energy charges are zero, we should be levied minimum charge.
7. Electricity duty is levied for Generated power with 1.2 paise/ unit as Generation duty which nowhere in the said KSERC regulation. (All these are against promoting Renewable energy producers. After all, these are installed and maintained by Consumers for the better environment, social responsibility and for our next generation).

8. Plan to reduce the rate fixed by KSEB for solar and wind power supplied by consumers in Kerala without proper reason. Read more at: [<https://www.onmanorama.com/news/kerala/2022/05/31/kseb-consumers-generating-solar-wind-power-may-receive-hefty-bil.html>]. KSEB reduced the export energy rate given to the prosumers from previous years with justification as the production cost is reduced, which is not true. At the same time maintenance labour cost increased. KSEB is supposed to give lowest buying rate from other sources during the year as per the solar regulation. In addition, KSEB is increasing the energy Tariff as buying electric power from the national grid at higher rates.
9. The export yearly bill must be generated and issued to solar consumers in order to verify the data and rates. If the export solar energy charges are not paid within one-month time from the settlement date, a late of fee interest at the rate 1% per month should be paid to prosumers.

Arguments of the Respondent

1. It is humbly submitted that the tariff for all type of consumers is fixed by the Hon'ble Kerala State Electricity Regulatory commission and KSEBL is billing the consumers as per the tariff fixed by Regulatory Commission. The domestic tariff includes both fixed charge and energy charge. Up to September 2019, fixed charge for domestic consumers was Rs. 30/- per month for single phase consumers and Rs. 80/- per month for three phase consumers.
2. In the tariff order 560 DD(T)/2018/KSERC dated Thiruvananthapuram 08 July 2019, the method of calculating fixed charge for domestic consumers was changed and was made proportional to the energy consumption slab of consumers. In case of ordinary domestic consumers, the energy consumption is total energy drawn from Boards Grid and recorded by energy meter. In case of solar consumers, the consumers are consuming energy from both solar system and Boards Grid and the excess energy is exported to Grid. Thus the total consumption is (energy imported from grid + energy generated by solar system) – energy exported to Grid. The fixed charge of the consumer is calculated using the above method and is not in violation of any existing tariff orders. Hence the demand of the petitioner to refund the fixed charge collected is without any merit and may be rejected.

3. The fixed charge is levied from consumers for the use of Boards grid. The KSEBL is making huge expenditure to construct and maintain the grid. As argued by the complainant, even though the billed units is zero, the consumer is using Boards Grid for import of energy when there is no adequate generation as per his demand due to atmospheric conditions or there is no generation during night time. Also, he is using the grid to export energy when there is excess generation compared to his demand in day time. Hence the demand of the petitioner to levy minimum fixed charge since his billed energy is zero, is not admissible.
4. Electricity duty is the statutory levy to the State Government as per provision of Section (4) of the Electricity Duty Act 1963 for every unit of energy generated and is applicable to all types of generators like solar, wind, diesel etc. In the tariff order of the Kerala state Electricity Regulatory Commission, it is clearly stated that “the rates specified in the schedule are exclusive of electricity duty and/or surcharge and/or any other taxes, minimum fees, duties and other impositions existing or that may be levied or imposed in future by the Government or the Commission, which are payable in addition to the charges payable as per the tariff mentioned in the schedule”. Thus, the collection of electricity duty is as per the existing rules and the demand of the petitioner to refund the cess collected with interest may be rejected.
5. Presently the net energy exported from October 1 to September 30 is calculated and credit given to solar consumers as per the rate fixed by Kerala State Electricity Regulatory Commission. From financial year 2023-24, the net energy export will be calculated from April 1 to March 31 and credit will be given to consumer as per the rate fixed by the Regulatory Commission for that period. As per the average power purchase cost order for the year 2022-23, issued by KSERC, it has been decided to settle the banked units of solar and other non-conventional sources at Rs. 2.69 per amount. Credit will be given to consumers as soon as the rate is fixed by the Commission. Also, bills are issued to solar consumers incorporating all the details as stipulated by the Regulatory Commission.
6. Energy charges of different category of consumers is fixed by the Kerala State Electricity Regulatory Commission and KSEB cannot increase the charges as KSEB wishes. KSEB will submit the income and expenditure statement before KSERC and project the tariff

increase required to meet the revenue gap. The Commission after detailed verification and after

conducting public hearing allow tariff increase if found justified. The tariff for solar energy exported to Boards Grid is also fixed by Hon'ble KSERC and KSEB is paying the consumers as per the rate fixed by KSERC.

Thus, all the demands of the petitioner is without any merit and hence the petition may be rejected.

Analysis and findings

The hearing of the appeal petition was conducted on 08/08/2023 at 11:35 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant's nominee Sri. Shaji, Greenol and the respondent Sri. Sunil K.W., AEE, Electrical Sub Division, Kerala State Electricity Board Ltd., Vyttila, Ernakulam.

The grievance of the appellant against the KSEB are

- (1) Charging of fixed charges for the total consumption.
- (2) Charging of Electricity duty for the self-generation.
- (3) Delayed payment for the banked energy and also to pay with interest for the late payment.

The fixed charges of the electricity consumers are charged based on the tariff fixed by the KSERC. The Section 45 of the Electricity Act 2003 states about the power to recover charges.

Section 45(1) *“Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity, him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.”*

Section 45 (3) *“The charges for electricity supplied by a distribution licensee may include-*

- (a) a fixed charges in addition to the charge for the actual electricity supplied;*
- (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.”*

The state electricity Regulatory Commission is fixed as the authority vested as per the Section 86 (1) (a) of the Act 2003.

86(1) *“The State Commission shall discharge the following functions, namely: - (a) determine the tariff for generation, supply , transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State:*

Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharges thereon, if any, for the said category of consumers.”

Thus, the domestic tariff includes fixed charges and the energy charges for the consumed energy. The fixed charges were Rs. 30/- per month for single phase and Rs. 80/- per month for three phase up to September 2019. On revising the tariff by KSERC on 2019, the fixed charges were calculated based on the consumption slab. The KSEB is calculating total consumption as solar energy generated + Energy imported from the Grid- Energy exported to the Grid. This is the total consumption of the consumer & fixed charges is calculated as per the slab of the total consumption. The fixed charges are levied to the consumer for the power infrastructure and also to maintain the same. A consumer who is already installed Grid interactive solar power also require power infrastructure mainly for two functions.

1. Importing the power from the Grid during the night as well as where there is new generation in the solar panel.
2. Exporting the excess power generated by the solar plant. The up-stream power infrastructure of the licensee is to be reserved for the consumer up to contract demand.

In view of the above, the fixed charges calculated by the licensee is seen to be in order.

The Electricity duty is charged as per the Section (4) of the Electricity Duty Act 1963.

Section (4) of Electricity Duty Act *“Every consumer belonging to any of the classes of the schedule shall pay every month to the Government in the prescribed manner a duty calculated at the rate specified against the class thereof.*

Provided that in cases where the supply of energy to a consumer is regulated by an agreement entered into between the Government or the licensee and the consumer it shall be competent for

the Government either to reduce the rate at which duty is liveable on such consumer or to exempt such consumer from payment of duty under this Section subject to such terms and conditions as may be imposed by the Government”.

The definition of consumer is given in Section 2(a) of the act.

2(a) *“Consumer includes a local authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise, a licensee or other person who consumes energy generated by himself, but does not include a licensee to whom energy is supplied by the State Electricity Board for supply to others”*

The section (5) of the Act states the licensee is empowered to collect the duty.

5(1) *“Every licensee shall collect and pay to the Government at the time and in the manner prescribed, the electricity duty payable under section 4 of this Act on the units of energy consumed by every consumer to whom energy is supplied by him. The duty so payable shall be a first charge on the amounts recoverable by the licensee for the energy consumed, and shall be a debt due by him to the Government”.*

5(2) *“ When any consumer fails or neglects to pay at the time and in the manner prescribed, the amount of electricity duty due from him, the licensee may, without prejudice to the right of the Government to recover the amount under Section 8, after giving not less than seven clear days” notice in writing to such consumer, cut off supply of energy to such consumers and he may, for that purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910, for the recovery of any charge or sum due in respect of energy supplied by him”.*

5A *“PERSONS CONSUMING ENERGY GENERATED BY HIMSELF TO INSTALL METERS - Every person who consumes energy generated by himself shall install a meter at such point and in such manner as may be prescribed and shall maintain it at all times in proper order”.*

These Sections are very clear about the Electricity Duty. The self-generation also to be metered with separate meter the duty is to

charged for the same. As such the duty calculation by the licensee is as per the statutory provisions.

The Grid interactive Solar system generate power during the day time and the excess power produced than that of the consumption is fed to the Grid. While calculating the import and export power, the excess of exported to the grid is considered as the banked energy. The excess of every month is accounted and the charges of the total banked energy is paid at the end of the year. The rate of the average solar power purchase is fixed by the KSERC.

The tariff for the excess banked power is fixed by the KSERC as per the Section 86(1) (a) of the Electricity Act 2003 and tariff fixation is a process including the public hearing.

The KSERC (Renewable energy and Net metering) Regulation 2020 describes in detail about the banking of energy and the settlement of the payment. The Section 21(5) of the regulation states as

21(5) *“The licensee shall pay to the prosumer for the net electricity balance in his account at the end of the settlement period, at the Average Power Purchase Cost (APPC) approved by the Commission;*

Provided that, in case of delay in payment of the net amount due to the prosumer beyond 30 days from the settlement date, the licensee shall pay interest to the prosumer at the FBIL rate + 200 base points prevailing on 1st April of the settlement year”.

This Section is very clear that the amount due to the prosumer is delayed beyond 30 days from the settlement date, the licensee shall pay the interest at the FBIL rate + 200 base points prevailing on 1st April of the settlement year. Then the licensee is liable to pay the interest to the consumer.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The fixed charge calculated by the licensee is in order.

2. The Electricity Duty is statutory levy and the licensee is empowered to charge.
3. The charges for the banked energy is to be released at the earliest by the licensee.
4. The licensee is liable to pay the interest as per the regulation.
5. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/033/2023/ dated: 23/08/2023 .

Delivered to:

1. Smt. Jelsy Shaji, Kunnilakkat House, Thykoodam People's Road, TPRA 119A, Vyttila P.O., Ernakulam.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Vyttila, Ernakulam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503