

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.com

Appeal Petition No. P/029/2024 (Present A. Chandrakumaran Nair) Dated: 22/07/2024

Appellant : Shri.Krishnadas.P, Green Fields
Kaippuzhamuttu,Cheppungal P.O,
Kottayam Dist.,

Respondent : The Special Officer (Revenue)
Vydyuthi Bhavanam, Pattom,
KSE Board Limited, Trivandrum -4

Respondent : The Deputy Chief Engineer
Electrical Circle, KSE Board Limited
Kottayam, Kottayam Dist.,

ORDER

Background of the case

The appellant Shri. Krishnadas P is the owner of the 4 star Hotel named Green Fields, Kaippuzhamutt, Kumarakam, Kottayam Dist. An HT service connection was availed from the Licensee (KSEBL) for running this Hotel. The power supply was connected on 08/03/2011. The consumer in Kerala is bound to pay the Electricity duty@10% of the total energy.As per the Government order dated 11/07/1986 the tourism also will be treated as Industry and all classified Hotels are eligible for this. Then Government order dated 31/08/2010 states that the Electricity Duty payable by the High Tension Industrial consumer is 10 paisa/unit instead of 10% of the energy charges.There was a dispute between the Licensee and the Hotels about the charging of this Electricity Duty and accordingly the Association of approved and classified Hotels of Kerala approached Hon'ble High Court of Kerala. Hon'ble court issued an interim order dated 13/10/2010 stating that the petitioner shall be permitted to remit the electricity bill with electricity duty @ 10 paisa per unit for energy consumed. The liability of the petitioner to pay at the rate 10% of energy charges will be decided in the writ petition. The Licensee was not extending the benefit of this order to the appellant stating that this Hotel commenced only after this court order.

The Licensee has issued in arrear cum disconnection notice to the Licensee for Rs.69,339/-. The appellant filed the petition to Hon'ble High court of Kerala seeking the direction not to demand the disputed arrears in electricity duty till the final disposal of the WP (c)30977/2010. Then the

court issued a direction stating that the appellant is relegated to alternative remedy available which is approaching CGRF. Then the petition was filed to the CGRF, and CGRF issued order dated 23/03/2024. Aggrieved by the decision of CGRF, the appellant filed the appeal petition to this Authority.

Arguments of the Appellant

Appellant/Petitioner is a 4 Star classified hotel functioning in the above address for the last many years and is represented by its Managing Partner. The appellant is also a member of Association of Approved and classified Hotel of Kerala, which is having its registered office at Wellington Island, Cochin. The Petitioner had approached the Hon'ble CGRF challenging an arrears/disconnection notice dated 18-11-2023 directing the Petitioner to pay an amount of Rs.69,339/-(Rupees Sixty Nine Thousand Three Hundred and Thirty Nine only) as arrears, by the respondent, Special Officer, Revenue.

The main contention raised by the Petitioner before CGRF was that the said demand is without any basis and is unsustainable and table to be set aside. On going through Arrear/Disconnection notice, it is evident that the amounts specified in the demand column as well as in the collection column is absolutely wrong. A mere examination of the bills vis-a-vis Arrear/Disconnection notice will reveal that the amounts paid by the Petitioner towards the bills raised is more than what is reflected in Arrear/Disconnection notice and that the tabulation sheet produced by the Petitioner will give a clear picture. It was further contended by the petitioner that the respondent has also been threatening the petitioner to pay the differential amount in electricity duty, which has been carried forward as disputed arrears. It is submitted that the petitioner, being a member of Association of Approved and Classified hotels has been paying electricity duty @ 10 paise per unit as per the order dated 13.10.2010 in WP(C) No 30977 of 2010 of Hon'ble High Court of Kerala permitting the, Association of Approved and Classified Hotels to remit electricity duty at the rate of 10 paise per unit. This writ petition is still pending consideration and KSEB can only act in compliance with the aforesaid order.

With regard to the dispute in collection of Electricity Duty which culminated in filing of WP(C) 30977/2010, it is respectfully submitted as follows. The Kerala Electricity Duty Act, 1963 stipulates about the electricity duty to be levied from various classes of consumers. Section 4, item 4 of the schedule, of the Kerala Electricity Duty Act, 1963, stipulated that electricity duty payable by industrial consumers taking supply of energy at 11KV and above is at 10 paise per unit of energy consumed. It is submitted that hotels availing supply of energy at 11KV and above were included in category 4(b) of the schedule to the Act in the light of Government Order dated 11.07.1986. This order was issued by the State Government accepting the recommendation of the Central Government to treat tourism as an industry so as to enable tourism promotional activities in the state to become "automatically eligible" for the concessions/incentives as applicable for the

industrial sector from time to time. As per the said Order, classified hotels are liable to be treated as industry for the benefit of concession in electricity charges as applicable to industrial consumers. Accordingly, after the amendment of Electricity Duty Act in consonance with the said Government order, classified hotels continued to remit electricity duty at 10 paise per unit of energy consumed.

While so, on 31.08.2010, the Power Department, Government of Kerala, issued an order based on the report of Controller and Audit General directing the Kerala Electricity Board to collect electricity duty at 10% of energy charges from non industrial consumers. Pursuant to this, with effect from September 2010, the 2nd respondent began demanding electricity duty at the rate of 10% of energy charges from similarly situated hotels. Finally, aggrieved by the demand of electricity duty at 10% of energy charges in contravention of the provisions of the Electricity Duty Act, 1963 and the GO, the Association of Approved and Classified Hotels of Kerala and one of its member hotel approached this Hon'ble Court and vide interim order, in WP(C) 30977/2010 dated 13.10.2010, this Hon'ble court ordered that the petitioner shall be permitted to remit electricity duty at the rate of 10 paise per unit in the light of Exhibit P1 Government order dated 11.07.1986. It was also ordered that the liability of the petitioner to pay the electricity duty at the rate of 10% of energy charges will be decided in the writ petition. Following this, the respondent Board has been collecting electricity duty at 10 paise per unit consumed from the members of the Association of Approved and Classified Hotels of Kerala. The said writ petition challenging demand of electricity duty at 10% of energy charges is pending consideration before this Hon'ble Court.

In the said circumstances, though the respondent Board claimed electricity duty at 10% of energy charges from the appellant herein, they were only collecting electricity duty at the rate of 10 paise per unit. This being so, the differential amount towards electricity duty was being calculated as disputed arrears. Accordingly, though the aforesaid differential amount towards electricity duty was carried forward as disputed arrears, there was no other arrears whatsoever from the part of this appellant towards the electricity bills till October 2023.

But surprisingly, from November 2022, the respondent Board began claiming arrears without any basis and this amount got carried forward in subsequent bills. Though repeated queries were made before the respondents time and again as to how the arrear amount has arose, the respondents neither could substantiate their demand for arrears nor could give a calculation statement. The said arrear amount was shown as undisputed charges and belated charges. It was categorically pointed out by the appellant that all payments, except the disputed electricity duty charges, have been remitted within time and under no circumstances, any such demand can be made.

In the meantime, vide the Kerala Finance Act, 2023 a notification dated 17.03.2023 was issued and Item No.4, Column 3 of the Kerala Electricity Duty Act, 1963 was amended and electricity duty at the rate of 10 paise per unit was increased to 5% of energy charges with effect from 17.03.2023. Accordingly, since April 2023, the petitioner began paying electricity duty at the rate of 5% of energy charges instead of 10 paise per unit. Anyhow, on receiving notice in the above case from CGRF, the respondents filed a reply incorporating strange and unsustainable grounds to substantiate their claim. Though the petitioner and the respondent were heard by the CGRF, vide order dated 21.03.2024 in OP no. 86/2023, the CGRF surprisingly dismissed the case stating that the licensee intimated the petitioner that the short remitted duty portion was marked as disputed in licensee's software by mistake. Highly aggrieved by the said order of the CGRF in dismissing the compliant without any authority, the appellant is filing this appeal challenging the said order for the following among other grounds.

Statement Of Facts submitted by Respondent

1. Deputy Chief Engineer

The appellant, M/s Green Fields is an HT consumer of Kerala State Electricity Board Ltd. (KSEBL), has been charged with electricity duty at 10% of the energy charge since its connection date on 08.03.2011. The interim order dated, 13.10.2010 W.P.(C) No.30977/2010, which provided certain reductions as pointed out by the appellant, does not apply to the appellant as service connection was provided after this date. It is submitted that reductions in electricity charges are only possible if the Kerala Tourism Department compensates for the shortfall in advance, as per Section 65 of the Electricity Act, 2003, or if specific government orders authorize such reductions. No such orders exist for M/s Green Fields, thus they must pay the full duty.

A billing software error marked the duty as disputed, leading to arrears. An Arrear cum Disconnection Notice for Rs. 69,339/- was issued on 18.11.2023. It is submitted that the arrears, totaling Rs. 10,58,953/- as of 31.12.2023, are non-disputable since the appellant was not covered by the interim order of the Hon'ble High Court in W.P.(C) No.30977/2010. Government Order dated 11.07.1986, which offers relief in electricity duty to the tourism sector, does not apply automatically since stringent criteria in this regard are to be followed. Beneficiaries are selected by a committee, and the appellant was not selected. Therefore, the consumer shall pay the full duty applicable to commercial consumers. The duty arrears in the case on hand is as per rules and regulations which are to be followed by the Licensee. Hence it is requested that the Hon'ble Ombudsman may be pleased to dismiss the appeal and issue appropriate order directing the appellant to remit the duty arrears with interest from due date till the date of realisation.

2. Special Officer Revenue

The petitioner Hotel is a HT consumer of Kerala State Electricity Board Ltd. (KSEBL) with consumer number (LCN: 12/5640) under Electrical Section, Thalayazham and the HT Agreement Authority is Electrical Circle, Kottayam. As per HT Agreement executed by them KSEBL is bound to collect current charges including Electricity Duty (a component levied by the State Government as per Electricity Duty Act, 1963) @10% of Energy charge amount for the quantum of energy consumed. The date of connection of this HT consumer is 08.03.2011. The interim order dated 13.10.2010 [Exhibit R1] in W.P.(c) No.30977/2010 is not applicable to the petitioner, since they were not included in the list of petitioners. subsequently produced by Association of Approved and Classified Hotels of Kerala on the aftermath aforesaid interim order.

KSEBL is not bound to extend any reduction in current charge bills (including duty portion) issued by it, unless and otherwise the Tourism Department in Government of Kerala, pay, the short remitted amount as claimed by the petitioner as compensation in advance as per Section 65 of Electricity Act, 2003 OR Specific Government Orders from the Department concerned is required entitling the petitioner to remit 10 ps per unit of energy consumed up to 31.03.2023 and 5% of energy charges w.e.f. 01.04.2023, in accordance with Electricity Duty Act, 1963 and its subsequent amendments. As there exist no Government Orders entitling this petitioner for the said benefits, they are bound to remit 10% of the price of energy charges from the date of connection itself.

Though KSEBL is bound to collect duty amount as per Section 4 of the Electricity Duty Act, 1963 and its subsequent amendments, however by mistake the short remitted portion of duty portion was marked as Dispute in our billing software based on aforesaid interim order produced by them. The collected duty portion was transferred to Government through book adjustments. The Electrical Inspectorate Department in State Government has not taken a concrete step in settlement of Electricity Duty case filed by HT consumers OR not given specific directions that duty may be levied from the petitioner hotel similar to that of industrial consumers. This creates unnecessary accumulation of arrears in the Books of Account of KSEBL. Meanwhile, an Arrear cum Disconnection Notice dated 18.11.2023 was sent to the petitioner, due to non-marking of short remitted portion for the period from (11/2022 to 11/2023) amounting Rs.69,339/- as 'Dispute' in the Billing Software [Exhibit R2]. As far as KSEBL is concerned no short remitted amount by the petitioner is to be marked as 'Dispute', since the interim order dated 13.10.2010 in W.P.(c) No.30977/2010 is not applicable to them, since date of energisation of the petitioner hotel falls on 08.03.2011, i.e. after the date of interim order 13.10.2010. The actual Principal arrears as on 31.12.2023 due to short remittance of duty portion comes to Rs.10,58,953/-. The entire amount is actually non dispute amount, since the petitioner has no locus stand for availing the benefit of interim order dated 13.10.2010.

The Government Order Dated 11.07.1986 [Exhibit R3] issued by the State Government prior to the enactment of Electricity Act, 2003. [Based on this Government Order the petitioners of W.P.(C) No. 30977/2010 sought relief from the Hon. High Court]. If the State Government intended to extend the benefit of industry to Tourism Sector for those eligible applicants the relief in Electricity Duty can be extended only in accordance with Section 65, Electricity Act, 2003 OR amendments in Electricity Duty Act, 1963 is required, regarding levy of duty, so as to obtain the benefit for the class of consumers the petitioner belongs. In the instant case the petitioner is not even selected as a beneficiary by the committee envisaged in the Government Order and hence they are not eligible for the benefit of Electricity Duty applicable to Industrial Consumers. On plain reading of Government Order it is understood no one become automatically eligible for the concessions/incentives as applicable to industrial sector from time to time, which includes electricity duty charges, on the other hand a committee will decide the beneficiary on case by case.

The petitioner is a Commercial Consumer and hence not comes under the purview of tariff and Electricity Duty applicable to Industrial consumers and hence they are duty bound to remit 10% of the energy charges as Electricity Duty as demanded by KSEBL. The petitioner is not entitled as beneficiary of the GO Dated 11.07.1986 issued by the Tourism Department in State Government, for the extension of relief in Electricity Duty. Government Orders dated 11.07.1986, extending the benefit of relief in Electricity Duty clearly mentioned about a committee, which is to be selected the beneficiary for the relief as claimed by the petitioner. No orders from the Government recommended by this committee entitling the petitioner has exist and hence KSEBL has to collect the Electricity Duty in full and transfer the same to the Government. The direction of interim order in W.P.(C) No.30977/2010 dated 13.10.2010 is only applicable to its petitioners and the petitioner consumer was not at all existed as on the date of interim order. The interim order is applicable only to M/s. Woodlands Hotel, even though no Government Orders entitling them as a beneficiary of GO Dated 11.07.1986, which is a general order in nature. The petitioner misinterpreted the interim orders and claimed that they are also eligible for interim orders of the Hon. High Court, even though they were came into existence as HT consumer only on 08.03.2011.

The Electricity Duty Act, 1963 and its amendments are applicable to the petitioner, since no intimation from the State Government treating M/s. Green Fields as a beneficiary of the GO dated 11.07.1986 which considered Tourism as an industry. If any such as intimation has received from the Government, the same can be taken up by KSEBL with Government either for the implementation of DBT or requesting for compensation amount in advance as per Section 65 of Electricity Act, 2003, in the absence of Government direction to demand electricity duty applicable to industrial consumers from the petitioner.

The date of connection of the petitioner consumer was on 08.03.2011 and hence, they have no locus standi to claim the benefit of interim order of the Hon. High Court of Kerala. KSEBL have no dispute with M/s. Green Fields until a writ petition was filed by the petitioner in the Hon. High Court of Kerala vide writ petition W.P.(C) No. 40436/2023. The Judgment of this writ petition permits the petitioner to approach the Consumers Grievance Redressal Forum. The Hon'ble Forum please be noted that, the order of the Consumer Grievance Redressal Forum (Southern Region), Kottarakkara in respect of O.P. No.86/2023. As per the order No.CGRF/KTR/O.P/No.86/2023/72 dated 23.03.2024 (Exbt. R4), the decision of the Forum dismisses the case as the licensee intimated the petitioner that the short remitted duty portion was marked as disputed in licensee's software by mistake. The above circumstances, the arguments raised by the petitioner to claim focused to the application is not justifiable and the case may be dismissed devoid of merit and this Hon'ble Forum may advise the petitioner to pay the settlement of duty arrears.

Counter Arguments of the Appellant

In this context it is relevant to submit that assuming for argument sake that even if the petitioner was not a member of Association of Approved and Classified Hotels of Kerala, they are bound to pay electricity duty only as per the High Court order, for the reasons aforementioned. In fact the Association of Approved and Classified Hotels of Kerala had filed the aforesaid petition before the High Court in WP(C) 30977/2010 enlisting the list of 89 members only to avoid confusion regarding payment of court fee. Because court fee needs to be paid on the basis of number of members in the Association of Approved and Classified Hotels of Kerala. This is just a formality. Even the KSEB is aware of this fact and that is the reason why they were collecting only 10 paisa per unit till 2023, towards electricity duty charges, in compliance with the High Court Order.

As already submitted during the hearing, under no circumstances the claim of the respondent to consider the demand as disputed electricity duty charges can be allowed. Even otherwise when the KSEB itself had admitted that the demand arose due to the mistake in the billing software it should be considered and deposited accordingly. It is further surprising to find that even when the KSEB had tried to substantiated their demand at this stage by saying that demand of Rs 69,399/- is towards short remitted duty portion for 13 months, a mere perusal of electricity bills will show that this calculation is absurd and would not stand in the eye of law. This would stand to show that the KSEB even this point of time has no valid explanation for raising the demand.

As evident from the High Court judgment, it was the standing counsel for KSEB who had submitted that the petitioner has an effective alternate remedy before the CGRF. This was a solely due to the fact that the demand raised by the KSEB was styled as a mere short assessment bill, which has no connection with electricity duty. If at all the bill had any connection with

electricity duty, the case would have been decided on merits by the High Court itself, as connected issue is pending consideration. As repeatedly submitted, when the issue is pending consideration before the High Court, no other authority can decide on the merit of the same. It is relevant to find that the allegation of respondent that High Court judgment is not applicable to the petitioner as the date of energisation falls on 8.03.2011, subsequent to the order of High Court. But as already submitted this will not stand as long as the interim order is based on the Government order which treats hotel as an industry. The said GO and interim order is still in force. Even otherwise the board was collecting only 10 paise per unit till 2023, towards electricity duty charges.

In the aforesaid circumstances, it can be concluded that under no circumstances the demand raised by the board is sustainable and is liable to be set aside for the sole reason that respondent has admitted this is to be a mistake in their billing software and that the petitioner is entitled to remit electricity duty in compliance with the directions issued by High Court in WP(C) 30977/2010.

Analysis and findings

Hearing of this petition was held by the Ombudsman on 20/06/2024 at KSE Board Limited, IB, Pallom, Kottayam. The appellant is represented by Adv. Rajesh Vijayendran and respondent are represented by Shri. Asokan, Sr. Supt. SOR and Smt. Jaya Renjini, AEE Electrical Subdivision, Vaikom.

The appellant is HT consumer of the Licensee and connection is taken for the Green Fields at Kaippuzhamutt, Kumarakam which is 4 star Hotel. The service connection was effected on 08/03/2011. The case in hand is about the arrears cum disconnection notice issued for Rs. 69,339/- on 18/11/2023. The respondents admitted that the amount is the arrear of electricity duty for a period from 11/2022 to 11/2023 which is shown wrongly as dispute item in the billing software. All the consumers have to pay the electricity duty which is levied by the Government as per the Electricity Duty Act 1963. The rate fixed by the Government is @10% of the energy charges which is billed by the Licensee and payable to the Government.

During 1986, based on the direction from the Government of India, State Government has agreed to consider the tourism sector as the industry as per the Go 224/86/GAD dated 11/07/1986 tourism sector. The classified hotels (1 to 5 star) are eligible for this concessions. Further a committee has been constituted to decide on the eligibility of concessions. Government of Kerala power (c) department has issued an order stating that the 'High tension Industrial consumers have to pay Electricity duty @10 paise per unit instead of @10% of energy charges. Here the question is whether this

Government order is automatically applicable to all Hotel or each case is to be decided by the special committee? Any way this matter is pending in the Hon'ble High Court of Kerala, and hence nothing could be decided in this case. The Association of Approved and classified Hotels of Kerala has filed the case to Hon'ble High court of Kerala WP© 30977/2010 and an interim order was obtained from the court. The interim order state that the petitioner shall pay the electricity duty @ 10 paise per unit and the liability of payment of electricity duty of 10% of energy charges will be decided in the writ petition. The respondents argue that this court order is not applicable as this Hotel is commissioned only after the interim order and hence the appellant was not a member to Association. The Hotel Green fields is a hotel 4 star classified and they obtained the certificate issued by Ministry of tourism. Their hotel is also a member of the associations of approved and classifieds Hotels Kerala. Further the association have submitted the statement to the court on 19/10/2021 with the list of member of the Association and in which this appellant hotel also included.

The interim order of the Hon'ble High court of Kerala states that the petitioner shall pay @10 paise/ unit. The petitioner is an association, then it is applicable to its members. Then the payment of Electricity duty is to be decided by the court. The respondent states that the total arrears would be Rs.10,58,953/-. Then the arrears cum disconnection notice is issued only for Rs.69,339/-The respondent is totally failed to explain the logic behind that. The Government of Kerala has revised the electricity duty from 10 paise/unit to 5% of the energy charges vide notification dated 17/03/2023. Then the appellant was stated that they were paying the electricity duty at the rate 5% of the energy charges. Hence the arrears worked out is for a period from 11/2022 to 11/2023. If the appellant was making the payment from April 2023 onwards @ 5 % per energy charges then now the arrears amount arises from April 28 to Nov 2023.? The Licensee was not able to explain the reason also. During the hearing the Licensee was asked to submit the details of the list of eligible agencies under the tourism sector decided by the committee formulated as per the order dated 11/07/1986. This was also not produced by the Licensee and hence it is not clear whether any such decision was taken by the committee. Then the argument of the Licensee that the eligibility it to be decided by the committee is not have any stand.

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 Licensee may raise the arrears of electricity duty on the appellant on getting the verdict from the Hon'ble High Court of Kerala on the writ petition pending with the Hon'ble Court.
2. No other costs ordered.

ELECTRICITY OMBUDSMAN

No. P/029/2024/_____ dated:_____

Delivered to:

1. Krishnadas.P, Green Fields, Kaippuzhamutt, Cheppungal P.o, Kumarakam, Kottayam Dist.,
2. The Special Officer (Revenue), Kerala State electricity Board Limited,Electrical Circle, Thiruvananthapuram
3. The Deputy Chief Engineer, Electrical Circle, KSE Board Limited, Kottayam,. Kottayam Dist.,

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, 2nd Floor, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara, Kollam-691506 .