

## STATE ELECTRICITY OMBUDSMAN

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### REPRESENTATION No: P 156/10

Appellant : Sri P.N.Saseendran , S/o Narayanan  
Palay Puthen Purayil ,  
Kangarappady, VADACODU(Po), Ernakulam Dt

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

### ORDER

Sri P.N.Saseendran S/o Narayanan, Palay Puthen Purayil , Kangarappady, Ernakulam Dt submitted a representation on 31.7.2010 seeking the following relief :

*Set aside the Order on Comp.109/2009-10 dated 29.6.2010 of CGRF Ernakulam and the Bill dated 3.11.2009 amounting to Rs 1,96,214/- of the Assistant Engineer Thevakkal (P 156/2010)*

Counter statements of the Respondent was obtained and hearing conducted on 7.10.2010 and 14.10.2010 .

The Appellant is an LT industrial consumer with consumer No 6221 under Electrical section Thevakkal . He received a demand notice dated 3.11.2009 for paying Rs 1,96,214/- on or before 10/11/2009 pertaining to the arrears for the period from 11/96 to 4/97 and 1/04 to 1/08. The Appellant moved the CGRF Ernakulam against the above. The CGRF got the calculation revised taking in to account the amount paid by petitioner during the period and finalized the outstanding amount as Rs 1,38,964/- and directed the petitioner to remit the revised the amount. The representation against the order of CGRF was submitted to this office in the above background.

The Appellant has narrated the background of the issue. The Appellant had been running a small scale unit in the name and style of M/S Peeyeness Industries with financial assistance of Kerala Financial Corporation since 1988. The said unit was taken over by KFC on 26/11/1996 due to default in paying the loan. KSEB continued to raise the demand against the consumer and service connection was dismantled on 06/10/1998. The revenue recovery action was initiated for an amount of Rs 43458/- plus interest, being arrears from Oct 1996 to Sept 1998. The consumer challenged above in the Hon: High Court with OP No 27671/99 and WA 31/2004. The Hon: High Court directed KSEB to collect Rs 21500/- and provide reconnection to the consumer. The main contention of the consumer was against collection of Fixed Charge (FC) beyond 6 months from the date of disconnection. As directed by the High court the Executive Engineer heard the consumer and ordered that the fixed charge shall be collected for a period of 6 months only and to revise the demand accordingly.

Even though the service was reconnected in April 2004 the consumer failed to remit the monthly current charge regularly. An arrear notice was issued by KSEB on 05/03/2007 for the payment of current charges from April 2004 onwards and amount demanded was Rs 1,14,064/- plus interest. The Appellant again moved the Hon:High Court with WP No 7833/2007. The court directed to pay 50% of outstanding dues and allowed interim stay. The consumer paid Rs 75355/- on 03/04/2007

The Hon:High Court delivered the final judgment on WP 7833/2007 on 03/12/2007. The Hon: High Court reviewed all the issues in detail and delivered judgment with the following directives to the parties concerned:

1. The Assistant Executive Engineer Thevakkal (R3) shall revise the bills limiting the demands for disconnection periods to six months from November 1996.
2. He will adjust the payments paid by the consumer treating the connection given in 2004 as a new connection.
3. Deposits or regular power bills payable by petitioner can be recovered.
4. The petitioner will produce the details of payments and the KSEB shall re-compute the surcharge liability if any only after adjusting a payments made. The details of payments are to be given by the petitioner within three weeks.
5. A detailed statement on the amounts outstanding shall be given to the petitioner within 3 weeks from the date of production of the judgment along with copies of receipts of payment.
6. The third respondent shall accept payments of regular bills and if he does not receive the same, the interest payable shall be recovered from the officials concerned.

The Respondent issued a demand notice on 3.11.2009 for paying Rs 1,96,214/- on or before 10/11/2009 pertaining to the arrears for the period from 11/96 to 4/97 and 1/04 to 1/08.

### Discussion and Findings:

The disputes between the Appellant and the Respondent were subjected to judicial review and intervention by the Hon: High Court at least on four occasions as per the details given below:

1. OP 27671/99 : Order dated 10.12.2003 of the Hon: High Court
2. WA 31/04 on the above OP: Judgment dated 9.1.2004 of the Hon: High Court
3. WP(C) 16498/2004 : Order dated 21.6.2006 of the Hon: High Court
4. WP(C) 7833/2007 : Order dated 3.12.2007 of the Hon: High Court

The Hon: High Court had reviewed all the issues in detail and delivered the judgment on WP(C) 7833/2007 on 3.12.2007 as detailed above.

I feel that justice will be delivered to all the parties concerned if implementation of the above Judgment is done properly. I will confine myself to a review whether the directives of the Hon: High Court in the Order dated 3.12.2007 had been properly implemented: The parties informed that the monthly charges are being paid regularly after January 2008 consequent to the Judgment dated 3.12.2007. Thus the directives 3 and 6 cited had been complied .

The arrear demand notice dated 3.11.2009 issued by the Respondent had two parts. Part 1 related to the fixed charge for the period from November 1996 to April 1997. Part 2 related to the arrears towards monthly charges payable from April 2004 to January 2008. The supporting statements show that the amounts already paid by the Appellant had not been given due credit in the calculations. Hence as per directions from CGRF the calculations were revised taking into account the amounts paid by the Appellant in January 2004 and April 2007 as per Court Orders. The interest payable were also re-worked. The CGRF directed the Appellant to remit the revised balance of Rs 1,38,964/- vide the order dated 29.6.2010.

On a review of the calculations it is seen that the demands have been limited to disconnection periods of six months from November 1996 thus complying with the directives of the Hon: High Court cited as 1 above.

During the hearing , the Appellant was requested to produce evidence of any other payments made by him during the period from April 2004 to January 2008. He submitted a statement showing that he had paid Rs 6142/- in March 2004 and Rs 5580/- in April 2004. He produced a receipt number 95801/16.3.2004 for Rs 6142/- and a letter dated 3.4.2004 stating that an amount of Rs 5580/- had been paid by him on 3.4.2004 .He had no claims of any other payments made by him during the period. The Respondent will have to take the above two payments also while finalizing the accounts.

The 'surcharge' (interest) liability had been re computed by the Respondent taking into account the payments made in January 2004 and April 2007.

Thus it is clear that the directives 2 and 4 in the Hon: High Court judgment cited had been complied .

The Respondent informed that the statement showing the outstanding amounts could not be handed over to the Appellant as per directive 5 since the Respondent R3 was wrongly named in the documents and they had not obtained approval from higher authorities in time.

Even though the Hon: High Court had delivered the judgment on 3.12.2007 the Respondent had issued the arrear demand notice only on 3.11.2009, with a delay of around 2 years. The Respondent explains that the delay was due to the incorrect naming of the Respondent in the Writ petition, delay in obtaining approval from higher authorities etc. I do not feel that the explanations given by the Respondent for the delay are satisfactory. The careless manner in which the Respondent had handled the whole issue, thus delaying the realization of huge revenues to the KSEB, is deplorable.

The Hon: High Court had upheld that KSEB shall be entitled to realize the deposits or regular power bills payable by petitioner. As such the plea of the Appellant to quash the demand notice for realization of arrears due for years together can not be accepted, but the modifications done in the demand notice as per directions from CGRF are correct and the CGRF order is upheld.

I am issuing the following guide lines to the Respondent to settle the issue:

1. Credit has to be given to Rs 6142/- paid in March 2004 and Rs 5580/- paid in April 2004 by the consumer and the arrears and interest payable are to be re-calculated.
2. The Appellant shall be liable to pay interest for the defaulted amounts only up to January 2008 as shown in the demand notice dated 3.11.2009, duly revised on 28.1.2010 as per CGRF order, since the Respondent had miserably failed to follow up the matter by providing a detailed statement on the amounts outstanding to the petitioner *within 3 weeks* as specified in the judgment of the Hon: High Court on WP(C) 7833/2007 dated 3.12.2007
3. The Respondent shall issue a revised final statement of arrears and the demand notice to the Appellant as per the directions given above *within 15 days* from the date of this order.
4. If the consumer fails to pay the arrears in full or in mutually agreed installments, the Respondent may initiate actions such as disconnection, dismantling, revenue recovery etc as per rules.

#### Orders:

Under the circumstances 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 arguments/claims/points raised by the Appellant in support of the reliefs sought for are devoid of merit and hence the reliefs are not*

*allowed and the representation is dismissed with the guide lines noted above for compliance by the Respondent.*

2. *No order on costs.*

Dated this the 29<sup>th</sup> day of October 2010 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P 156 /2010/ 690 / dated 29.10.2010

Forwarded to: 1. Sri P.N.Saseendran , S/o Narayanan  
Palay Puthen Purayil ,  
Kangarappady, VADACODU(Po), Ernakulam Dt

2. The Assistant Executive Engineer  
Electrical Sub Division, Kalamasserry

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 , Power house , ERNAKULAM

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