

## STATE ELECTRICITY OMBUDSMAN

THANATH BUILDING, CLUB JUNCTION, POOKKATTUPADY ROAD

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### REPRESENTATION NO: P/178/2010.

(Present: T.P. VIVEKANANDAN)

Appellant : Smt.Santha George,  
Madappillil house, Edathala P.O, ERNAKULAM (Dist).

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
PUTHENCRUZ, ERNAKULAM (Dist).

### ORDER

#### **Background of the Case:-**

The Appellant is a LT IV consumer (No.160221/21) of Electrical Section, Puthencruz. She is running a metal crusher unit. During an Inspection by the Officers of KSEB in October 2002, it was found that the Energy meter was not working and declared it faulty. The meter was seen changed only in next March (3/2003). The Consumer was billed @ 7280 units for each month, during the meter faulty period of 10/2002 to 3/2003. This energy of 7280 units per month was based on the energy consumption of the previous month (9/2002), when the meter was supposed to be working properly. It was paid by the consumer. The meter was replaced in 3/2003. The Audit wing of KSEB on scrutiny of records in 5/2007 found that, after changing the Meter in 3/03 the average consumption of succeeding 3 months was 10166 units and has to be applied, as the previous 3 months average (prior to meter faulty) was not available, as per condition 31 of Conditions of Supply of Electrical Energy, 1990 (CSEE 1990 - that was in force at that time). Consequently KSEB issued in 8/2009, a bill for Rs.61,038/-, being the short assessment bill for the period 10/2002 to 3/2003, citing that the true average consumption of that period was actually 10166 units and not 7280 units assessed earlier and is the cause of this case. It is also to be noted that, the consumer stopped the industrial unit due to non renewal of License by the Panchayath and the Electric service connection dismantled in 9/2005. It is also said that the consumer failed to pay the dues and therefore KSEB resorted to Revenue Recovery Action as per Law through Revenue Authorities, for the recovery of pending arrears against the consumer.

Being aggrieved by the bill for Rs 61038/-, the party approached the Executive Engineer, Electrical Division, Tripunithura, and filed objection of the bill citing various provisions of the Electricity Act. The Executive Engineer, after conducting a hearing disposed of the same, with the finding that the issuing of the bill was in order, except the true average consumption assessed, during the meter faulty period and ordered to reassess the same by taking the average based on an yearly consumption rather than 3 months average, since there is found a wide variation in usage through out the year. On the basis of the said order, the short assessment bill was reduced to Rs.39, 683/- and was served on the Consumer vide bill dated 23.03.10.

The Consumer, aggrieved again by the decision of the Executive Engineer, approached Hon: High Court and the Hon: Court in its order dated 20.08.2010 on WP(c) No: 26685/2010 directed the

petitioner to approach the Hon: CGRF to settle the issue. As such, the consumer filed the petition, and it was heard and the judgment issued by CGRF on 18.11.2010. The Hon: CGRF found that the order issued by the Executive Engineer, Tripunithura is in order and declared that the petitioner is liable to remit the bill amount of Rs.39, 683/- as demanded by the KSEBord. Not satisfied by the decision of CGRF, the petitioner, approached this Authority with a Representation seeking to set aside the order dated 18.11.2010 of Hon: CGRF and to cancel the short assessment Order No DB/ADL/2009/10/132/7.8.2009 of AE, Puthencruz.

**Argument of the Petitioner:-**

She is the Consumer, under LT IV industrial Tariff taken for running a metal crusher unit. The Respondent have inspected the premises during 10/2002 and found that the meter was faulty and issued an invoice as per condition 31 of Conditions of Supply of electrical energy. She remitted the amount and the case was closed. There after, after a gap of 7 years a short assessment bill was issued stating that the previous assessment made was not correct. She submits that since the assessment was once closed by issuing revised invoice the Board has no right to reassess and issue fresh invoice for the very same period.

Further, the power supply to the unit was dismantled in 9/2005 as the Panchayath Authorities refused to renew the License for running the Crusher unit. She has suffered heavily by the same and owes huge debt to Bank etc. The petition filed before the Executive Engineer did not consider fully our views. Hence we disputed the decision of the Executive Engineer before the Grievance cell and this Forum also failed to consider our contention that the Board has no authority to reopen and reassess the assessment once concluded as per condition 31 of CSEE. It is not the fault of the consumer that the Internal Audit of the Board was delayed and the same shall not be binding on us, as the assessment was concluded 7 years back. The appellant is also not in a position to verify the correctness of Meter reading registers as the old invoices are not kept by her. The claim raised in the short assessment bill is highly belated and time barred. In the above case the appellant is not liable to pay the short assessment bill and the same may be set aside and she may be absolved from the liability to pay any amount to KSEB on this account.

**Argument of the Respondent:-**

The service connection No 16022 to the appellant was dismantled on 5.9.2005 and now Revenue Recovery action has been initiated for recovery of Arrears amounting to Rs 211981/- pending against her. The Audit wing pointed out in 5/2007, that the true average consumption for the meter faulty period of 10/2002 to 3/2003 was 10166 units, instead of the charged 7280 units and hence has to be reassessed. The AE of the Section office reassessed the consumer accordingly for the meter faulty period and issued an invoice for Rs 61038/- for the same. The already charged 7280 units from 10/2002 to 3/2003 was not an average but one month's consumption for 9/2002 only during which month the Meter became faulty. The Meter was either faulty or recording low consumption and Meter was changed frequently before the said faulty period and hence it was not possible to take previous average. Hence reassessment was made taking three months average after faulty meter was changed.

The consumer approached the Executive Engineer, with an appeal which was heard on 20/01/2010 and disposed of, ordering to revise the bill by taking the consumption on a yearly average basis as there was found a large variation in consumption in different months in a year. Accordingly the bill was revised to Rs 39683/- and issued to the consumer. The consumer then filed Petition before the

Hon: High Court vides WP© No: 26685/2010 and as per its direction contained in the judgment dated 20/8/2010, she approached the Hon: CGRF, Ernakulum. The CGRF by its Order dated 18.11.2010 held that the short assessment bill issued is correct and in order and the petitioner is bound to pay the revised bill of Rs 39683/- served on her. No penalties or surcharge has been imposed on the consumer. The bill was raised only first time in 8/2009 and hence consumer's argument that it is time barred is baseless. Even though the service was dismantled in 09/2005 the petitioner has not settled the dues and RR Action is going on. In the above circumstances the bill issued, is as per the IE Act, and prayed to dismiss the petition of the consumer.

**Findings:-**

The Consumer and the Respondent was heard in my chamber on 16.2.2011 and they have argued the case on the lines narrated above. After going through the Petition of the consumer, the statement of facts and Meter reading copy submitted by the Respondent, and the argument notes of both parties and analyzing the case, I come to the following conclusions and decisions thereof.

The consumer is running a Metal Crusher unit and her Energy Meter was found as faulty in 10/2002 and continued in that state up to 3/2003, i.e. till the faulty meter was replaced on 28.3.2003. On a perusal of the meter reading records, during the period of 9/2001 to 8/2004, it is seen that the meter gets faulty frequently. The Connected Load (installed Capacity) of consumer was increased in 1/2002 and even after that, the energy Consumption was low probably due to faulty meter. The Meter was changed on 29.8.2002 and thereafter the energy consumption was seen increased to 7280 units for the month of 9/02. Next month, again the meter was found faulty and the consumer was seen billed at the rate of 7280 units per month for the succeeding months from 10/02 to 3/2003 (including both months), till the meter was changed on 28.3.2003. The next month's energy consumption shows an increase and was recorded in Register as 10260 units. The Licensee (KSEB) does not seem to have investigated the cause of meter becoming faulty frequently.

The Respondent have raised the bills on the consumer, for the months of 10/2002 to 3/2003 (meter faulty period) based on previous months usage i.e. consumption of 9/02 only, and not strictly as per condition 31 of CSEE, 1990, i.e. average of previous three months, as argued by the consumer. The Licensee (KSEB) was not in a position to get the previous three months average as the Meter was faulty and only one month's usage is available at that time. Hence KSEB has to wait and see the succeeding three months average as per condition 31 of CSEE, 1990. During this period, it is usual to bill the consumer as per the previous month's consumption so as not to block the revenue (Electricity charges) completely. Hence KSEB resorted to raise bill on this average. This consumption used for raising invoices is not based, as per Condition 31 of CSEE, 1990, but used for billing purpose only (for the reason stated above) and has to be modified based on the outcome of the succeeding 3 month's average Energy consumption. Hence KSEB is legally right to prefer a short assessment bill based on the true average energy consumption after replacing the faulty Meter with a good one, if the previous three months average (prior to meter becoming faulty) cannot be reasonably assessed.

But it is seen that KSEB, even after changing the Meter in 3/2003 and getting the succeeding three month's average consumption, did not raise any short assessment bill (for the shortfall occurred), as per condition 31 of CSEE, 1990, in the coming months nor even before initiating the R R Action against the consumer. The respondent has reported that the service connection has been dismantled in 9/2005 and after that R R Action taken for non payment of dues. Normally, before going for RR Action, a

notice containing up to date arrears have to be issued to the consumer. This notice should reflect all pending dues. As per Regulation (20) of Kerala Electricity Supply code,2005, 'Once final bill has been issued on the basis of special Meter reading, the Licensee shall have no claim for any prior period other than the final bill amount'. Here in this case, the service was dismantled as the Panchayath refused to renew the License. Hence, the service connection might have been disconnected and latter dismantled on request of consumer and the Licensee ought to have noted down the Final reading of the Energy Meter. This is followed by the up to date arrear notice (final bill) and then the RR action against the consumer. Hence KSEB cannot raise a short assessment bill of a prior period once the R R Action has been initiated after dismantling the Service Connection.

There is clear lapse on the part of Respondents in not raising the short assessment bill in time i.e. after changing the faulty Meter in 3/2003 and watching the energy consumption pattern in the succeeding three months period. The Respondent should have noted down the 3 month's average and then raised the short assessment bill, if any, against the consumer in 6/03 or subsequent month itself. But this was not done. Moreover, it is also noted that, even though the Audit wing found out and reported this omission of short assessment way back in 5/2007, the respondents raised the bill on the consumer only in 8/2009, i.e. it took more than 2 years to act upon the report of Audit wing.

**Decision:-**

From the above, it is convinced that the Electric service connection of the appellant has been dismantled in 9/2005. Subsequently the up to date arrear notice was issued to the consumer and the Respondent have gone for Revenue Recovery action for the non payment of the same. Therefore, I come to the conclusion that the Short assessment bill raised for the Meter faulty period of 10/2002 to 3/2003 would have been legally correct, had it been raised before dismantling the Electric Service connection and proceeded for the Revenue Recovery Action to recover the arrears. But raising an Electricity Charges arrear bill (short assessment bill) in the year 2009 for a service connection dismantled in the year 2005 is violation of Regulation (20) of Supply Code 2005, and hence found not in Order. Hence I am inclined to set aside the order of Hon: CGRF dated 18.11.2010 in this case and also directs that the consumer is not liable to pay the bill for Rs 39683/- dated 23.3.2010 of AE, Puthencruz.

No order on cost. Having concluded and decided, the Appeal Petition is disposed of as above on the 25th of May 2011.

**Electricity Ombudsman.**

**No: P/178/2010/867 / dated 26.5.2011.**

**Forwarded to:** 1). Smt. Santha George. Madappillil house, Edathala (P. O), Ernakulum DT  
 2). The Assistant Executive Engineer, Electrical Subdivision, KSEBoard, PUTHENCROUZ,  
 3). The Secretary, KSERC, KPFC Bhavanam, V ellayambalam, Trivandrum-10.  
 4). The Secretary, KSEB, Vydyudi Bhavanam, Pattom, Trivandrum-4.  
 5). The Chair Person, CGRF, Power house Bldg, Cemetery mukku, Ernakulam.