

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road  
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024  
[www.kerala.org](http://www.kerala.org) Ph.0484 2346488 Mob: +91 9567414885  
Email:ombudsman.electricity@gmail.com

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Appeal Petition No: P/193/2011.

(Present: T P Vivekanandan)

Appellant : Sri.K.P Hashim  
Managing Partner, Harbour Fisheries,  
Thoppumpady, Kochi-5.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Thoppumpady, Kochi-5.

Background of the Case: -

The appellant is the Managing Partner of M/S Harbour Fisheries, with consumer No.PL 635/12692 under Electrical section, Thoppumpady. He is running a freezing and cold storage Ice plant which is a SSI industrial unit. While being so, the APTS of KSEB conducted a surprise inspection in the premises on 08.05.1997 and detected that the two phases of the Current Transformer (CT) to the Meter was not working, there by not recording the energy of those 2-phases in the meter (out of the 3-phase Supply) which means less consumption was recorded in the Meter than the actual energy consumed. A short assessment bill for Rs.47146/= was issued to the consumer, assessing the unrecorded part of the energy, actually used by the consumer, for the past six months at the prevailing tariff rate. The appellant aggrieved by this action and the bill thereof, filed OP 8496/97 before the Hon: High Court of Kerala and as per the interim order of the Court, remitted Rs.15000/- on 02.06.1997. The final verdict came on 04.04.2000, directing the consumer to remit the balance amount and to prefer the statutory appeal with in a month. The review Petition, OP 21745/2000, filed by the consumer was dismissed by the Hon: High Court. Then he filed WA 1829/2000 in Hon: High Court. The final order in Writ Appeal, 1829/2000, was pronounced on 19.09.2003, ordering that since the meter was faulty, either party can necessarily refer the matter to the Electrical Inspector as per Section 26 (4) of Indian Electricity Act 1910. But neither the consumer nor the KSEB took the issue before the Electrical Inspector.

Subsequently during 7/2009, a notice was issued by KSEB to the consumer asking for the payment of balance amount of Rs.32146/- and due to its failure (to remit the sum by the consumer), the supply was disconnected on 07.08.2009. Later the entire sum with interest was remitted in installments by the consumer. The consumer now claims the refund of Rs 32146/ plus the interest levied on him and that was remitted to KSEB, for the reason that it was time barred, with future interest i.e. at the rate of 24% per annum until the date of refund. The appellant filed a Petition before the CGRF, Ernakulum

to this effect which was dismissed vide judgment dated 27.11.2010. Hence the cause for the Appeal filed before this Forum.

**Argument of the Appellant: -**

Argument of the appellant is that the finding of CGRF in the order dated 27.11.2010 is incorrect, arbitrary, unreasonable and without any basis. The appellant has submitted that it was the KSEB who raised the dispute saying that the meter was faulty and raised an imaginary bill saying that, had the meter been working properly the complainant would have become liable to pay the said amount of Rs.47, 146/-, representing the electricity charges for the 2/3<sup>rd</sup> portion of the energy consumption, alleged as being not recorded in the Meter during that period. It is argued that, after retaining the faulty meter with KSEB from the year 1997, no reasonable person can say, it was for the complainant to approach the Electrical Inspector, by paying the fees for testing the meter. Further he submits that the alleged amount of Rs.47, 146/= claimed under the disputed bill issued on 10.04.1997 was not payable by the appellant, as it did not belong to consumption of energy charges. He had actually paid the energy charges as per the meter reading for the energy consumed during the relevant time. More over he argues that the claim was not at all based on any reason or after testing the meter by the Electrical Inspector, who is the Competent Authority to decide whether the meter was faulty or not. Even after the judgment of Hon: High Court, KSEB did not take any step to get the meter tested or give back the alleged meter to the consumer to get it tested, if decided so. KSEB was keeping the matter pending for 12 years and raising a time barred claim in the year 2009, and collected the illegal charges by coercing the consumer with threats of disconnection of supply. Lastly he has submitted that it is illegal and unfair on the part of the KSEB to retain with it any longer the illegally collected and refundable amount of the consumer totaling to Rs.2, 21,461/= and therefore the KSEB is liable to pay interest for the same from the date of complaint as this amount is being used by KSEB.

During the Hearing on 11.08.2011, the Counsel for the appellant stressed on the following points;

- 1). It is a fictional claim. The Meter was not tested and declared as faulty by a competent authority and the same was removed for verification.
- 2). The present claim is time barred.
- 3). There is no provision to disconnect a service connection unless a disputed claim is decided by law. The KSEB has to prove the claim.
- 4). Considering the age of the dispute, a one time settlement is feasible.

**Argument of the Respondent.**

The respondent denies all the averments and allegations contained in the petition (except to the extent it is expressly admitted in the statement of facts) filed. It is submitted that the APTS unit of KSEBoard conducted a surprise inspection in the premises of the consumer on 8<sup>th</sup> May 1997 and detected that the two phases of the CT to the metering equipment was not working and hence not registering the energy consumption of those two phases in the Meter. Hence a short assessment bill for Rs.47, 146/=, assessed for the previous six months on the unrecorded portion of the energy used by the consumer was issued. The respondent states that a series of cases including the matter under dispute have been filed by the appellant before the Hon: High Court of Kerala and states that the

appellant had remitted an amount of Rs. 15,000/- earlier and Rs. 10,000/= later as per the interim orders in the OP's and writ petition No 1829/2000 filed by the appellant. But due to oversight, the later remitted amount Rs.10,000/= was accounted against another bill of the same connection of the consumer issued subsequent to another inspection done on 22.05.2000.

It is further pointed out that, though the final judgment in WP (C) 1829/2000 filed by the consumer was issued on 19.09.2003, the appellant has not turned up to remit the testing fee to approach the electrical inspector. The same was kept unnoticed by the Board officials, since lot of amounts were pending due to various petitions filed by the consumer at the Courts. After a detailed verification of all the cases, it is revealed that two arrear amounts of Rs.32,146/- and Rs.1,80,784/- were pending and a notice was issued to the consumer demanding to pay these sums on or before 25.07.2009. The demand for Rs.1,80,784/- was stayed by Hon: Court in WP(C) 1114/06. This Case was now disposed by Executive Engineer, Electrical Division, Mattancherry on 27.02.2010 as per the direction of the Hon court and the final amount has been remitted by the consumer.

On the hearing day, the respondent replied as follows;

- 1). The assessment was done as per rules since it was found that 2/3<sup>rd</sup> of actual consumption was not recorded by the meter.
- 2). The Single bench Judgment in OP 8496/97 dated 04.04.2000, had directed the consumer to prefer Statutory Appeal with in one month. In the Writ Appeal filed 1829/2000, against the Order, the Division Bench has not cancelled the Single Bench Order and has ordered to go for statutory appeal.
- 3). The supply was disconnected after giving 15 days Notice and there after additional 10 days. The consumer did not file any complaint on this.
- 4). The interest/Surcharge on arrears was calculated as per the rules in KSEB.

#### **Analysis and Findings.**

The Hearing of the case was done on 25.07.2011 and 11.08.2011, in my Chamber at Edappally and both were present. The Petitioner's side was represented by the learned Counsel Sri. M N Mathew and Sri. K P Hashim, the appellant. The respondent's side was represented by Sri. C S Sunil, the Asst. Exe. Engineer, Electrical Sub Division, Thoppumpady. They have argued the case on the lines detailed above. On examining the petition, the statement of facts of the respondent, the documents attached, the averments raised during the Hearings and considering all the facts and circumstances of the case, I come to the following Findings and Conclusions leading to the decisions there of.

The issue leading to the dispute was originated in the year 1997, when the APTS of KSEB conducted a surprise inspection in the premises of the consumer and detected that two phases of the CT to the metering equipment was not working. A short assessment bill amounting to Rs.47,146/= was issued to the consumer, being assessed for the unrecorded portion of the energy, considered to be actually consumed by the appellant for the past six months. Aggrieved by the Bill, the consumer filed OP 8496 /1997 before the Hon: High Court of Kerala and as per the interim order, the consumer had remitted Rs.15,000/- on 02.06.1997. The final judgment was delivered on 04.04.2000, directing the consumer to remit the balance amount and to file a statutory appeal. Later, the consumer filed Writ Appeal No. 1829/ 2000 and the Hon: Court, ordered to reconnect the electricity that was disconnected, subject

to payment of Rs.10, 000/- which has been paid by the consumer. But the respondent states that due to oversight this sum of Rs.10000/- was accounted against another bill of the same connection, which was issued on 23.05.2000 for a sum of Rs.41, 188/- based on another APTS inspection conducted on 22. 05.2000. The final judgment in WA 1829/2000 came on 19.09.2003, ordering that since the meter was faulty (as both sides did not dispute it), either of the party can refer the matter for arbitration to the Electrical Inspector under Section 26(4) of the Electricity Act. The Hon: Court in W A No 1829 of 2000 has ordered on 19<sup>th</sup> September, 2003, as follows;

*“Admittedly by both sides, as is revealed by the records, there cannot have any dispute that the meter was faulty. In such circumstances either of the party can, necessarily, refer the matter for arbitration to the Electrical Inspector concerned under Section 26(4) of the Electricity act as it then existed.*

*There-fore without prejudice to the right of the appellant in that regard, the appeal is closed.”*

It is seen that both parties did not approach the Electrical Inspector for arbitration, as ordered in the judgment. Both parties are equally responsible for the failure to take steps to refer the case for arbitration before the Electrical Inspector, for a decision on the quantum of true energy used by the consumer during the disputed meter faulty period of 10/1996 to 04/1997 (six months). It is argued by the appellant that, since the Meter has been taken away by the KSEB it is for them to refer the matter to the Inspector and establish the claim of bill. The KSEB's view is that the appellant has to approach the Electrical Inspector as he had filed the case and got the order. Moreover, the earlier Single Bench order of Hon Court has directed the consumer to file statutory appeal and this direction was still in force, they argue.

It is certain that both sides can approach the Electrical Inspector as per the Order stated above, but I feel the consumer ought to have initiated action to refer the Case to the Electrical Inspector, since he has filed the case and obtained the Order. Moreover, I feel the last sentence of the Hon: Court order which reads as; *“There-fore without prejudice to the right of the appellant in that regard, the appeal is closed.”* implies specifically the consumer's right to do so in this regard which means the consumer has to act. The reason cited by the appellant that 'as the Meter was kept with KSEB, it is the duty of the KSEB only', does not seem to me as a valid reason or can be justified since the custody of the Meter by KSEB is not a bar to file the Petition by the consumer before the Electrical Inspector. Once the Petition is filed by the consumer, the Electrical Inspector may take further steps including summoning the respondent and other proceedings to hear the case. The consumer also did not inform the KSEB their inability (the reason stated above) to approach the Electrical Inspector. Hence I am of the opinion that the argument of the consumer to this effect is not sustainable.

The respondent has taken further action to recover the arrears by issuing a notice on 09.07.2009 directing the consumer to remit the balance amount of Rs.32, 146/- with surcharge. The surcharge recovered from the consumer, for the period 16.5.1997 to 10.8.2009 @ 24% interest per annum was, Rs.94483/=. Now the consumer has requested to refund an amount of Rs.221461/= which was said to be the sum illegally collected from him based on the disputed bill with up to date interest. But he has not furnished any detailed calculation statements for raising such a claim amount.

As per Clause 23 of the Electricity Supply Code, the interest payable for belated payments was fixed as 18% per annum from 24.10.2008 onwards. Hence the interest levied on the consumer at the rate of 24%, for the late payment of balance amount of Rs 32146/-, is found to be on the higher side.

Another important argument of the appellant is that the claims were apparently time barred as the KSEB preferred to raise the same abruptly after a lapse of many years. The reasons of the appellant confined to section 56 (2) Electricity Act 2003, which reads as under;

“56 (2) - Not with standing anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such became first due unless such sum has been shows continuously as recoverable as arrear of charge for electricity supplied and the licensee shall not cut off the supply of the electricity”.

It will not be out of place here to refer to the reported decision in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC 7794 AIR 2008 Jha 99), which read as; “The period of two years as mentioned in section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board raising the bills against consumption of Electricity energy “.

In a similar case in Brihat Mumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11 (Bom), it was held as; “Amount of charges would become due and payable only with the submission of the bill and not earlier. Word “due” in this context must mean due and payable after a valid bill has been sent to consumer. Till after the issue and receipt of the bill the respondents have no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent”.

In this case the invoice under dispute was originally issued to the consumer on 12.05.1997 and remained under part payment of Rs 15, 000/- as per Hon: Court order. Following this case, a series of cases were originated in tandem and were pending before the Hon: High Court. It is stated that cases like WP(C) -22456/2007 and WP(C) 22602/2008 etc were continuing before Hon Court, prior to the issue of Notice on 9.7.2009, on the same consumer No. of the appellant. Hence I feel that the Clause 56(2)-Limitation of time bar of 2 years will not be applicable here as the Cases were filed in tandem and arrears were kept pending due to Court cases only and hence the bill is a live one.

Regarding the issue of disconnection of service connection (D/C), it is stated by the respondent that D/C notice was served and further 10 more days’ extension time in addition to the notice period, was also given to the consumer before effecting the same and hence was done as per rules only. The appellant did not seriously contend the D/C issue in the hearing. Since the respondent was found to be acted, only after giving the due notice, as per rules, I think the argument is not maintainable.

Decision: -

From the analysis done above and the findings and conclusions arrived at, I come to the following decisions thereof.

Neither party disputes the fact of Meter as faulty. The Hon: High court in its order in W A 1829 of 2000 (produced above), also highlighted this fact. The Hon: Court also ordered to refer the matter to the Electrical Inspector for assessing the true energy consumed by the appellant during the period of Meter faulty. Since the Hon: Court has specifically entrusted the task of assessment of energy, during

the disputed period by the Electrical Inspector, I am not entering into the merits of the Bill. Further, the appellant who was aggrieved by the bill did not take any action even after getting the Court order stated above, I am inclined to view that the short assessment bill raised by the KSEB as proper. Hence it is decided that the consumer is liable to pay this bill with 18% interest (as per Regulation 23 of Kerala Electricity Supply Code, 2005, applicable from 24.10 2008,) for the belated period of, the due date of the bill to the day of remittance. It is noted that the respondent has collected 24% interest on the balance amount of Rs 32146/- on 10.08. 2009 instead of 18%, which is not correct and hence the excess amount collected on the higher rate of interest shall be refunded by adjusting it in consumer's future bills. Applicable interest, for the excess amount so collected, shall also be refunded to the consumer in the same way.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the Consumer Mr. K P Hashim stands disposed of as above.

No order on costs. Dated the 26<sup>th</sup> of July, 2012.

Electricity Ombudsman

No: P/ 189/ 2011/ 1178/ Dated 02.04.2012

Forwarded to: -

- 1). Sri. K.P Hashim  
Managing partner, Harbour Fisheries,  
Thoppumpady, Kochi-5.
- 2). The Assistant Executive Engineer  
Electrical Sub Division, KSEBoard,  
Thoppumpady, Kochi-5.

Copy to: -

- 1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,  
Vydhuthi bhavanam, Pattom, Thiruvananthapuram-4
- 3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEB, Power House Building, Cemetery mukku, Ernakulam-682018.