

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/194/2011.

(Present: T.P. VIVEKANANDAN)

APPELLANT : Smt. Kunhamina C.K.
Azhikode Oil & Flour Mill,
Oladathaze, Azhikode. P.O,
KANNUR (DT)

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Pappinissery, KANNUR.

ORDER.

Background of the case: -

The appellant was running an Oil and Flour mill under the name and style of Azhikode Oil & Flour Mill under Electrical Section, Azhikode (Kannur Dt.), with consumer No: 7568 and having a connected load of 21KW. The service connection was effected in 1990. However, since the oil mill was running on loss, the electricity charges were not paid on time by the consumer and therefore the service was disconnected in 12/1999. The consumer then approached the Hon: Minister and got installments for the arrears and 2 installments were paid and then discontinued. The complainant's power supply was restored on 12.11.2002 based on Hon: High Court order. However, again due to mounting losses the appellant could not run his small scale industry. The appellant informed the Electrical Section that he is not in a position to run the industry due to mounting losses and requested them to dismantle the supply. Even though the supply was disconnected in January 2003, it was not dismantled, due to filing Case at the Munsiff court by the consumer, till 26.12.2008. Thereafter the respondent issued a notice dated 16.10.2009, directing the appellant to pay Rs.2, 50,150/- within 7 days. Being aggrieved by this, she lodged a complaint before the CGRF, Kozhikode on 24/3/2010 which was disposed of, by ordering to revise the Bill reckoning the date of dismantling as, six months from the date of disconnection vide Order No.3080057/ CGRF-KKD/2010-11 dated 2/12/2010. Aggrieved by this order, the consumer has filed the Appeal Petition before this Authority.

Arguments of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances that are narrated above. Further the appellant has adduced the following;

1). Since the supply was disconnected in January 2003 the Electricity Board is not entitled to demand any charges beyond 6 months from the date of disconnection. As per the Electricity Supply Code and the Terms and Conditions of supply of Electricity, applicable to the complainant, the KSEB authorities are duty bound to dismantle the service connection of the consumer in July 2003 i.e. after six months

from the date of disconnection. However, the demand was raised on the assumption that the supply was dismantled only on 26.12.2008. Therefore the entire demand is liable to be quashed. The said demand is absolutely wrong and the consumer is not liable to pay the said huge amount.

2).The complainant submitted a complaint as OP No: 81/2009-10 before the Hon: CGR Forum. The first and 2nd respondents submitted a version stating that the complainant has paid current charges up to 10/99 and the supply was disconnected in 12/99 for not paying the electricity charges. However according to the respondents electricity charges were assessed up to 11/2001 which comes to Rs.24, 748/-. According to them, though the consumer obtained installments he paid only two installments and the service was dismantled on 29.11.2001. The supply was restored on 12.11.2002. According to the version of KSEB, the complainant has paid an amount of Rs.16, 600/- as on 12.11.2002. However, adding the amounts paid by the complainant, as revealed from the version, the total amounts comes to Rs. 18, 012/-. As the supply was disconnected in 12/99, it should have been dismantled in 5/2000. The consumer is not liable to pay any amount for the period from 6/2000 to 10/2002. Further, KSEB has stated that an amount of Rs.10, 725/- has been charged as fixed charges for the period 12/2001 to 10/2002 which is not payable by the complainant. According to the respondent, the supply was again disconnected in 2/2004. Hon: Forum (order dated 02.12.2010) was pleased to direct the KSEB to revise the bill reckoning the date of dismantling after 6 months from the date of disconnection. But in the bill issued by the respondent, an amount of Rs.67, 484/- is demanded as per the notice dated 10.12.2010. The appellant is not liable to pay the said amount. The amount payable by the consumer is computed as shown below:

(i). Charges for 11/99 (stated in the calculation statement filed by the respondent) = Rs. 735.00

(ii). 12/99 to 5/2000 fixed charges 735×6 = Rs.4410.00

(Should have been dismantled in 5/2000

And hence no payment for 6/2000 to
10/2002)

(iii). Re effected in 11/2002, The charges upto 1/2004 (for 11/2002 to 1/2004) is;

11/2002	Rs.	975.00
12/2002	Rs.	975.00
01/2003	Rs.	4128.00
02/2003	Rs.	1016.00
03/2003	Rs.	1067.00
04/2003	Rs.	975.00
05/2003	Rs.	1178.00
06/2003	Rs.	1178.00
07/2003	Rs.	1150.00
08/2003	Rs.	1178.00
09/2003	Rs.	1097.00
10/2003	Rs.	1097.00
11/2003	Rs.	1178.00
12/2003	Rs.	1097.00
01/2004	Rs.	1345.00
02/2004 to 07/2004	Rs.	<u>5850.00</u>
Total Amount Payable	Rs.	30,629.00
Amount Already Paid	Rs.	<u>18,012.00</u>
Balance Amount Payable	Rs.	12,617.00

This is excluding the security deposit and the interest on the same payable to the consumer. The said amount has to be deducted from the outstanding dues as above. No surcharge is payable by the consumer since the dispute was under Litigation and CGRF has already directed the respondent to revise the bill. Since the computation in the revised bill was wrong the complainant again approached the Forum. The Forum vide its order dated 07.01.2011 directed the complainant to approach the Ombudsman within a period of 30 days from the date of receipt of the order.

Argument of the Respondent: -

The respondent denies all the averments and allegations contained in the petition except to the extent they have specifically admitted. It is as follows;

The consumer, Smt. Kunhamina C.K, has obtained an electric connection, having consumer No.7568 under LT IV tariff from Electrical Section Azhikode, for running an industrial Unit named 'Azhikode Oil & Flour mills'. The service connection was effected on 19-12-1990 with a connected load of 21 KW. The consumer had paid the monthly current charges up to 10/1999 only. After that, the supply was disconnected in 12/1999 for not paying the electricity charge for the energy consumed. During that period the consumer had approached Hon: Minister and obtained installments for the arrear amount. After paying just two installments, the consumer again defaulted the payment. Hence the service was dismantled on 29.11.2001 after observing all the formalities. The arrears of electricity charges up to 11/2001, as on dismantling date, was Rs. 24748/-. As requested by the consumer, installments were allowed to clear the dues vide order dated 28.12.2001. But after remitting four installments, again payment was defaulted by the consumer. The total amount paid by the consumer was Rs.16600/-.

Then the consumer filed Petition at the Hon: High Court (OP No 26568/2002) and obtained orders and consequently the Secretary, KSE Board issued order dated 8.11.2002, for remitting the arrears in installments and for re-effecting the service connection. Accordingly the supply was restored to the consumer on 12-11-2002. The consumer paid an amount of Rs.1412/- during reconnection time. The balance due as on re-effecting the service connection date was as follows. The total dues outstanding = Rs. 24748.00 + 10725 (F/C from 12/01 to 10/01) – 16600.00- 1412.00) = Rs.17461/-. Thereafter the consumer did not make any payments and approached Munsiff Court, Kannur vide OS No: 664/2002, against the pending dues. Hence the supply was not disconnected till 02/2004 for the defaulted sum of electricity charges. The amount outstanding then (2/2004) was as follows.

Previous dues	= Rs.17461.00
Dues from 11/2002 to 01/2004 (Electricity consumed from 11/2002 to 01/2004)	
(FC=Rs.975× 15 month + SC)	= Rs.19634.00+Surcharge.
Therefore total outstanding dues	= Rs.37095.00+ Surcharge.

It may be noted that, after getting the reconnection, the consumer filed O.S No. 664/2002 before the Munsiff Court, Kannur, against the pending dues. So the service was not disconnected. The party thus continued to consume the electricity, up to 1/2004, without paying the electricity charges. The supply was again disconnected in 2/2004 only. The outstanding dues at the time of disconnection was (17461 + 19634 = Rs. 37095/-) plus surcharge applicable for late payments. Though the supply was disconnected in 2/2004 the service connection was not dismantled because O.S. No. 664/2002 in the subject matter was pending before the Munsiff court, Kannur. The connection was finally dismantled after the disposal of the case on 26.12.2008. The total outstanding dues at the time of dismantling was Rs. 94761/- plus surcharge and arrear notice was issued on 16.10.2009. The consumer has not remitted the electricity charges for the energy consumed even after the disposal of O.S. 664/2002.

Based on the direction of the CGRF, the bill has been revised and served to the appellant on 10-12-2010. The respondent states that based on the facts and figures, the appellant is not entitled for any of the relief sought in the Appeal Petition. As directed from this Forum, they have furnished further details of the pending bills to the consumer.

Even though the consumer was given installment facility to clear the arrear dues earlier, she failed to make the payment and necessary RR action has been initiated to recover the dues. The dues up to 02/2004 was Rs. 37095/- plus surcharge.

On 02.02.2010, vide order No: 3080057/CGRF-KKD/2010-11/338 of CGRF, the above bill was revised as shown below treating the date of dismantling as on 07/2004.

FC from 02/2004 to 07/2004 : Rs.975 × 6 months = Rs.5850.00
Total dues = Rs.37095 + Rs.24739 (up to date Surcharge) + 5850 = Rs.67484.00

Since the consumer did not make any payment, Revenue Recovery notice was issued on 27.01.2011 for Rs. 66, 057/- after adjusting the cash deposit of Rs.2500.00 of the consumer. The registered notice for the same was noted as received by the consumer on 31.01.2011.

Analysis and Findings: -

The Hearing of the case was conducted on 30.03.2011 at KSEB IB, Kozhikode and Smt. Sathyabhama, Advocate, represented the appellant's side and Sri. Anwar A A, Assistant Executive Engineer, Electrical Sub Division, Pappinissery, represented the Respondent's side. A second hearing was done on 28.12.2011, and the appellant sought adjournment and a 3rd hearing was conducted in my chamber on 25.07.2012, at Edappally, and Sri. Mohammed Shameel, Advocate, and Sri K Shijo, Assistant Engineer, represented either side respectively. On perusing the Petition, the counter of the Respondent, the documents submitted and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The consumer defaulted payment of electricity charges from 10/1999 onwards and the service was disconnected by KSEB in 12/99. After that, the party approached Hon: Minister and was allowed to pay the arrears in installments which was also not fully complied by the consumer. Hence the electric service connection was dismantled on 29.11.2001. The dues as on that day was Rs 24748/-.

The consumer filed OP No 26568/2002, at the Hon High Court and as per the direction, the electric service was reconnected on 12.11.2002, after collecting Rs 1412/- and allowed installments for the balance amount. It is noted that, after re-effecting the service connection, the consumer filed O.S. No. 664/2002, before the Munsiff Court, Kannur, against the pending dues. The consumer had also consumed the energy (electricity) up to 1/2004 without paying the normal monthly electricity charges. The supply was not disconnected by KSEB till 2/2004 as a Suit was filed at the Munsiff Court.

The supply was again disconnected in 2/2004. The outstanding dues at the time of disconnection was reported as Rs (17461 + 19634) = Rs. 37095/- plus surcharge for late payments. Though the supply was disconnected in 2/2004 the service connection was stated to be not dismantled because of Case pending before the Munisiff court, Kannur. But the respondent is eligible for collecting the minimum charges from the consumer, for next six months after D/C in 2/04 only. Actually the service connection was dismantled after the disposal of the case on 26-12-2008, but the respondent does not deserve any merit to demand the minimum charges up to that date. It is limited up to 7/2004 only.

The point for decision is 'what is the amount due by the consumer to the respondent?'

1). The Electric service, after disconnection in 12/99, was reconnected in 11/2002 as per the order of the Hon High Court. Since the Electric service was reconnected (not a fresh connection), the party is supposed to be a Live consumer, all along the back period. Any Live consumer is bound to pay the

minimum charges even during the period of disconnection (max: six months) and if the service is reconnected after dismantling, he is required to pay the minimum Charges (fixed charges) for the entire back period of D/C or dismantling time . As per the prevailing rules, vide Clause 41(5) of KSEB Terms and Conditions of Supply which reads as follows;

“ The dismantled service connection of domestic, agriculture, industrial and commercial consumers if requested for reconnection, Board will take appropriate decision subject to the realization of the following dues.

i). Entire arrears of electricity charges with up to date surcharge, interest etc.

ii). Deposit work charges for dismantling and constructing the line for effecting service connection

iii). Meter minimum charges up to the date of re-effecting the service connection, testing charges, inspection fee and application fee etc.

iv). Additional cash deposit if any required.

v). Charges payable to Revenue department towards cost of proceedings in case revenue recovery proceedings are already initiated.”

From the above rule, it is very clear that the consumer is bound to pay the pending arrears from 10/1999 to the date of reconnection in 11/2002. It is also seen that the consumer has used energy up to 1/2004, till it was again disconnected in 2/2004. Though the consumer has defaulted payment of electricity charges again from the reconnection date and the respondent failed to disconnect the supply in time, after giving notice, on the pretext that a Suit has been filed by the consumer at the Munsiff Court. It is reasonable that the respondent can raise claim for the energy consumed and the appellant is bound to pay the charges for the electricity he has used for the period from 11/2002 to 01/2004, even if the KSEB failed to disconnect the service in time. Moreover, KSEB can claim the fixed charges (minimum charges) for the next six months after disconnection date i.e. up to 7/2004. The respondent has furnished the dues as on 7/2004 as Rs 67484.00 including the surcharge portion.

Decision: -

The consumer herself agrees that the industry was running on loss and was not able to pay the electricity charges in time from 10/99 onwards. The Board has disconnected the power supply, as per rules, in 12/99 and dismantled the service connection in 11/2001. But the consumer has obtained a dismantled service connection reconnected, as per Hon: High Court order, followed by the order of Secretary to KSEB dated 8.11.2002. The party is bound to pay the up to date arrears as well as the minimum charges (fixed charges) even during the period of disconnection and dismantling, to be eligible for a getting an Electric connection reinstated (after dismantling), so as to be a ‘continuing Live consumer’ all along the period. Otherwise, he has to apply for a new connection and execute fresh Agreement with KSEB for the same, which has not happened. Therefore the consumer has to pay minimum charges even during dismantling period is found to be reasonable and justifiable.

The reinstated service connection is stated to be disconnected in 1/2003 by the appellant. But the data of Meter reading and the bills raised by the respondent shows that, there was consumption of energy up to and including in 1/2004. So the date of D/C is reckoned as 2/2004 as stated by the KSEB and therefore the respondent is eligible to charge minimum rates for next six months, up to 7/2004. Therefore the dues of the consumer pending as on 2/2004, reported by the respondent as Rs 37095/- seems to me as correct. The respondent can also demand the next six months minimum charges, which is noted as (Rs.975 X 6 months) = Rs 5850/-. The respondent is eligible for claiming this amount less CD (caution deposit) and interest or surcharge at the rate of 18% on the balance amount.

Please also note that the respondent is not eligible for any interest or surcharge on the pending amount during the Petition pending period before CGRF and this Authority i.e. for the period from 24.3.2010 (date of filing at CGRF) to the due date of the revised bill ordered now.

The respondent is directed to revise the bill as ordered now and to issue with 30 days time given for making payment. Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the consumer stands disposed of as such. No order on costs.

Dated the 24th of August, 2012.

Electricity Ombudsman.

Ref No: P/ 194/2011/ Dated

Forwarded to: -

- 1). Smt. Kunhamina C.K.
Azhikode Oil & Flour Mill,
Oladathaze, Azhikode. P.O,
KANNUR (DT)

- 2).The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Pappinissery, KANNUR.

Copy to:

- (1). The Secretary, Kerala state Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,
Vydyuthi bhavanam, Pattom, Thiruvananthapuram-4
- (3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vudyuthibhavanam, Gandhi Road, Kozhikod