

THE STATE ELECTRICITY OMBUDSMAN  
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9447576208  
Email:ombudsman.electricity@gmail.com

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APPEAL PETITION NO. P/162/2015

(Present: V.V. Sathyarajan)

Dated: 18<sup>th</sup> February 2016

Appellant : Sri Haneefa  
Mattappallil House,  
Kulathoor P.O,  
Pathanamthitta

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Mallappally, KSE Board Ltd,  
Pathanamthitta District

**ORDER**

**Background of the case:**

The appellant, Sri Haneefa, is a consumer with consumer No. 12243 under Electrical Section, Vaipur, and is running a vehicle service station. The service connection was effected on 12-04-2011 under LT IV A tariff. The Regional Audit office, Pathanamthitta during their audit conducted at Electrical Section, Vaipur in October 2013, had noticed that the connection given to the appellant's service station was classified under LT IV A tariff instead of LT VII A tariff. As per the above audit report, the respondent changed the tariff of the appellant and a short assessment bill was issued to him, directing to remit an amount of Rs. 39,107.00 being the difference in the tariff (industrial and commercial) from 12-04-2011 onwards.

The appellant filed objections against the bill before the various authorities in the Board. As the reply was not satisfactory the appellant approached the Hon'ble High Court with WP (C) 1889/14 which was disposed with a direction to the Executive Engineer, Electrical Division, Thiruvalla to consider the request of appellant and pass appropriate orders. The Executive Engineer conducted a hearing on 19-12-2014 as per the direction of Hon'ble High Court and disposed the petition without allowing any relief. Hence the appellant lodged complaint before the CGRF, Kottarakkara, on 05-02-2015.

The CGRF, after hearing the case dismissed the petition on the ground that the petition had already been decided and disposed by the Hon'ble High Court in WP (C) 1889/2014 vide judgment dated 20-01-2014, directed the Executive Engineer, Electrical Division, Thiruvalla for taking decision. The Executive Engineer disposed the petition by confirming the bill already issued by the respondent. So the appellant approached CGRF against the decision of Executive Engineer in OP No. 1426/2015 which was disposed with a direction

to revise the impugned bill for 24 months, vide order dated 13-7-2015. Still not satisfied with the decision of CGRF, the appellant has filed the Appeal petition before this Authority on 05-10-2015.

**Arguments of the appellant:**

1. The appellant stated that he is conducting a Motor Service Station cum Workshop. The tariff of the appellant was originally given under LT IV A but later changed to LT VII A as evidenced and subsequently the same was changed to LT IV A. The Assistant Engineer himself was taking the reading and fixing the tariff and issuing the bills then and there, and collecting the amount without any default from the appellant. The appellant herein was regularly paying the bill amounts under LT IV A. Till the bill dated 05-11-2013, the consumption was charged under LT IV A. The appellant was served with a bill dated 05-12-2013 in which an additional amount of Rs. 39,101.00 was shown as arrears.
2. Actually the appellant was very much aggrieved against the short assessment bill. As the same is under LT VII A and for the change no notice was issued to the appellant and claiming of additional amount of Rs. 39,101.00 as arrears. All the same were done arbitrarily by the respondents.
3. The appellant is only a self employed person who is very much suffered of the above said bill. He is getting some money on daily works and expending all the same for the maintenance of the said work shop and also for the livelihood of himself and his dependent family members. There is no other earning or income for the appellant except the income derived from the above said motor service cum workshop. It is a fact that he is doing the work with minimum charges which is in his own locality and which is only a village area and if the tariff ought to have been fixed under LT VII A and the same should have been fixed at the appropriate time.

But now the amount is claimed in arrears which causes prejudice to the appellant and such claim is causing bias and much hardship to the appellant. If the tariff was fixed in LT VII A he would have collected charges from the customers accordingly also. But after years passed it is not proper on the part of the respondent to claim tariff under LT VII A for the past years. There was no fault from the part of the appellant in fixing the tariff. The concerned electrical officers were coming and taking the reading and thus they were very much aware of the works and usage of electricity in the premises and they were very much aware that the concerned unit was using electricity for service station and workshop.

4. It is to be further submitted that against the said short assessment bill the appellant has filed objections to the Assistant Engineer, Electrical Section, Vaipur dated 27-12-2013. The Assistant Engineer has given a reply dated 30-12-2013. Against the bill where arrears claimed and against change of tariff the appellant have filed a revision as per clause 37 of Kerala State Electricity Board Terms and Conditions of Supply of Electrical Energy before the Assistant Executive Engineer dated 27-12-2013. The appellant

has filed additional objections/ revisions before the Assistant Executive Engineer.

5. Thereafter the appellant approached the Hon'ble High Court of Kerala as per W.P. (C) No.1889 of 2014 to dispose of Ext. P7 and Ext. P8 pending before the respondents. Thereafter Hon'ble High court of Kerala disposed off the Writ Petition (C) 1889/14 directing the respondents to consider and pass appropriate order on them. The appellant filed objections before the respondents on 25/02/2014. But the respondents have not considered the objections and passed orders without considering the judgment of the Hon'ble High Court and not redressed the grievance of the appellant.
6. Against which the appellant approached the Consumer Grievance Redressal Forum, Kottarakkara by filing O.P. 1250/14 and the O.P. was admitted by the said Forum and passed interim orders. It is informed to appellant from the office of this Forum that notice would be sent to the appellant for final hearing. No notice was received by the appellant with regard to final hearing. But the Forum passed final orders on 29-11-2014 without hearing the appellant. As per the orders of the Forum the Executive Engineer has not complied with the judgment of the Hon'ble High Court and therefore the Forum directed Executive Engineer, Electrical Division, Thiruvalla for information and necessary action. Thereafter appellant filed his objections. But the Executive Engineer, Thiruvalla has not considered his objection and passed the order confirming the electricity bill and reapproved the earlier stand of the respondent. Against which appellant filed OP No. 1426/15 before the Hon'ble CGRF, Kottarakkara.
7. Even though there was a specific finding from the part of Hon'ble CGRF that there was gross negligence and laches from the part of licensee in fixing the suitable tariff and collecting charges in time, the petition filed by the appellant is not fully allowed by the Hon'ble Forum. It was also observed by the Hon'ble Forum that there was no role from the appellant for fixation of tariff and the disputed bill amount was issued after a long period of energisation in the premises of the appellant. The Hon'ble Forum ought to have found that the licensee has no authority to collect any amount from the appellant and the Hon'ble Forum ought to have quashed the entire bill. But instead of that the Hon'ble Forum allowed the licensee to collect amount for a period of 24 months for which the appellant was very much aggrieved and filing this appeal before this Hon'ble Ombudsman.
8. Thereafter, 18-09-2015 the appellant received a bill dated 16-09-2015 from the Assistant Engineer for an amount of Rs. 31,816.00. The respondents have no authority to revise a slab after collecting the amount under LT IV A. The appellant was doing the business based on LT IV A tariff. He was executing his workshop charges considering then electric charges. Therefore he cannot at a later point of time collect any money from his customers. The respondents inspected the premises and provided the electric connection and fixed tariff in which the appellant has no role. Moreover, in every month the meter reading was taken by the authorities watching the type of consumption. In the situation for the very negligence

on the part of respondents cannot attract any penalty on the appellant. The appellant is too poor to pay the alleged arrears. Therefore the demand for arrears is liable to be set aside.

**Arguments of the respondent:**

1. Sri. Haneefa M.S, Mattappallil, Kulathoor P.O. is running a vehicle service station under Electrical Section, Vaipur bearing Consumer No. 12243. The above connection was effected on 12-4-2011, under LT IV tariff. During the audit conducted by Regional Audit Office, Pathanamthitta in October 2013 at Electrical Section, Vaipur for the period from 4/2008 to 3/2013, certain anomalies regarding misclassification of tariff were found out and directed to take appropriate steps to rectify the mistakes and make good the loss sustained to the Board vide their report dated 15-11-2013. The invoice in question is for the amount actually undercharged confined to 24 months. The other contentions of the petitioner have no relevance at this stage.
2. As per the report of the audit team the tariff of con. No. 12243 has been changed from LT IV to LT VII A with effect from 12/2013 as the service station comes under the LT VII A category and a bill amounting to Rs. 39,107.00 has been issued to the appellant with up to date assessment for the loss sustained to KSE Board vide bill dated 03-12-2013 with last date of payment fixed on 02-01-2014 which was served to the appellant on 07-12-2013. The regular current charge bill of Consumer No. 12243 for the month of 12/2013 was issued on 05-12-2013 under LT VII A tariff with last date of payment fixed on 27-12-2013. The inspection/audit bill amount was entered by the system as arrears in this regular bill dated 05-12-2013. The details of inspection bill dated 03-12-2014 have been intimated to the appellant in person and the last date of its payment has been extended from 02-01-2014 to 10-01-2014 in the presence of the appellant as per his request.
3. The Kerala State Electricity Board Limited is having a mechanism of routine inspection and review by the Regional Audit Office Wing and during such an inspection from the Regional Audit Office, Pathanamthitta at Electrical Section, Vaipur, it was established that the appellant has been undercharged due to misclassification of tariff. As per clause 37 (5) of the Terms and Conditions of Supply, 2005 (As revised in 2007), if the Board established that it has undercharged by the consumer either by review or otherwise, the Board may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Board will specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.
4. On 27-12-2013 the appellant filed objections about the bill dated 05-12-2013 stating that he has no arrears pending to his Con. No. 12243. A reply to the appellant was issued vide letter No. DB/13-14/54 dated 30-12-2013 by the Assistant Engineer, Electrical Section, Vaipur in which it is stated that the details of inspection/audit bill dated 03-12-2013 for an amount of Rs. 39,107.00 has been intimated to the appellant in person and the last

date of payment has been extended from 02-01-2014 to 10-01-2014 in the presence of the appellant as per the request.

Again the appellant has filed objections before the Assistant Executive Engineer, Electrical Sub Division, Mallappally on 27-12-2013. For that a reply was sent from the office of the Assistant Executive Engineer, Electrical Sub Division, Mallappally on 15-01-2014.

5. The Assistant Executive Engineer, Electrical sub Division, Mallappally conducted a personal hearing on 25-02-2014 on the matter and passed appropriate order vide order No. DB37/ESD/MLPY/2013-14/150 dated 04-03-2014.
6. The respondents have passed orders after hearing the appellant personally on 25-02-2014.
7. After that the appellant has filed objection before the Hon'ble Consumer Grievance Redressal Forum, Kottarakkara vide O.P. No. 1250/2014. Notice sent by the Hon'ble Consumer Grievance Redressal Forum regarding hearing was obtained vide CGRF (S) KTR/Hearing O.P. No. 1250/2014/3334 Dt. 25-09-2014. The Forum observed that as the grievance of the appellant has been voiced before the Hon'ble High Court of Kerala in W.P @ No. 1889/2014, which was disposed of by judgment dated 20-01-2014, it is not proper of this Forum to adjudicate the same issue again. It was also observed that if the judgment of the Hon'ble High Court has become final and the same remain uncomplied (as Executive Engineer is the authority to conduct hearing instead of Assistant Executive Engineer) the appellant may take appropriate steps for non compliance of the judgment and the case is disposed of.

Accordingly the Executive Engineer, Electrical Division, Thiruvalla has conducted a hearing on 29-12-2014 and passed appropriate orders vide order No. GB1/WP (C) No. 1889/2014/VPR/2014-15/3464 Thiruvalla dated 22-01-2015.

8. Again the appellant filed objections before the Hon'ble Consumer Grievance Redressal Forum, Kottarakkara vide O.P.No.1426/2015 On 05-02-2015. The Hon'ble CGRF disposed the above case with the orders that the additional bill Dt. 03-12-2013 for the amount of Rs. 39,107.00 is quashed and the opposite party is directed to revise the impugned bill for 24 months. 30 days time (due date) shall be given to pay the bill without any surcharge during the period of complaint.

It is apparent enough that any instance of under charging could be established by the licensee only through a review of the state of affairs and such a review could be possible only through monitoring history of events and records. As per clause 37 (5) of the Terms and Conditions of Supply 2005 (As revised in 2007) "if the Board established that it has undercharged by the consumer either by review or otherwise, the Board may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Board will specify the

amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account". Here in this case, as the Kerala State Electricity Board Limited is having a mechanism of routine inspection and review by the Regional Audit Office Wing, and during such an inspection from the Regional Audit Office, Pathanamthitta at Electrical Section, Vaipur, it was established that this appellant had been undercharged due to misclassification of tariff.

Accordingly short assessment bill for Rs. 39,107.00 has been issued. In order to redress the grievance of the petitioner raised vide WP (C) 1889/2014 and O.P No. 1250/2014, hearing was conducted by the competent authority and final order was sent to the consumer. The appellant had given ample time for remitting the said amount. In taking a lenient view it was also intimated to the appellant about the instalment facility for remitting the arrear amount. As a registered consumer of Kerala state Electricity Board limited, the appellant is bound to obey the KSE Board Terms and Conditions of Supply with necessary amendments.

9. As per the order of the Hon'ble CGRF in O.P. No. 1426/2015, the bill has been revised for 24 months and the amount comes to Rs. 31,816.00. The same has been issued vide bill No. 502858 dated 16-09-2015 with last date of payment fixed as 16-10-2015 i.e. 30 days from the bill date.
10. As a registered consumer of the Kerala State Electricity the appellant is bound to obey the KSE Board Terms and Conditions of Board with necessary amendments. As per clause 37 (5) of the Terms and Conditions of Supply, 2005 (As revised in 2007) If the Board establishes that it has undercharged by the consumer either by review or otherwise the Board may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. A well known judgment of the High Court of Kerala in W.A. No. 211/2012 contains the settled position that the question of normal period of limitation is not applicable towards electricity and water charges.

So the appellant is liable to pay the arrear amount pending against this consumer number. It is highly pertinent in this context that the licensee (KSEBL) has invoiced the amount actually undercharged alone. No penalty or interest was included in the amount so invoiced. Though the Hon'ble Consumer Grievance Redressal Forum, Kottarakkara disregarded this settled position of law as regards to the limitation of time and made the assessment confined to 24 months, this licensee has resorted to comply with the respective order of the Consumer Grievance Redressal Forum, keeping a consumer friendly perspective.

The appellant argued that he is conducting a motor service station cum workshop. It may be noted that an automobile service station cum workshop can avail the benefit of industrial tariff only if the workshop load is segregated and installed separate meter for the same. If loads are not segregated the charges should be realized at the rules applicable to automobile service station i.e. at LT VII A tariff. Upon inspection it was noted that a vehicle service station is functioning in the premises. Hence

the tariff comes under LT VII A. Now the appellant is paying regular current charges under LT VII A tariff without any objection. It may be noted that the officials of Kerala State Electricity Board Limited has acted according to the rules and regulations and there is no lapse occurred from the part of KSE Board Limited.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 18-12-2015. Sri Anwar Basheer, Counsel for the appellant was present for the appellant's side and Smt. Ligimol Vargese, Assistant Executive Engineer, Electrical Sub Division, Mallappally represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

According to the respondent the tariff assigned to the appellant was found incorrect with regard to the activities and purpose of energy used in the premises. The respondent argued that the tariff applicable to the premises of the appellant comes only under commercial but not industrial. The appellant's argument is that fixing appropriate tariff rests on the respondent's side and the appellant has no role in it. On a perusal of the documents it can be seen that the respondent assigned the industrial tariff while effecting the service connection to the appellant without conducting proper verification regarding the purpose of supply. The respondent could reclassify the tariff only after the inspection by the Audit Wing.

As per the Schedule of Tariff and Terms & Conditions for Retail Supply by KSEB with effect from 01-12-2007, workshop with automobile service station shall segregate the workshop load for availing the benefit of industrial tariff. Since the appellant has not segregated the workshop load he is not eligible for LT IV industrial tariff. The appellant has not disputed the fact that he is engaged in the business of running a vehicle service station. Hence the action of the respondent to reclassify the appellant's category under LT VII A is found in order based on the tariff notification and this Authority could not find any lapse in this regard.

The argument raised by the appellant is that no notice was issued to him by the respondent regarding the change of tariff before claiming of short assessment amount of Rs. 39,101.00 as arrears. Further contention of the appellant is that even though the Hon'ble CGRF found that there was gross negligence and laches on the part of licensee in fixing the tariff applicable and collecting charges in time, the Forum denied justice to the appellant.

On a perusal of the records it can be seen that the respondent issued penal bill for an amount of Rs. 39,107.00 dated 03-12-2013 was served on the appellant on 07-12-2013. It is also pertinent to note that the Hon'ble High Court disposed the petition WP (C) 1889-2014 directing the Executive Engineer to consider and dispose the appeal after affording an opportunity of personal

hearing. But the Executive Engineer has not complied with the judgment of the Hon'ble High Court. Later, the Executive Engineer disposed the petition only after the intervention of CGRF. If the respondent had taken prudent action, this kind of unnecessary litigation could have been avoided.

As per Regulation 24(5) of Electricity Supply Code, 2005; **“if the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount under charged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making the payment of bill. While issuing the bill, the licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.”** Hence it is clear that, there is nothing illegal or arbitrary, in the action of respondent in claiming an ‘undercharged’ amount from a consumer, by preferring a short assessment bill to recover the same. Here in this case the respondent issued the short assessment as a separate bill along with calculation statement and other details. Hence the contention raised by the appellant that no notice was issued to him regarding the tariff change before claiming the short assessment bill cannot be acceptable.

**The issue relevant in this case is from which date the assessment is applicable.**

As per Section 56 (2) of Electricity Act, 2003, no such sum due from any consumer on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charge for electricity supply. Further, the judgment in a petition filed before the Hon'ble High Court, Bombay, vide case No: 3784/2007, has dealt with the ‘due date’ issue in detail and pronounced its considered opinion. The same judgment is referred in this context and is reproduced herewith the relevant portion as; *‘In construing the expression “due” the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1) & (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer.*

*Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him’.*

On a perusal of the short assessment it can be seen that the assessment was made from 12-04-2011 to 11/2013 for a period of 32 months from the date of connection. The CGRF while disposing the petition on 13-07-2015 directed the respondent to limit the period of assessment to 24 months based on the Section 56 (2) of Electricity Act, 2003. Since the Forum has already decided the case in favour of the appellant, this Authority finds no scope for further intervention in the matter.



**Decision**

In view of the above discussions it is decided to quash the short assessment bill issued for Rs. 39,107.00. The respondent is directed to revise the bill limiting the period as 24 months. The revised assessment shall be served within a period of 30 days from the date of receipt of this order. No interest or surcharge need be levied from the appellant during the appeal pending period and up to the due date of the revised assessment. Instalment facility for remitting the revised assessment shall be allowed if the appellant desires so.

Consequently the instant appeal fails and is hereby dismissed. The impugned order of CGRF in OP No. 1426/2015 dated 13-07-2015 is hereby confirmed. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/162/2015/\_\_\_\_\_ Dated: \_\_\_\_\_

Delivered to:

1. Sri Haneefa, Mattappallil House, Kulathoor P.O, Pathanamthitta
2. The Assistant Executive Engineer, Electrical Sub Division, Mallappally, KSE Board Ltd, Pathanamthitta District

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, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.