

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/068/2017  
(Present: A.S. Dasappan)  
Dated: 25<sup>th</sup> September 2017

Appellant : Sri. Sathyaseelan  
Puthenveedu,  
Nellanadu, Venjaramoodu,  
Thiruvananthapuram

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Venjaramoodu,  
Thiruvananthapuram

### **ORDER**

#### **Background of the case:**

Sri Sathyaseelan, the appellant, having electric connections bearing consumer numbers Nos. 5737, 5738 and 5739 under Electrical Section Venjaramoodu, Thiruvananthapuram, has filed an Appeal Petition on 22/06/2017 before this Forum and stands numbered as P/068/2017. The appeal is against the order Dated 29-03-2017 of CGRF, Kottarakkara, in the Petition No. OP 258/2016, filed before it. The appellant has also filed a Writ Petition, WP (C) 16331/2017, before the Hon: High Court of Kerala on 15-05-2017, against the CGRF Order, which is under its consideration before the Court.

#### **Arguments of the appellant:**

1. The appellant is provided with electric supply with consumer No. 5737, 5738, 5739 beginning from right to left i.e., the beginning Number was 5739 followed by 5738 and 5737. The said consumer numbers are given to 3 shop rooms belong to the appellant and though the meter is to be installed separately in each shop room the Board officials planted separate boards.

2. In the said 3 shop rooms the electric connection provided to consumer No. 5739 was used as an Ayurvedic Shop, 5738 as Medical Store and 5737 as Milma Booth. Business in Milma Booth was stopped prior to 1995 and Ayurvedic Shop also was closed in 2000. On the medical store in the Consumer No. 5737 alone was continued with and the same was shifted to Consumer No. 5737. The following were the meter numbers in respect of the consumer numbers: -

5739 : 5118000  
5737 : 8058404

3. The meter numbers were recorded in the Board using choke and in the year 1994 when the Board Officials put the number using paint there was an inter change by which the No. 5739 was shown as 5737, 5738 remaining the same and thus 5739 became 5737. Thereafter when readings were taken the following readings were noticed.

4. Bill dated 25.01.1997 for the period from 9/1994 to 12/1996 for Rs. 18,073/- was given for Consumer No. 5737. The said irregular reading and charging occurred due to the interchanging of 5737 to 5739. As a matter of fact a single bulb was used in the said consumer number. Since the same was an irregular and illegal claim, the amount was not paid. Taking the connection 5739 as 5737 the Ayurvedic shop's connection was disconnected. Thereafter only the meter charge alone was paid. So the said mistake occurred due to the reading taken for 5737 as 5739. It is to be considered that such claim of Rs. 18,073/- was made by taking wrong reading. When readings were noted later consumer No.5737 with meter No. 5118000 had run only up to 728 on 08-09.-1998. So there is no question of consumption of electrical energy by reaching the meter reading to show 1350 units. When the mistake occurred in Number, the reading was taken from 728 and thus the exorbitant quantity of 1350 unit.

5. Challenging the same, the appellant have approached the Hon'ble High Court of Kerala. Thereafter again a notice of disconnection was issued and the appellant approached the Hon'ble High Court of Kerala and remitted an amount of Rs. 10,000/- as directed by the Hon'ble High Court of Kerala.

6. While the matter was pending a bill for Rs. 1,22,110/- was issued dated 11.3.2002. True copy of the same is produced here with and marked as Annexure Al. In the said bill the Consumer Number shown is 5737 and there was no consumption of electrical energy in 5737 at all. Moreover the 5737 was actually become the Ayurvedic shop by the mistake committed by the Electricity Board staff in numbering. In the counter affidavit filed before the Hon'ble High Court of Kerala though challenge is made regarding the said exorbitant claim it is stated in paragraph 7 by the Board as follows:-

"At the relevant time, the total arrears against consumer No. 5737 as on April 2001 had accumulated to Rs. 1,19,312/-"

Though in the counter affidavit the split figure for Rs.18,073/- is stated, no details are forthcoming regarding the Rs. 1,28,365/- or Rs. 1,19,312/-. It is absolutely incorrect in stating that the appellant committed mistake by putting numbers using paint and it was only the Board officials who committed the mistake.

7. When there was an interchange as stated, the meter rotation was taken to have been completed and it was accordingly the mistake crept in and consequent demand made. Consumer No. 5739 was disconnected by the Board staff taking the same as consumer No. 5737. The said fact is also admitted in the counter affidavit filed before the Hon'ble High Court of Kerala. So the claim of Rs. 18,000/- and the further claim of arrears to Rs.1,22,000/- are all due to mistake committed by the line staff and wrong reading taken and the appellant was not having any role in the said mistake.

8. On the basis of the direction issued by the Hon'ble High Court of Kerala when an amount of Rs. 10,000/- was remitted reconnection was given to Consumer No. 5739, the Ayurvedic shop. Hence the officials have themselves committed mischief and wrong in having the readings noted incorrectly and also in pasting wrong numbers.

9. The Medical shop is actually having the number 5738 and the same as shifted to consumer No.5737, which was later wrongly numbered as 5739. Power supply to the said connection was also disconnected illegally.

10. In the Counter affidavit filed before the Hon'ble High Court of Kerala it is stated that for the period from September 1994 to December 1996 the total unit consumed was 6878, exceeding permissible limit. The said statement is totally incorrect since there was an interchange due to mistake in numbering by the Board officials, there was jumping in figures by taking the readings of the mistaken number and that of the original number. It was accordingly that in consumer No. 5737, which was later wrongly numbered as 5739, by taking the previous readings of 5737 to 5739, as excess consumption the charge was levied. So the irregularity and illegality occurred due to the wrong numbering of the meters. If the reading of the respective meters were taken there would not have been any excess charge at all.

11. The appellant filed a separate request calling for the records relating to the meter reading by letter dated 11-11-2003 to the Assistant Engineer .The said details were not given to the appellant so far.

12. Though the learned Single Judge of the High court of Kerala directed the Assistant Engineer to consider the matter by filing a supplementary petition

the Assistant Engineer knowing about the mistake on their part tried to pass orders if the direction was to him. However again when the matter was taken up by the Hon'ble High Court of Kerala in OP No. 7508 of 2002, there was a direction to reconnect the supply and amount of Rs. 20,000/- to restore electricity connection.

13. There after the appellant filed an appeal before the Executive Engineer, Electrical Division, Nedumangad. But that appeal was dismissed by the Executive Engineer, Electrical Division, Nedumangad. True copy of the same is produced here with and marked as Annexure A2. Though the appellant challenged the order of the Executive Engineer, Electrical Division, Nedumangad in W.P.(C) No 36756/2007 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala directed the appellant to approach the CGRF for the Redressal of the grievance of the appellant. Accordingly, the appellant approached the CGRF, Kottarakkara with O.P No 258/2016. The CGRF, Kottarakkara dismissed the Original petition as per order dated 29-03-2017. True copy of the same is produced here with and marked as Annexure A3. Pursuant to the same the Asst. Engineer, KSEB, Electrical Major Section, Venjaramoodu issued a disconnection notice on 05-05-2017 to the appellant. True copy of the same is produce here with and marked as Annexure A4. In the above circumstance the appellant submits the above complaint aggrieved by the order of the CGRF, Kottarakkara dated 29-03-2017 in O.P. No. 258/2016 on the following among other.

A) The Executive Engineer, Electrical Division, Nedumangad has not properly appreciated the case advanced by the Appellant. It was the firm case of the Appellant that there was inter change of meter and the said inter change caused mistaken noting of meter reading by taking that in respect of the disputed meter there was rotation to the full extent. The same was not based upon any materials and even the Executive Engineer, Electrical Division, Nedumangad accepted that there was inter change of meter. In such a situation the finding entered to the effect that there was actual consumption of energy and the meter registered correct reading are illogical and illegal finding not acceptable to any human perception. Hence, proceedings of the Executive Engineer, Electrical Division, Nedumangad are liable to be set aside.

(B) The Executive Engineer, Electrical Division, Nedumangad ought to have found that there was no case advanced by the Board or its officials to the effect that there was inter change of meter. In such a situation when the appellant's case was to the said effect and on records also when it was found to be correct the presumption is that the case put forward by the appellant is more probable and legally acceptable. Moreover, there was no proper adjudication of the points raised by the Appellant though the Executive Engineer, Electrical Division, Nedumangad has stated that the consumer was running a Bakery and Milma Booth and the same might have been the cause for higher consumption. The said finding was an irrational and unjust one and more over

when there was an inter change for a period of one year which is admitted by the Executive Engineer, Electrical Division, Nedumangad, there was mistaken reading was also noticed in view of the fact that no such inter change was recorded in the Board's registers and accordingly the Meter Reader falsely stated the readings by taking the low meter reading as one happened by full rotation. So when the mistaken entries were not properly appreciated and that too with the records available in the Board's office the proceedings of the Executive Engineer, Electrical Division, Nedumangad is an irrational and illegal order. So it is liable to be set aside.

C) When there is defective reading and that too was caused due to the fault on the part of the Board's officials the consumer cannot be mulcted with liability and if at all there was any mistake, the recovery can only for a period of 3 months. Apart from that as per the provisos in the Indian Electricity Act Revenue Recovery proceedings cannot be initiated also. There was no issuance of bills showing the said amounts except by claiming a lump sum amount, which was under challenge in various writ petitions before this Hon'ble Court. So the claim itself is barred by limitation.

D) The appellant made request to produce the copies of the original records and make available the same for his verification but no such permission was granted and even the Appellant requested for given evidence by cross examining the Sub Engineer, etc. But the Executive Engineer did not allow the same nor pursue the records accordingly the proceeding was passed in violation of the principal of natural justice and fair play and the appellant was precluded from substantiating his case. Hence on the said ground also the proceedings passed by the Executive Engineer, Electrical Division, Nedumangad are liable to be set aside.

E) The Consumer Grievance Redressal Forum failed to consider these aspects while passing the impugned order in O.P. No 258 of 2016 dated 29.03.2017. There was no consideration of the contentions by the CGRF which resulted in miscarriage of justice to the appellant. The CGRF did not even send copy of the order to the appellant to approach this Hon'ble Forum with this complaint.

F) In any view of the matter the respondents are not entitled for demanding any amount from the appellant and Annexures A1 to A5 is liable to be set aside by this Hon'ble authority.

#### 5. Nature of reliefs sought from the Ombudsman.

- a) Set aside bill of the Asst. Engineer, KSEB, Electrical Major Section, Venjaramoodu dated, 25.01.1997 for Rs. 18,073/-
- b) Set aside Annexure-A1 bill Asst. Engineer, KSEB, Electrical Major Section, Venjaramoodu dated 11.03.2002 for Rs. 1,22,110/-

- c) Set aside Annexure-A2 order of Executive Engineer, Electrical Division, Kerala State Electricity Board, Nedumangad, Thiruvananthapuram District.
- d) Set aside Annexure A3 order of the CGRF, Kottarakkara dated 29.03.2017 in OP No.258/2016.
- e) Set aside Annexure A4 demand of the Asst. Engineer, KSEB, Electrical Major Section, Venjaramoodu dated 05.05.2017.
- f) Declare that the appellant is not entitled to pay any amount to the respondents on the basis of Annexure A1 to A4 order/demand and direct the respondents to return/adjust Rs. 80,000/- remitted by the appellant on the basis of the order of the Hon'ble High Court of Kerala in various occasions with interest.
- g) Such other reliefs as deemed to be fit and proper to this Hon'ble Ombudsman in the facts and circumstances of the case.

### **Arguments of the respondent:**

All these three service connections are given to the three shop rooms of a single building of the consumer Sri. Sathyaseelan bearing consumer Nos. 5737, 5738 and 5739 .The connected loads of said consumer Numbers are 640w, 280w & 280w respectively. These services were effected on 28-06-1990 under OYEC scheme and tariff assigned was in LT 7B. No painting has been done by the Board and there was no interchange in the consumer numbers as alleged. An additional bill of Rs. 18,073/- was issued to the consumer on 11-02-1997 for the excess consumption over and above the monthly unit allotted to him as per the Provisional invoice card for the period from 9/1994 to 12/1996 which led to this litigation. Actually the consumer was running a Bakery and Milma booth in the premises during this period for which the additional bill was issued and thereafter a medical store.

Dismantling notice was issued to the consumer as the appellant did not remit the arrears due to the Board. The service connection was disconnected 12/2001. Then the consumer filed the petition before the Hon'ble High Court vide OP No. 38027/2001. Based on the judgement of the Hon'ble High Court the appellant remitted Rs. 10,000/- on 27-12-2001 and gave reconnection to consumer No 5737. The said amount of Rs. 1,22,110/- as stated in the statement of facts is the arrear amount including current charge and surcharge as accumulated for the defaulted period from 01/1996 to 03/02.

The only thing happened is an interchange of reading furnished in the meter reading register for the period from 2/2001 to 12/2001. For the above period the actual reading of consumer no 5737 was posted against consumer no 5739 and vice versa. This mistake was noted during 12/2001 and revised bills were issued to both the consumers.

In OP No. 33046/2001, the Hon'ble High Court directed the Executive Engineer to deal with the matter. The Appellant was also directed to submit the supplementary petition before the Executive Engineer within 3 weeks. But the consumer not submitted any petition. The consumer filed OP No. 7508 of 2002 and by judgement dated 10-10-2003, a direction was issued to remit Rs 25,000/- towards the demand and also a direction to the Executive Engineer to consider the claim of the consumer. The Appellant preferred an appeal against the same as WA No. 1766/2004 which was disposed off without expressing any opinion on merits. Judgement upheld the direction of the Single Judge and to deposit Rs. 20,000/- and thus remitted the amount on 24-11-2004. Then also the consumer not remitted the arrears and current bill. The Appellant filed supplementary petition before the Executive Engineer on 20-12-2004. Hearing was conducted on 20-01-2005. Appellant requested for adjournment and again hearing posted to 28-01-2005, but did not turned up for hearing. Due to the indifferent attitude of the Appellant the Executive Engineer could not dispose the case as directed by the Hon'ble High Court. The Appellant again approached the Hon'ble High Court by filing WP(C) No. 3304/2006 and by judgement dated 01-03-2006 the Hon'ble High Court directed the Executive Engineer to pass a just order on hearing the petition. Thus a personal hearing conducted on 23-03-2006 and issued Order No. GB1/364/2004/427(a) dated 20-04-2006. After hearing both parties the Executive Engineer concluded that no illegal demand has been raised against the consumer and that the consumer is liable to pay the bills after adjusting the amount already remitted as per the direction of the Hon'ble High Court. By that time the total arrears outstanding against the Con. No. 5737 for the period from 01/1996 to 02/2006 was calculated as Rs. 1,83,304/- including surcharge. In spite of this order no remittance was made by the Appellant. As per the Order No CGRF/KTR/OP No. 258/2016/6277 dated 29-3-2017 a disconnection notice was issued to the consumer on 5-05-2017. (Copy of the above order received in this office on 4-04-2017). The Hon'ble CGRF by the above order emphasised the fact that the additional bill issued by the Kerala State Electricity Board Ltd is genuine and sustainable and that the appellant is liable to pay the amount due to KSEB Ltd. The court also made it clear that the consumer is at liberty to prefer appeal before the Electricity Ombudsman within 30 days from the date of receipt of the order. Accordingly after the expiry of the period, this Office has issued a disconnection notice dated 05-05-2017.

This office came to know that the appellant has again filed a new case with WPC16331 of 2017 before the Hon'ble High Court of Kerala against the Board officials including the Hon'ble Electricity Ombudsman as the 6th respondent.

In the light of the above facts the Hon'ble Electricity Ombudsman may dismiss the petition.

**Analysis and findings:**

The case was posted for Hearing on 25-08-2017 in the Court hall of CGRF, Kottarakkara, but the appellant or his authorized person was absent and Sri. Visakh Vijayan, Assistant Engineer in charge of Assistant Executive Engineer, Electrical Sub Division, Venjaramoodu and Smt. Ushakumari M.S. the Senior Superintendent, Electrical Section, Venjaramoodu were represented the respondent. Smt Priya D/o Sri. Sathyaseelan has requested time to appear the hearing at Ernakulam by the appellant's counsel and the request granted.

The respondent informed the Forum about the filing of case at the Hon: High Court of Kerala by the appellant. The appellant's authorized representative Sri. Latheesh Sebastine, advocate appeared for hearing on 07-09-2017 in my chamber at Ernakulam.

Since a case is pending before the Hon High Court for decision against the orders of CGRF, I do not feel it appropriate to entertain the Petition on the ground that the Case is not maintainable before this Forum also, as per Clause 22 (d) of the Kerala State Electricity Regulatory Commission(CGRF and Electricity Ombudsman) Regulations, 2005. Hence this Forum declines to interfere with the orders of CGRF.

At this juncture it is to be noted that, the Clause 22 (d) of the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, provides that;

“No representation to the Ombudsman shall lie in case where a representation for the same grievance by the complainant is pending in any proceedings before any Court, tribunal or arbitrator or any other authority or a decree or award or a final order has already been passed by any such Court, tribunal, arbitrator or authority”.

Since a Writ Petition filed by the respondent lies before the Hon High Court of Kerala and in the light of the above provision under 22(d) of KSERC Regulations 2005, which restricts the maintainability of the petition filed for the same cause of action and relief, the Appeal Petition filed by the appellant, need no further action at this Forum and hence needs to be rejected.

**Decision:**

The provisions made under Clause 22(d) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, restricts the maintainability of the Petition before this Forum, when a similar nature Petition filed for the same cause of action and its related grievances, is pending before any other Court, Tribunal, Arbitrator or Authority. Here in this case, a writ Petition is seen filed by the appellant before the Hon: High Court of Kerala vide WP (C) No 16331/2017,



and is pending for its decision. Hence the Appeal Petition No P/ 068/ 2017, filed by Sri. Sathyaseelan, before this Forum is not maintainable for the reason stated above and therefore the said Petition stands dismissed and is ordered accordingly.

**ELECTRICITY OMBUDSMAN**

P/068/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Sathyaseelan, Puthenveedu, Nellanadu, Venjaramoodu, Thiruvananthapuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Venjaramoodu, Thiruvananthapuram.

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.