

# STATE ELECTRICITY OMBUDSMAN

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## REPRESENTATION No: P43/09

Appellant : Smt E.Praseeja,  
Manohar Jewelleries,  
Jewel House, Payyannur

Respondent: Kerala State Electricity Board  
*Represented by*  
The Assistant Executive Engineer  
Electrical Sub Division Payyannur

## ORDER

The Hon:High Court of Kerala in the Judgment dated 18.12.2008 on WP(C) 37034/2008(H) filed by Smt E.Praseeja , Manohar Jewelleries had ordered that 'if the petitioner files a petition before the Electricity Ombudsman within 10 days from today the Electricity Ombudsman will consider the same with opportunity of hearing to the petitioner and take a decision within two months from the date of filing the petition'.

Smt E.Praseeja, Manohar Jewelleries,Jewel House, Payyannur submitted a representation on 22.1.2009 seeking the following relief :

*To set aside the Order dated 3.12.2008 of the CGRF*

Counter statement of the Respondent was obtained on 24.2.2009 and hearing of both the parties was arranged at Government Guest House Kannur on 26.3.2009 . During the sitting the Appellant sought for an adjournment due to the inconvenience of the Advocate which was allowed with the condition that further adjournment will not be allowed. Another sitting posted on 12.05.2009 at Kannur had to be cancelled due to unavoidable circumstances. Next sitting was arranged on 07.07.2009 at Kannur Guest House , but the Appellant did not turn up for the hearing. In the interest of justice it was decided that the Appellant will be provided with *one final opportunity* to attend the hearing and a sitting was arranged at the Ernakulam Office at 2.30PM on 28.7.2009 .Notice was issued on 13.7.2009 . The Appellant was also informed that further adjournment shall not be allowed under any circumstances and in case she fails to attend the hearing and present

her case, the undersigned will be constrained to dispose off the matter *on the basis of the material available on record* without further notice.

On 28.7.2009 the counsel for the Appellant submitted a request for further adjournment for one month on the grounds that 'the Appellant had informed that there is a decision pending before the Government in connection with the Door Number of the shop room belonging to the Appellant and there is every chance for a favorable order to the Appellant within one month. If that be so the Appellant can avail the benefit of that order and deduction of at least Rs 3 lakhs is expected. Besides the entire documents and records in connection with the shop room and electricity connection are now in the office of the Appellant at Payyannur'.

The undersigned carefully considered the reasons noted for seeking the adjournment and has come to the following conclusion:

The central issue in the representation before this forum is related to *the rate at which penal charges shall be demanded* by the KSEB towards unauthorized additional load.

The decision on the question of door number to the Appellant reported to be pending with the Government has no bearing on this central issue. The statement that the documents and records on the case is at Payyannur and hence an adjournment for one month is needed shows the lack of seriousness with which the Appellant /Counsel is handling the matter. Hence it is concluded that the Appellant is not pursuing the matter earnestly and have failed to utilize all the opportunities made available for hearing her. The Counsel who had attended the sitting was advised to present the case and arguments in favour of the Appellant but he did not oblige.

The Hon: High Court had directed that a decision on the matter shall be taken within two months from the date of filing the petition. More over the clause 23 (1) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 states that 'the representation admitted by the Ombudsman shall be disposed of within a period of three months from the date of receipt of the representation. Provided that in the event of the representation being disposed of after the completion of the said period of three 3 months, the Ombudsman shall record, in writing, the reasons for the same'.

Under the above circumstances after considering all the aspects of the matter it is decided that the representation shall be disposed off *on the basis of the material available on record*.

The following records had been submitted by the Appellant :

1. A petition dated 01.01.2009 narrated as 'appeal filed under the Kerala Ombudsman Act' received on 22.1.2009
2. Copy of the petition dated 25.09.2008 filed before the CGRF Kozhikode
3. Copy of the order dated 3.12.2008 of CGRF Kozhikode
4. Copies of the Bills and Notices issued by KSEB on 30.9.2008, 7.10.2008, 10.11.2008, 5. 11.2008,12.1.2009,25.11.2008 and 3.12.2008 to Consumer Number 10245 Payyannur

The contentions/arguments/points raised by the Appellant in the representation and other documents are summarized below:

The Appellant is engaged in the business of Jewelry as a partner of the shop called Manohar Jewellery at Payyannur The Consumer Number is 10245 under Payyannur Section. The permitted load in an old connection in the building was 4KW. But there was an additional load of 31 KW also in the shops. KSEB had been charging double the rates for the additional load .Thus 4 KW was being charged at Rs 200/- per KW and 31 KW at Rs 400/- per KW. For the electricity units consumed Rs 8.885 per unit was charged for the permitted units and double of the above rate for the excess consumption .This makes enormous charges.

KSEB issued bill dated 17.5.2008 for Rs 1,63,607/- and bill dated 17.7.2008 for Rs 1,62,083/-.

The Appellant is not liable to pay these amounts. These demands are highly unreasonable unjust and illegal. The Appellant pleaded to the CGRF to declare that the petitioner is not liable to pay fixed charges and current charges as demanded in the above bills, to direct the Respondent to refrain from disconnecting the electricity supply , to direct the respondents to refund the excess paid etc.

The CGRF dismissed the petition filed against these bills on 3.12.2008.

The order of CGRF is against the law, weight of evidence and probabilities of the case. The Forum considered only the arguments and documents produced by the respondent and did not consider the relevancy of the fact put forward by the Appellant. The Forum did not consider why the charges become enormous.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The Appellant is an LT VII A commercial consumer under Electrical Section Payyannur. The connected load was 4 KW .

The Appellant had applied for 69 KW load on 15.3.2005 in connection with modifications in the Jewellery building and on 20.4.2005 agreed to remit the cost of installing transformer etc .The transformer installation work was sanctioned on 27.2.2006 and the Appellant paid OYEC charges for the work on 1.3.2006.The work was executed by KSEB. On 4.3.2006 the Electrical Inspector approved the wiring and other installations in the premises.

On 24.9.2005 building numbers were allotted to the Appellant by the Payyannur Municipality. But the Municipality subsequently cancelled the Building numbers on the basis of violation of building rules on 4.6.2007. On 12.5.2008 the Tribunal for local self government institutions of the Government of Kerala set aside the above action of the municipality on technical grounds. Further developments on the matter are not known but it is under stood that the Municipality has not allotted door numbers till date.

Hence it can be seen that even though the Appellant had completed wiring installations way back in March 2006 and KSEB had completed transformer installation works she could not submit the application for service connections to KSEB since she had *no valid building numbers*.

But during an inspection in 11/2006 it was seen that the Appellant had been using an additional load of 31KW in the premises. KSEB raised demands of penalty for the unauthorized additional load as per the details given below:

4KW\*Rs 100/- per month plus 31KW\*Rs 200/- per month from July 2006 onwards.

The penalty was limited to Fixed charges only as per the prevailing rules at that time. The Appellant paid the penalty of Rs 6200/- per month (Rs 12400/- per bi-month) without protest from July 2006 to March 2008.

But from the bi-monthly bill for May 2008 onwards the penalty was applied on energy charges (on proportionate energy consumption by the additional load) also as per the BO No (FM) 368/2008/(DPC1/C-GI/182/2007) dated 07.02.2008 .

The bill dated 17.5.2008 was computed as given below:

Total units : 9005 for 2 months. Total load 31+4=35 KW

Fixed Charge: Rs 4\*200/- for 2 months (at Rs 100/- per KW per month) = Rs 800/-  
plus Rs 31\*200/-\*2 for 2 months (Penal charges) = Rs 12400/-

Energy Charges : (Normal)  $9005 * \frac{4}{35} = 1029$  units at Rs 8.05 per unit  
plus 10% duty = Rs 9112/-

Plus (Proportionate Penal charges)  $9005 * \frac{31}{35} * 2 = 7976 * 2$  units at Rs 8.05 per unit  
plus 10% duty = Rs 1,41,255/-

Thus the total amount of bill was Rs 1,63,607/-

Same calculation methodology was applied for subsequent bills also since the consumer did neither remove nor regularize the additional load.

The Consumer had concurred the existence of the unauthorized additional load of 31 KW from July 2006. They had paid the penal charges from that month onwards without protest . Only when the penalty was applied for the energy charges they have disputed the demands.

The real problem is that the consumer *could not obtain valid building numbers* from the local authorities due to building rules violations .The valid building number is a pre-requisite for availing electric connection. Hence the Appellant is utilizing the existing service connection (Number 10245 ) to energize the other installations without authorization for carrying on the business activities.

#### Discussion and Findings:

The most important issue to be decided in this case is the penal charges applicable for unauthorized additional loads.

As pointed out by the Respondent the consumer had not disputed the existence of additional load. Even in the representation dated 01.01.2009 to the undersigned and in the petition to CGRF dated 25.9.2008 it has been admitted that 'there was an additional use of 31KW'. The Consumer had been paying the penal charges on Fixed Charges without protest from July 2006 onwards.

Hence it can be seen that the only point under dispute is the change in methodology of penalizing adopted by the Respondent from the bill dated 17.5.2008 onwards.

The relevant clauses in the Terms& Conditions of Supply regulations approved by Kerala State Electricity Regulatory Commission and issued by KSEB under Section 30 of the Kerala Electricity Supply Code 2005 are reproduced below:

*51. Unauthorized load*

*(1) The unauthorized additional load in case of LT/HT/EHT consumers shall be penalized as per Clause 50 (5) & (6) above.*

*(2) The penalty for unauthorized additional load shall be levied till the said unauthorized additional load is removed or regularized as per rules.*

*If the consumer fails to pay the bill amount, the service shall be disconnected without further notice. It shall be reconnected only after payment of penalty and other charges, if any, as per rules and removal/regularization of the unauthorized additional load by the consumer*

*(4) In case of Low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding unauthorized additional load, the procedure mentioned in clause 50 (1) shall be applicable. The unauthorized load should be got regularized by the consumer within a period of three months on application to the Assistant Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Assistant Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit.*

The Sections 50(1) 50(5) and 50 (6) referred above are reproduced below:

*(1) If on an inspection of any place or premises or after inspection of the equipment, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Board's officer not below the rank of Assistant Engineer (assessing officer) comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use as per Section 126 of Electricity Act.*

*(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person /occupier or possessor of such premises or place.*

*(6) The assessment under this section shall be made at a rate equal to two times the tariff applicable for the relevant category of services specified in sub-section (5) above.*

As per the above clauses of the Terms& Conditions of Supply, which are applicable to all the consumers of KSEB , the unauthorized additional load is to be penalized at twice the tariff rates .This had been further clarified by the KSE Board in the BO dated 07.02.2008 cited earlier and made effective from 15.6.2007 , by reiterating that the ‘two times the respective tariff for the entire period ---- for assessing penalty in the case of misuse of energy and unauthorized use of energy including unauthorised additional load , unauthorized extension and meter tampering cases detected. Penalty rate shall be applicable to *both fixed and energy charges* for the unauthorized use’.

From the above it is clear that the regulations as well as the orders of the KSEB empower the Respondent to penalize unauthorized additional load by two times the tariff rates. The fixed charge and energy charges are integral components of tariff rate .Hence the unauthorized additional KW connected as well as the proportionate energy consumption by that load is liable to be penalized.

The Appellant has not put up any valid arguments or facts against the above. The Appellant has not explained why she feels that ‘she is not liable to pay these penal charges’. She could not establish that these demands ‘are highly unreasonable unjust and illegal’. She has not raised any valid points to claim that ‘the order of CGRF is against the law, weight of evidence and probabilities of the case’. Her statements ‘that the Forum considered only the arguments and documents produced by the respondent and did not consider the relevancy of the fact put forward by the Appellant’ have not been substantiated by any facts or documentary evidences. She has failed in producing any documents in favour of her arguments . Her statement that ‘the Forum did not consider why the charges become enormous’ is not factual. Hence the undersigned is constrained to dismiss the objections raised by the Appellant against the penal charges raised by the Respondent.

Hence it is concluded and decided that the action of the Respondent in penalizing the unauthorised additional load , both for unauthorised KW connected and the proportionate energy consumption, is in accordance with the statutes and standing instructions and hence is in order.

The following guide lines are also issued in this context:

1. Electricity Duty shall not be charged on the penal component of the energy charges.
2. The Respondent may issue a detailed month wise statement of the normal fixed charges , normal current charges , penal fixed charges, penal energy charges, electricity duty etc for the whole period to the Appellant and take action to realize the arrears outstanding as per rules.
3. The Appellant is advised to take action to regularize the additional load as early as possible by submitting the required documents to the Respondent to get relief from the penal charges.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The representation submitted by the Appellant is devoid of merits and hence stands dismissed.*
2. *The Respondent shall be free to proceed to realize the arrears as per the guide lines given above.*
3. *No order on costs.*

Dated this the 30 th day of July 2009 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P43/09/ 301 / dated 30.07.2009

- Forwarded to: 1. Smt E.Praseeja,  
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2. The Assistant Executive Engineer  
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Copy to :

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3. The Chairman , CGRF,KSE Board ,  
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