

# KERALA STATE ELECTRICITY OMBUDSMAN

THAANATH BUILDING CLUB JUNCTION POOKKATTUPADI ROAD  
EDAPPALLY TOLL KOCHI 682024

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## REPRESENTATION No: P14/08

### *Appellant:*

Sri T.K.Pareekutty Haji  
Secretary Koduvally Muslim Orphanage Committee  
THAMARASSERY Kozhikode Dt

### *Respondent:*

Kerala State Electricity Board  
Represented by  
The Assistant Executive Engineer  
Electrical sub Division KSE Board  
THAMARASSERY  
KOZHIKODE Dt

## ORDER

Sri T.K.Pareekutty Haji , Secretary, Koduvally Muslim Orphanage Committee , THAMARASSERY submitted a representation on 16th June 2008 against the Order No 6/CGRF/COMP/08-09/33/DT 26.4.08 on OP205/07 of CGRF KOZHIKODE pleading to

- i. *set aside the order of CGRF*
- ii. *and to set aside the Notice issued by the Respondent KSEB on 05.12.2007*

The counter statement of the Respondents was obtained and a sitting held on 27.8.2008 to hear both the parties. Both the parties were allowed to submit argument notes before 6.9.2008 .The Appellant produced argument note and the related documents .

- I. The Appellant Sri Pareekutty hajee has submitted the following details in support of their plea: The Appellant is a consumer bearing consumer no 3843 for the commercial complex building owned by Koduvally Muslim Orphanage Committee. Several Tenants had occupied the rooms in the building including a lodge .The income from the Commercial complex was used to support an orphanage. The tenants used to hand over their share of the electricity charges and the Appellant paid the bill to KSEB.The Appellant has produced some agreements with tenants to establish this claim. The respondents issued a notice dated 05.12.2007 to the

Appellant asking to remit an amount of Rs 31548/- which was alleged to be the arrears for the period from 01/2004 to 02/2005. The respondents had taken the readings of the premises regularly from 01/2004 to 02/2005 and issued bills which were regularly paid by the Appellant. Neither the meter readers nor any representative of KSEB had made any indication on the meter being faulty . If the Respondents had issued the arrear bill in 2005 the Appellant could have collected the amount from the Tenants and paid .Almost all the tenants of that period have vacated and it is not possible for complainant to collect the money from them now. The respondents had not taken any steps to convince the consumer about the fault on the old meter nor have they tested it in any lab. The consumption used to vary depending upon the seasons and due to changes in consumption patterns of tenants and changes in tenancy. The claim of the respondents also attracts the time bar by Section 56(2) of Electricity Act 2003.

II. The Respondent KSEB has submitted the following points in defense of the Notice dated 05.12.2007: Cons No 3843 is a 3 phase connection under LTVII A having Connected load of 11KW . The meter reading of the consumer was seen reducing from 1/2004 and the meter stuck up in 1/2005. The faulty meter was changed on 2.3.2005 .The consumption recorded upto 12/2004 was not commensurate with Connected load. Back assessment was done for the period from 1/2004 to 2/2005 as pointed out by the Revenue Audit .Even from 12/2002 the meter reading was reducing. An average consumption of 40 Units per KW can be expected in Commercial premises .Section 24(5) of Supply Code permits KSEB to recover the amount undercharged from the consumer by issuing arrear bills if the Licensee establishes that it has undercharged the consumer.

III. The findings of the undersigned on the various points at dispute are explained below:

1. An extract of the meter reading diary of the consumer has been produced by the respondents. The average consumption recorded during the period from 12/02 to 12/03 was approximately 58 units per month. So also, the average consumption recorded during the period from 1/04 to 2/05 was approximately 92 units per month. But the average consumption recorded during the period from 3/05 to 3/07 was approximately 327 units per month. The only incident of relevance in the first quarter of 2005 was a change in meter on 2.3.2005. The Appellant has not claimed any major change in tenancy or use-pattern during the quarter nor has he questioned the correctness of the new meter. Addition of a few computers or UPS will not result in such jump in consumption. Hence the logical conclusion is that the actual consumption was being recorded after 3/2005 and there was under assessment and under recovery before 3/2005.
2. The fact that there had been under assessment was clear once the meter was changed in 3/05. The lapse on the part of the respondents in assessing the under recovery in time is serious. Issue of a notice for recovery of the under assessed amount after more than Two and Half years for no reasons

explainable is a serious case of mismanagement. But that does not absolve the responsibility of the consumer to pay.

3. Now the whole issue boils down to the period upto which the back assessment can go. The representative of the Respondent could not give any explanation or reasoning for adopting the period as 1/2004 to 2/2005. It was an arbitrary decision without the support of reasons. The fact of the matter is that the respondent could not find out the period from which the under assessment had commenced. It is logical and reasonable to limit the period to 6 months in such cases. The factors such as the inability of the Appellant to recover the arrears from at least some tenants ,the income from the commercial complex is utilized for supporting an orphanage etc are also considered in adopting such a shorter period.
4. The objection of the Appellant under the clause 56(2) of Electricity Act 2003 is not acceptable. The meaning of the above section of the Act had been elaborated by the undersigned in another case (P9/08 Kolikkal Granite Industries Vs KSEB) which is reproduced below:

*The argument of the Appellant that the Invoice issued by the Respondent is barred by limitation in view of the Section 56(2) of the Act deserves careful examination. The claim shall be barred by limitation after the period of two years from the date when such sum became first due as per the clause subject to certain conditions.*

*Here the most pertinent question is when does a sum from the consumer become due? Does the sum become due as soon as the energy is consumed by a Consumer? If yes, how can one show that sum as 'continuously as recoverable as arrear of charges for electricity supplied'?. It is obvious that the sum could be shown continuously as recoverable as arrear of charges only if the amount is computed and demand is raised by the Licensee.*

*It is also seen that the Section 56(2) speaks about the sum due from any consumer which he neglects to pay as explained in Section 56(1) above. The consumer would be able to pay only when a demand is raised by the Licensee and the question of negligence comes up only when a demand note or Invoice is issued to the consumer. The only conclusion one can reach under this situation is that the Section 56(2) is related to the Sum which a licensee has raised as demand and which a consumer neglects to pay. This sum shall not be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges.*

*In other words the Clause 56(2) as well as Clause 56(1) become operative only if the Licensee raises a demand and issues an Invoice to the Consumer. And obviously the Limitation of time commences from Two years from the date of such Invoice or demand subject to the condition mentioned in the last part of the Clause 56(2)*

- IV. 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:
- i. *The respondents are directed to revise the Assessment taking only Six months period prior to 2.3.2005 for back assessment and issue fresh notice to the Appellant.*
  - ii. *No order on costs.*

Dated this the 9<sup>th</sup> day of September 2008,

P.Parameswaran  
Electricity Ombudsman

No P14/08 / \_\_\_\_\_ / dated 10.9.2008

Forwarded to:

- 1 Sri T.K.Pareekutty Haji  
Secretary Koduvally Muslim Orphange Committee  
THAMARASSERY Kozhikode Dt
2. The Assistant Executive Engineer  
Electrical sub Division KSE Board  
THAMARASSERY  
KOZHICODE Dt

Copy to :

- i. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004
- ii. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, VaidyuthiBhavanam  
Gandhi Road Kozhikode
- iii. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, Vaidyuthi Bhavanam  
KOTTARAKKARA
- iv. The Chairman  
Consumer Grievance Redressal Forum  
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