

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email: ombudsman.electricity@gmail.com

APPEAL PETITION No. P/006/2020
(Present: A.S. Dasappan)
Dated: 9th June 2020

Appellant : Sri. Sanjay Lal T.M.
Thottathil House,
Thottathil Lane, East Fort,
Thrissur

Respondent : The Assistant Secretary
Electrical Wing,
Thrissur Corporation,
Thrissur

ORDER

Background of the Case:

The appellant is running a restaurant in the name and style "MING PALACE CHINESE RESTAURANT" as tenant, having an electric connection with Consumer No. 8554B, under Thrissur Municipal Corporation (Licensee). When the appellant has applied for additional connected load, the respondent has served him an arrear notice dated 20-4-2019 amounting to Rs. 3,43,113/- towards the dues of electricity consumed for the old months and directed him to clear the arrears for considering the application. Being aggrieved, the consumer filed petition before CGRF, Electricity Dept., Thrissur Municipal Corporation and the Forum disposed of the petition by reducing the arrear amount for Rs. 2,07,372/- vide order dated 03-12-2019. Aggrieved by the said order, the appellant has filed this Appeal Petition on 27-01-2020, before this Authority.

Arguments of the appellant:

Appellant's family is running a restaurant in the name and style "MING PALACE CHINESE RESTAURANT" as tenant, at the above address for the past many decades. Appellant, desirous of expanding business applied for additional connected load. The licensee vide notice dated 20-4-2019 directed the appellant to clear arrears of Rs. 3,43,113/- pending the Consumer number for considering the application.

Earlier in the year 2002, the Licensee has made a demand of arrears in electricity charges of Rs. 6,58,781/- for the period from 1992-93 to February 2001 in the consumer number. The said demand was challenged before the Hon'ble High Court of Kerala in O.P No. 36874 of 2002.

The Hon'ble High Court after considering the facts and law in the issue was pleased to dispose of the said OP 36874 of 2002 vide judgement dated 2-6-2009. The Hon'ble High Court while disposing the OP was pleased to pass the following directions to the respondent therein, the Secretary, Thrissur Municipal Corporation.

“Accordingly, I direct the respondent to revise Ext. P1 and P-4 excluding the portion that has become time barred as on 16-9-2002, when Ext.P-1 was issued. It is directed that towards the liability arising out of such re-quantification, 1/3rd of the amount remitted by the appellant in pursuance to Ext. P2 will be appropriated and if there is any balance amount to be paid, the appellant shall pay the same. On the other hand, if the amount paid in excess of the amount paid is in excess of the amount due, the same shall be adjusted in the appellant’s future bills”.

The appeal filed by the Electricity Department, Thrissur Municipal Corporation through WA 1974 of 2009 was dismissed by the Division Bench of the Hon'ble High Court vide judgement dated 3-6-2015. Pursuant to the judgement in W.A 1974 of 2009, no further demand was made by the licensee as the matter had reached a finality by adjusting the 1/3rd amount remitted by the appellant towards the demand.

No bills are pending for payment in the Consumer Number. Appellant apprehending that the present demand may relate to the earlier demand made by the licensee, submitted a representation supported by documentary evidence in May 2019. The licensee without properly considering the representation / documents, vide notice dated 3-8-2019 directed appellant to remit a reduced amount of Rs. 2,07,372/- as arrears in the consumer number.

Appellant aggrieved by the computation done by the licensee with respect to calculation of arrears for the disputed period in the consumer number, filed a complaint with the CGRF of the licensee. However the CGRF on an erroneous appreciation of the documents / submissions made in the matter, vide order dated 3-12-2019 upheld the demand made by the licensee through notice dated 3-8-2019.

The licensee while computing the liability of the appellant, in compliance with the judgements of the Hon'ble High Court, did not take into account the amount already remitted by the appellant during the relevant period. Though there was a direction to the appellant by the CGRF to adduce evidence regarding remittance of any amount during the relevant period, the appellant could not produce any at that time as the matter related to the period 2000-01. Though the respondent therein (licensee), was holding the best evidence did not produce the same supporting the remittance made by

the appellant during the relevant period. On receipt of the order of CGRF with great effort, the appellant could trace the letter dated 19-11-2002 issued by the Secretary, Thrissur Corporation forwarding the statement of the consumer number for the period 1992-93 to 2000-2001. The statement is issued by the licensee in compliance with the directions of the Hon'ble High Court of Kerala in W.P. (C) 27959/2002. The statement shows that the appellant has made remittances in the consumer number, which was not taken into consideration by the licensee while computing the outstanding liability.

Pursuant to the orders of CGRF, licensee has now issued fresh demand notice dated 17-1-2020 directing the appellant to remit Rs.2,07,372/- plus Interest within 15 days from the receipt of the notice. It is submitted that as the amount of arrears has so far not been finally determined, their claim for interest is not sustainable.

The Consumer Grievance Redressal Forum has passed the order on 3-12-2019 and the Appellant on non-redressal of his grievance should have filed the application before the Ombudsman on or before 3-1-2020. On receiving the copy of the order it took few days to search and procure the statement for the relevant period issued by the respondent. The delay occurred thus and not due to any laches or negligence.

Reliefs sought for:

- I. To direct the respondent to process and sanction the application for additional load submitted by the appellant forthwith without insisting for the remittance of Rs. 2,07,372/- arrears and interest in the consumer number 8554-B.
- II. To direct the respondent to re-compute the arrears payable in the consumer number in view of the additional evidence produced by the appellant giving credit to the remittances made by the appellant.
- III. To declare that no interest is chargeable on the arrears payable if any on re-computation.
- IV. To condone the delay in filing the application before the Ombudsman.
- V. To grant such other reliefs, as this appellant may pray for and this Forum may deem fit and proper in the circumstances of the case.

Arguments of the respondent:

The electric connection with Consumer No. 8554-B was allotted in the name of Sri. Janardhana Rao for 9 kW under LT VII A tariff. This consumer was a regular defaulter of the payment of electricity charges and was remitting it by part by part. The details of arrear amount showing the amount remitted and to be remitted since 4/1992 are furnished as below.

		DEMAND	COLLECTION		
<u>1992-93</u>					
Opening Balance	4/92	:	23444.53	663.5	3/92
4/92-3/93		:	12012.00 (1001 X 12)	2002	(2 X 1001)
AB 9/92		:	34861.75	5000	4 + 5/92
AB 3/93		:	26274.32	9003	PP AB 3/92
			<u>96592.60</u>	<u>16668.50</u>	6-8/92 + AB
<u>1993-94</u>					
Opening Balance	4/93	:	79924		
4 + 5/93		:	3911.00 (1955.50 X 2)	20,000	P.P.
6/93-3/94		:	28415 (2841.50 X 10)		
Addl/ Bill 9/93		:	31886.69		
Addl/ Bill 3/94		:	16461.45		
			<u>160598.24</u>		
<u>1994-95</u>					
Opening Balance	4/94	:	140598.24	31886.69	AB 9/93
4/94 - 9/94		:	33699.00 (5616.50 X 6)	16461.45	AB 3/94
10/94-3/95		:	45300.00 (7550 X 6)	55000.00	P.P
AB 9/94		:	8290.55	24000.00	P.P
		:	<u>227887.79</u>	<u>127348.14</u>	
<u>1995/96</u>					
Opening Balance	4/95	:	100539.66	48000.00	P.P
4/95 - 3/96		:	90696.00	24500.00	P.P
				24500.00	P.P
			<u>191235.66</u>	<u>97000.00</u>	
<u>1996-97</u>					
Opening Balance	4/96	:	94235.66		
4/96-3/97		:	46476.00 (3873 X 12)	29000.00	P.P
AB 9/96		:	737.00		
AB 3/97		:	2504.29		
			<u>143952.95</u>		
<u>1997-98</u>					
Opening Balance	4/97	:	114952.95	46380.00	
4/97-1/98		:	46730.00 (4673 x 10)	23365.00	
2+3/98		:	10346.00 (5173 x 2)		
			<u>172028.95</u>	<u>69745.00</u>	
<u>1998-99</u>					
Opening Balance	4/98	:	102283.95		
4/98 - 1/99		:	51730.00 (5173.10 X 10)	22750.00	P.P
2 + 3/99		:	11390.00 (5695 X 2)	23365.00	P.P
AB 9/98	(11355-6000)	:	26213.00		

AB 3/99		63705.00		
		<u>255321.95</u>	<u>46115.00</u>	
<u>1999-2000</u>				
Opening Balance	4/99	209206.95		
	4/99	5695.00	25865.00	02-96-1998
	5/99	6684.00		
	6/99-3/00	76730.00 (7673 X 10)		
	AB 9/99	85647.00		
	AB 3/00	194125.00		
		<u>578087.95</u>	<u>25865.00</u>	
<u>2000-01</u>				
Opening Balance	4/00	552222.95	47601.00	10/98-3/99
	4/00 -1/01	76650.00 (97665 x 10)	89109.00	4/99 - 3.00
	AB 9/00	22506.00		
		<u>651378.95</u>	<u>136710.00</u>	
3/2001 വരെ				
കുടിശ്ശിക			5,14,669	
ബഹു. കോടതി ഉത്തരവ്				
പ്രകാരം അടച്ച തുക			1,71,556	
ബാക്കി അടയ്ക്കാനുള്ള തുക			<u>3,43,113</u>	

A demand notice for Rs. **6,58,776/-** (Rs. 5,14,669 + Rs. 1,44,107) was served on 19-11-2002 and payment made partially. The appellant filed a petition before the Hon. High Court of Kerala and an amount of Rs. 1,71,556/- was remitted on 17-10-2002 as directed by the Hon. Court.

The Electrical Wing of the Corporation filed an appeal petition vide WA 1974/2009 in the above petition. Though an order was issued on 03-06-2015, the same was not received by the Corporation and hence the notice was issued on 20-04-2019 for the entire amount of Rs. 3,43,113/-. The appellant produced the copy of the order of the Honourable High Court of Kerala and the arrear amount was revised and issued.

In continuation, the appellant filed petition before the CGRF and the Forum ordered to remit the amount.

The Order of the High Court of Kerala in OP No. 36874 was to realise the arrear amount for three years from the date of notice as per Limitation Act under Section 539 of Municipal Act. But the Act applicable to the electricity charge arrears is the Electricity Act. But there is no retrospective effect for Section 56 (2) of the Electricity Act, 2003.

On the above circumstances, requested order to realise the amount of Rs. 3,43,113/- with interest.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 10-03-2020. Sri. Binny Thomas, Advocate represented for the appellant and Sri. Jomon C.J., Assistant Secretary and Sri Ramanuuny K.N, Electricity Dept., Thrissur Corporation 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.

The brief facts of the case is as follows:

The appellant having consumer number 8554 B under Thrissur Municipal Corporation, is the owner of a restaurant by name 'Ming Palace'. On 16-09-2002, the appellant was issued a notice demanding payment of Rs.5,14,669/- towards dues allegedly payable for the period up to March 2001. This notice was challenged before the Hon'ble High Court of Kerala in OP No. 27529/2002. This OP was disposed of by giving liberty to the appellant to file his objections on the notice dated 16-09-2002 and the respondent was also directed to permit the appellant to verify the account and to consider the matter in the light of the objection that is to be filed by the appellant. The appellant was also directed to pay 1/3rd of the amount (Rs.1,71,557/-) and as such the remittance has been made.

Accordingly, the appellant had submitted an objection dated 10-10-2002 and finally the respondent issued an order dated 19-11-2002 along with a statement of dues for the period from 1992-93 to 2000-01. This order dated 19-11-2202 was challenged before the Hon'ble High Court of Kerala in OP No. 36874/2002. It was stated that in pursuance of judgement in OP No. 27529/2002, the respondent was obliged to allow him to verify the accounts and such verification was not allowed. The appellant also contended that in view of the provisions contained in Section 539 of the Municipalities Act, no dues can be recovered after the period of three years. In the counter affidavit filed by the respondent, it was stated that they were issuing invoices periodically to the appellant and the appellant was not settling their bills in full, but was making only part payments. The Hon'ble Court have not accepted this contention in the counter affidavit since clause 32 F of the Conditions of Supply of Electrical Energy which prohibits such part payments and provides that such part payments will not be accepted.

The Hon'ble High Court disposed of the OP No.36874/2002 with the following directions in judgement dated 02-06-2009.

"Accordingly, I direct the respondent to revise Ext. P1 and P-4 excluding the portion that has become time barred as on 16-9-2002, when Ext.P-1 was issued. It is directed that towards the liability arising out of such re-quantification, 1/3rd of the amount remitted by the appellant in pursuance to Ext. P2 will be appropriated and if there is any balance to be paid, the

appellant shall pay the same. On the other hand, if the amount paid in excess of the amount paid is in excess of the amount due, the same shall be adjusted in the appellant's future bills”.

Further the respondent filed an appeal in W.A. No. 1974 of 2009 which was dismissed vide judgement dated 03-06-2015. At present, the respondent has served an arrear notice dated 20-4-2019 amounting to Rs.343113/- towards the dues of electricity consumed for the old months and directed him to clear the arrears for considering the application for additional connected load applied by the appellant. The appellant has submitted a representation against the arrear notice before the respondent in May 2019. The respondent vide notice dated 03-08-2019 directed the appellant to remit a reduced amount of Rs.2,07,372/- as arrears. The appellant aggrieved by the computation done by the licensee filed a complaint with the CGRF and the CGRF vide order dated 3-12-2019 upheld the demand made by the respondent. Pursuant to the orders of CGRF, licensee has issued fresh demand notice dated 17-1-2020 directing the appellant to remit Rs.2,07,372/- plus interest within 15 days from the receipt of the notice.

The appellant has raised the following arguments in the appeal petition.

No bills are pending for payment in the Consumer Number. Though there was a direction to the appellant by the CGRF to adduce evidence regarding remittance of any amount during the relevant period, the appellant could not produce any at that time as the matter related to the period 2000-01. Though the respondent therein (licensee), was holding the best evidence did not produce the same supporting the remittance made by the appellant during the relevant period. On receipt of the order of CGRF with great effort, the appellant could trace the letter dated 19-11-2002 issued by the Secretary, Thrissur Corporation forwarding the statement of the consumer number for the period 1992-93 to 2000-2001. The statement shows that the appellant has made remittances in the consumer number, which was not taken into consideration by the licensee while computing the outstanding liability.

The respondent has submitted the following contentions in his counter affidavit.

This consumer was a regular defaulter of the payment of electricity charges and was remitting it part by part. Though an order was issued on 03-06-2015 in WA 1974/2009, the same was not received by the Corporation and hence the notice was issued on 20-04-2019 for the entire amount of Rs. 3,43,113/- But on receiving a copy of the judgement in WA 1974/2009, the arrear amount was revised to Rs. 2,07,372/- and issued.

The Licensee is empowered to raise the bills of electricity consumed by the consumer. If the bills are not paid in time, they can issue notice of disconnection and can pursue legal action against the consumer to recover the arrears. Usually the current month's bill is accepted along with the

previous month's dues if any. Clause 32 F of the Conditions of Supply of Electrical Energy reads as "*Part payment will not be accepted. The whole amount shown in the invoice has to be remitted at a time. Payment of subsequent dues will not be accepted when earlier dues are in default*". It is an omission to accept the current month's bill ignoring the arrear bill and rarely may it occur such a bill. But here, it is seen claimed by the Licensee, the non payment of part amounts of old bills, which is unusual. As per the disputed notice dated 16-09-2002, the arrear bills pertains to the old periods 1992-93 to 02/2001. This shows the Licensee has collected the succeeding month's bills also in part, without collecting the alleged arrears (previous months) bills.

In the Provisional Invoice Card system (slab system) which was in force up to 1998, every consumer has to pay fixed amount as per the slab allotted to them and excess consumption beyond the prescribed slab will be charged as additionally after taking the meter reading probably once in six months. Usually the current month's bill is accepted along with the previous month's dues if any so as to avoid broken collection. It is an omission to accept the current month's bill ignoring the arrear amount if any, and rarely may it occur. But here, it is seen that the licensee claimed the non payment of arrear after a long period, which seems to be unusual. As per the disputed arrear notice dated 16-09-2002, which pertains to an old period from 1992-93 to February 2001 and the licensee has collected the succeeding month's electricity charges, even without collecting the disputed long pending arrears. The realization of the arrears was delayed only because of the negligence on the part of the officers of the licensee and the appellant is not responsible in this case.

The respondent has also not raised any argument that the arrear and penal interest were included in the subsequent regular bills issued by him. The issuance of additional demand of electricity charge arrears on 16-09-2002, for a period from 1992-93 to 02/2001 was itself occurred only because of the negligence on the part of the officers of the licensee.

As per respondent, the amount to be remitted by the appellant is Rs.2,07,372/- and as per the appellant, the amount is Rs. 70,662/- and the appellant has expressed, during the hearing, his willingness to remit this amount. On perusing the calculation statement prepared by the respondent, it is seen that Rs.1,36,710/- was remitted by the appellant in 2000-01. The argument of the appellant is that Rs.136710/- is also to be deducted from the revised demand for Rs. 207372/- and thereby the balance will be Rs.70662/-

Decision

From the conclusions arrived at as detailed above, I decide to quash the demand notice no. EW/2/1240/19 dated 17-01-2020 for Rs. 2,07,372/- issued to the appellant.

The appellant had remitted an amount of Rs. 1,36,710/- against the demand of Rs. 2,07,372/- and the balance amount of Rs. 70,662/- shall be

remitted by the appellant. No interest is payable by the appellant till the due date of the revised bill and the respondent shall issue the revised bill within 15 days from the date of this order.

Soon after the remittance of the amount of Rs. 70,662/-, the respondent shall sanction additional load as per the relevant provisions of the Kerala Electricity Supply Code, 2014.

Having concluded and decided as above it is ordered accordingly. Since the appeal is found having some merits and hence admitted. The order of CGRF No. CGRF/TCED-5138/19 dated 03-12-2019 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/006/2020/_____ /Dated: _____

Delivered to:

1. Sri. Sanjay Lal T.M., Thottathil House, Thottathil Lane, East Fort, Thrissur
2. The Assistant Secretary, Electrical Wing, Thrissur Corporation, Thrissur.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Vibhagam, Thrissur Corporation, Thrissur - 680001.