

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/017/2021**(Present: A.S. Dasappan)****Dated: 13rd August 2021**

Appellant : Sri. Mathew M. Varghese,
Madappillil House,
Matson Granites,
Ambunad, Malayidamthuruthu,
Ernakulam Dist. 683561

Respondent : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kizhakkambalam, Ernakulam Dist.

ORDER**Background of the case:**

The appellant is a Low Tension (LT) consumer of Electrical Section, Edathala with consumer number 1157503000787 under LT IVA tariff. The date of connection is 23-08-2013. The connected load in the premises is 75 kW and the Contract Demand is 83 kVA. On 26-08-2020, the appellant requested the Assistant Engineer to disconnect the electric supply and effect dismantling of the transformer. The appellant was given an electricity bill for Rs.79,775/- on 07-08-2020 towards the assessment of "Deemed HT demand charge" for the months 12/2016, 01/2017, 03/2017 and 04/2017 in which months the maximum demand exceeded 100 kVA against the contract demand 83 kVA. Further, the appellant approached Consumer Grievance Redressal Forum (CGRF), Central Region with requests (1) Quash the short assessment bill dated 07-08-2020 (2) Disconnect and dismantle the electric connection with effect from 26-08-2020 (3) Refund the OYEC charge remitted at the time of connection in 2013. The Forum in its order vide OP 44/2020-21 dated 27-01-2021 issued the following: -

- 1) The claim of the low voltage surcharge for the period from December 2016, January 2017, March 2017 and April 2017 are found genuine. However, the respondent may verify the correctness of its calculation and issue revised bill to the petitioner.
- 2) The detailed calculation statement of the bill shall be provided to the petitioner.
- 3) The respondent shall disconnect and dismantle the service connection immediately after observing the formalities and recover any pending arrears through lawful ways.
- 4) Any amount demanded after the date of remittance of dismantling fee shall be waived off as it is unlawful.
- 5) The petitioner is not eligible for OYEC refund.

Aggrieved by the decision of the Forum, the appellant filed the Appeal Petition before this Authority.

Arguments of the appellant:

The appellant was running an MSME unit engaged in the manufacturing and sale of M sand. The appellant's unit has got an LT IV tariff connection from KSEB Ltd., Edathala under On Your Electric Connection (OYEC) Scheme and he had deposited Rs.4.0 lakhs as demanded by the Electricity Board towards the cost of 160 kVA Transformer and cost of construction of 40 M, 11 kV tap line from the nearby Oorakkad 11 kV feeder for meeting the power demand of the appellant. The unit was started in the year 2013 and due to heavy loss, closed down in the year 2020 and intimated the above fact to the KSEB Ltd. on 26-08-2020. The unit got sick from 2016 onwards and the appellant had been running the unit suffering huge loss, but completely closed down in 2020.

The appellant received a bill dated 07-08-2020 demanding to pay Rs.79,775/- as deemed HT charges for the months of December 2016, January 2017, March 2017 and April 2017. Though the bill is dated 07-08-2020, it was received after the above said date. The excess demanded as per the bill was for the months from December 2016 to April 2017. But the demand was unusual and unbelievable for the reason that before and after that period there was no excess

consumption but consumption was below the normal. This would show that the meter was either defective or having some technical problem somewhere in the system. It is to be noted that the connection was secured under the scheme OYEC and the entire cost of drawing the line, installation of other equipments, cost of transformer etc. were met by the appellant himself. The appellant had submitted request on 26-08-2020 expressing his desire to close down the unit and requested to dismantle the connection but the Board disconnected the electricity only in November 2020 and illegally charged fixed charges for these periods also.

As the demand was made on 07-08-2020 after three years, it is time barred and the appellant is not liable to pay the amount as demanded. The Board has to refund the amount spent by the appellant, for installing transformer and other equipments installed. The Board has to refund the said amount to the appellant. Apart from that the tariff of the electricity consumed includes the cost of the materials used for the supplying of electricity, cost of manpower spent for installation of these equipments, other incidental costs and profit. As the equipments and transformers were purchased by the appellant, the Electricity Board is bound to refund either that portion of cost of these equipments included in the tariff or to refund the cost of the materials supplied by the appellant, which comes about Rs.4,00,000/-. Apart from that there were severe power fluctuations in that area during that period. As per the knowledge of this appellant, the power fluctuation also leads to the escalation of the power consumption as the thrust of power leads to boost the meter also. In spite of the above contentions and the documents called from KSEB, Edathala, and the documents produced by the appellant, the Forum dismissed the petition, but directing the Board to provide detailed calculation statement of the bill to the appellant and to disconnect and dismantle the service connections and to waive any amount demanded after the date of remittance of dismantling fee. The above said order was received by the appellant on 10-02-2021. Aggrieved by the above said order, the appellant has no other way, but to approach before this Authority against the order of the Forum.

For these and other reasons to be urged at the time of hearing, it is requested that this Authority may please be set aside the order of the Forum in CGRF-CR/OP No.44/2020-21/401 dated 27-01-2021 received by the appellant on 10-02-2021

allowing the appeal filed by the appellant and set aside the impugned bill dated 07-08-2020 demanding to pay Rs.79,775/- as the cost of the excess consumption of the electricity.

Arguments of the respondent:

The argument of the respondent is as follows: -

The appellant was given service connection bearing consumer No.27015 under LT IVA tariff (Industrial Manufacturing Units) on 23-08-2013 under Electrical Section, Kizhakkambalam. The consumer remitted OYEC charges for availing this connection. With the bifurcation of Kizhakkambalam Section, the appellant came under Electrical Section, Edathala with consumer No.1157503000787 under the same tariff purpose and connected load. The appellant submitted a request dated 26-08-2020 to the Assistant Engineer, Electrical Section, Edathala for disconnecting the supply, dismantling the transformer and exempting them from paying any charges thereafter and releasing the cash deposit.

The appellant was served on the bill on 07-08-2020 demanding to pay Rs.79,775/- as Deemed HT charges up to 17-04-2017. Hence, the demand existed before the date of the appellant's request dated 26-08-2020 for disconnection and dismantling. Thereafter, the appellant informed the Assistant Engineer on 26-09-2020 that he is ready for remitting any arrears along with the fees for request dismantling bill dated 07-08-2020 served on the appellant is for realizing Deemed HT charge up to 17-04-2017. The demand was raised based on the report of the Regional Audit Officer as a short assessment bill for deemed HT Demand charges for 12/2016, 01/2017, 03/2017 and 04/2017, the reading months for which the LT Consumer's Contract Demand exceeded 100 kVA in 02/2017, the appellant's demand was 100 kVA.

The appellant exceeded the contract demand regularly, which attracted Deemed HT charges vide clause No.9 of the General Conditions for HT & EHT Tariff, under Part-B - HT & EHT Tariff of the Tariff order dated 14-08-2014. Being an LT consumer, the Contract Demand of the appellant shall not exceed 100 kVA as per Regulation (8) of the Kerala Electricity Supply Code 2014. Since the contract

demand of the appellant is 83 kVA, he should have limited the RMD within 83 kVA. The argument that the meter was defective during the period in question does not stand because the appellant has not raised any doubts regarding the reliability and accuracy of the meter any time before. The appellant remitted OYEC charges for the service connection and it was in accordance with Section 46 of the Electricity Act 2003, which empowers the distribution licensee to charge from a person requiring a supply of electricity expenses reasonably incurred in providing any electric line or electric plant used for the purpose for giving that supply. The service connection was disconnected but not dismantled even though the appellant remitted the dismantling fees on 13-10-2020 since arrears are pending to be paid. The service connection will be dismantled as and when the payment is received.

The appellant's argument is that the demand made on 07-08-2020 after three years of its occurrence is time barred and hence, the appellant is not liable to pay the amount as demanded does not stand in the light of the Hon'ble Supreme Court judgment in CA 1672/2020 dated 18-02-2020. It has been clarified therein that as per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. The mistake was discovered for the first time as pointed out by the audit wing in their report 07-08-2020. Thereafter the bill was raised on 07-08-2020 itself and served dated on the appellant with a 15 days clear notice. It has also made clear in the judgment that the consumers' liability to pay arises on the consumption of electricity. The obligation to pay would arise when the appellant is liable and obliged to pay the demand as per bill issued by the Licensee, quantifying the charges to be paid. Hence, the bill dated 07-08-2020 is not time barred.

The Licensee's claim for the amount spent by the appellant is primarily against the OYEC agreement signed by the appellant. It is agreed therein that the OYEC amount shall not be refunded and the electric line and installation shall be of the Board's property. Hence, the appellant has no right to claim the amount the appellant spent at the time of installation. The installations are deemed property of the Licensee as per Regulation 24 of the Kerala Electricity Supply Code 2014. Hence, the Licensee is not liable to refund any amount of the OYEC charges to the appellant.

The reasons cited by the appellant for quashing bill dated 07-08-2020 and refund of OYEC charges are not at all sustainable in the light of laws. The service connection of the appellant has already been disconnected. The connection, however, has not been dismantled because the arrears are pending to be paid. The amount demanded after the date of dismantling fee shall be waived off as directed by the CGRF (CR) and service connection shall be dismantled once the appellant remits the demand in the bill dated 07-08-2020. The appellant had submitted before the respondent on 26-09-2020 that he was willing to remit any arrears on this service connection. Hence, the appellant's arguments are null and void and the representation filed before this Authority may be dismissed with costs.

Analysis and findings:

An online hearing of the case was conducted at 3-00 PM on 25-06-2021 with prior intimation to both the appellant and the respondent. Sri. Aboobacker. M.K. attended the hearing for the appellant and Sri. Titus Daniel, Assistant Engineer-in-charge, Electrical Subdivision, Kizhakkambalam from the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The arguments of the appellant are as follows: -

The industrial unit was started in the year 2013 by availing electric power from KSEB Ltd. after remitting Rs.4.0 lakhs under OYEC scheme. The unit became a "sick unit" from the year 2016 onwards and completely closed down in the year 2020. This was intimated to KSEB Ltd. with a request to disconnect and dismantle the electric connection. The deemed HT demand charges raised for the month of 12/2016, 01/2017, 03/2017 and 04/2017 are abnormal and time barred and hence, need to be quashed. The service was disconnected in 11/2020 and not dismantled so far. The OYEC charges remitted by the appellant is to be refunded. Also, disconnection cum dismantling of the electric connection is to be treated as done on 26-08-2020.

The argument of the respondent is as follows: -

The appellant availed power exceeding the Contract Demand regularly, which attracted deemed HT demand charges for 4 months and hence, liable to remit the amount. The appellant, being a LT consumer, the Contract Demand never to exceed 100 kVA, otherwise extra demand charge under HT tariff to be paid by the appellant as per Regulation 8 of Kerala Electricity Supply Code 2014. The appellant had not raised any doubts regarding the accuracy of the meter. The appellant remitted the OYEC charges for the service connection in accordance with Regulation 46 of The Electricity Act 2003 and hence, the appellant's claim for refund of OYEC charge cannot be allowed.

In this case mainly to be decided whether the appellant is liable to remit the "deemed HT demand charge" for the months 12/2016, 01/2017, 03/2017 and 04/2017 and whether any provision to refund the OYEC charges remitted by the appellant while availing electric connection from KSEB Ltd.

In the statement of facts furnished by the respondent, it is seen that the connected load in the premises is 75 kW and Contract Demand is 83 kVA ($75/0.9 = 83.33$). While verifying the meter reading details for 67 months from the month 01/2016 to 07/2021, the connected load is seen furnished as 74449 watts (rounded to 75 kw) and Contract Demand as 83000 VA (83 kVA). In the hearing and in the documents presented later, any variation of connected load is not reported by the respondent. Regulation 2 (24) and 2 (28) of Kerala Electricity Supply Code 2014 says about "connected load" and "contract load or contract demand" respectively.

Regulation 2 (24): connected load :- "expressed in kw or kVA means aggregate of the rated capacities of all energy consuming devices or apparatus which can be simultaneously used, excluding standby load if any, in the premises of the consumer, which are connected to the service line of the distribution licensee".

Regulation 2 (28): "contracted load" or "contract demand" means the maximum demand in kW or kVA, agreed to be supplied by the distribution licensee and indicated in the agreement executed between the licensee and the consumer; or the contracted load or contract demand duly revised thereafter;

Regulation 2 (56): “maximum demand” means the highest average load measured in kVA or kW at the point of supply of a consumer during a consecutive period of thirty minutes or such other consecutive period as specified by the Commission; during a billing cycle;

In this subject case, the total load connected in the premises is 74 kw (83 kVA), Contract Demand is same as the total connected load, then how the meter recorded a demand higher than 83 kVA and even up to 119 kVA in the month of 01/2017.

This Authority verified the energy consumption and Recorded Maximum Demand (RMD) for the months from 09/2016 to 08/2020. The total consumption in 11/2016, 12/2016, 02/2017 and 03/2017 are 10590 units, 12210 units, 20580 units and 13680 units respectively. The corresponding RMD are 113 kVA, 119 kVA, 112 kVA and 108 kVA. The consumption in the zone in which the above RMD shown is 1470 units in Off-peak period 10080 units in Normal preiod, 3960 units in Off-peak period and 1740 units in Off-peak period. In addition to the above, in 12 months the RMD is seen exceeded the connected load of the premises.

It is pertinent to note that the “RMD” is not a continuous reading like the energy consumption recorded in the meter in each month. If any doubt in the meter reading, it can easily be verified with the previous reading. But “RMD” in a month cannot be verified with the previous month’s “RMD”. Moreover, in the meter reading details the “RMD” is seen recorded as ‘75’ in 12/2017, 01/2018 & 06/2018; ‘76’ in 03/2018, 04/2018, 05/2018 and 06/2018; ‘90’ in 02/2020, 03/2020 and 04/2020. Here also doubts how the “RMD” became the same figures in more than one month. The respondent had not submitted any scientific data to prove that the meter recorded higher demands in the years 2016 and 2017.

Regulation 101 of Kerala Electric Supply Code 2014: Annual review of contract demand: -

- (1) In the case of HT and EHT connections, if the maximum demand recorded exceeds the contract demand in three billing periods during the previous financial year, the licensee shall issue a notice of thirty days to the consumer directing him to submit within the notice period, an application for enhancement of contract demand.

- (2) If there is no response from the consumer by the end of the notice period, the licensee shall enhance the contract demand of the consumer to the average of the top three readings of maximum demand shown by the maximum demand indicator (MDI) meter of the consumer during the previous financial year, if the additional load can be sanctioned without augmentation or upgradation or uprating of the distribution system.
- (3) In the case of LT consumers under demand-based tariff, similar review and consequential process shall be carried out.
- (4) Consequent to enhancing the contract demand, applicable charges shall be collected from the consumer and the consumer shall be directed to execute supplementary agreement if required.

The Licensee had not taken any action in accordance with the above regulation to review the Contract Demand even though such situations occurred in the previous years. As per the above detailed analysis, it is not proper and justifiable to issue a reassessment bill in demand charge, on the basis of an Audit Report after three years and without convincing the correctness of the higher RMD to the appellant. Without ascertaining the correctness of the readings, any amount cannot be realized from a consumer.

The appellant had requested the Assistant Engineer to disconnect the supply and dismantle the transformer on 26-08-2020, but the respondent did not take any action up to 11/2020 for disconnection. Since arrears are pending for payment by the appellant, the connection was not dismantled. In this case, the CGRF, Central Region had already discussed Regulation 140 & 145 regarding disconnection of supply on the request of the consumer and dismantling on the request of the consumer. The Forum observed that the Licensee had failed up to act upon the Regulation 140 as well as 145. Also, the Forum noticed that the appellant was again billed for the fixed charge even after placing the request for dismantling the supply and hence, the action of the respondent is not in accordance with Regulation 140 and 145 of Kerala Electricity Supply Code 2014.

The meter reading details in 01-07-2020, 01-08-2020, 05-09-2020, 16-10-2020 and 01-06-2021 furnished by the respondent are as follows: -

Consumption Zone	Meter reading				
	01-07-2020	01-08-2020	05-09-2020	16-10-2020	01-06-2021
Normal period	20952	21137	21139	21139	21139
Peak period	784	787	787	787	787
Off-peak period	2240	2244	2245	2245	2245

From the above, it can be observed that the appellant stopped the functioning of the industry in between 01-08-2020 and 05-09-2020. The total consumption in the premises from 01-08-2020 to 05-09-2020 is only 90 units. As such the appellant's request to treat the disconnection and dismantling date of the service connection as 26-08-2020 is genuine and admissible. Hence, the Licensee has no right to issue the demand charge after the month of 08/2020.

The appellant availed electric connection on 23-08-2013 after remitting the OYEC charges.

The Kerala Electricity Supply Code 2005, Clause '7' says about "Power to recover expenditure": -

(1) Subject to the conditions under Clause 8, the Commission authorizes the Licensee under Section 46 of the Act, to recover from the owner or occupier of any premises requiring supply, the expenses reasonably incurred by the Licensee for providing any electric line or electrical plant required specifically for the purpose of giving such supply. Regulation 32 of Kerala Electricity Supply Code 2014 regarding "Recovery of expenditure is same as the Regulation '7' of Kerala Electricity Supply Code 2005. The above matter was discussed by the CGRF in its order dated 27-01-2021 in OP No. 44/2021. As such the request for refund of OYEC charges is not an acceptable argument.

(2) Regulation 24 (1) & (2) of Kerala Electricity Supply Code 2014 says: -

(1) The whole of service line, meter and other associated equipment shall be deemed to be the property of the licensee and shall remain under his control so long as they are connected to the distribution system of the licensee.

(2) The licensee may use the service line and other apparatus to give supply to other consumers, if the supply to the consumer who has paid for such line and apparatus is not affected adversely.

Provided that the service line and other equipment of a consumer with a dedicated feeder shall not be used to supply power to another consumer.

Decision: -

From the findings and conclusions arrived at as above, I decide as follows: -

- (1) The electricity bill for Rs.79,775/- issued to the appellant on 07-08-2020 towards the deemed HT charges for the months 12/2016, 01/2017, 03/2017 and 04/2017 is quashed.
- (2) The service connection of the appellant is treated as dismantled on 26-08-2020 and respondent shall not realize any demand charges after the month of August 2020.
- (3) The request for the refund of OYEC charge remitted by the appellant while availing electric connection in the year 2013 is rejected.

Having concluded and decided as above, it is ordered accordingly and the appeal petition filed by the appellant is allowed to this extent. The order of CGRF, Central Region in OP No. 44/2020-'21 dated 27-01-2021 is modified as above. No order on costs.

ELECTRICITY OMBUDSMAN

P/017/2020/ _____ dated _____.

Delivered to:

1. Sri. Mathew M. Varghese, Madappillil House, Matson Granites, Ambunad, Malayidamthuruthu, Ernakulam Dist. 683561.
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Kizhakkambalam, Ernakulam Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.