

THE STATE ELECTRICITY OMBUDSMAN

D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

www.keralaeo.org Email: ombudsman.electricity@gmail.com

APPEAL PETITION No. P/030/2022

(Present: A. Chandrakumaran Nair)

Dated: 01st August, 2022

Appellant : Smt. Nirmala Devi. S.,
Kishore Nivas, House No. 40/747,
Palarivattom, Kochi,
Ernakulam Dist. 682 025

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Palarivattom, Ernakulam Dist.

ORDER

Background of the case:

The appellant residing in Kishore Nivas, PHRWA 86, Palarivattom is a domestic consumer of the Licensee with consumer number 1155434011226 under Electrical Section, Palarivattom. The appellant installed a solar power plant at her residence in 2020 to consume self-generated electricity and also to reduce the electricity bills as a ecofriendly move. There were no arrears from the appellant towards the energy bills. The solar plant installed by following all the norms and conditions of the Licensee. On 19-11-2021, the Sub Engineer, Electrical Section, Palarivattom has issued a site Mahazar to the appellant stating that she had arrears for the last few months, which was come due to mistake made by the then meter reader. As the demand and disconnection notice are exorbitant amount of Rs.11,971/- which is payable within 10 days. The appellant approached the Hon'ble High Court of Kerala and got a stay order and subsequently the Hon'ble High Court ordered to approach the consumer grievance redressal mechanism. The appellant approached the Consumer Grievance Redressal Forum, Central Region and the Forum ordered vide OP No.75/2021-22 dated 05-04-2022 that the appellant is liable to pay for the units actually consumed from KSEBL.

Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

Arguments of the appellant:

As per demand cum disconnection notice, an exorbitant amount of Rs.11,971/-, which is payable within 10 days that is on 29.11.2021 and the disconnection date is also given as 14.12.2021, which is arbitrary. Also, it was issued demanding an exorbitant amount, without showing any details or time period at which the arrears started to accumulate which itself is violative of the regulation 123 (r)(xv) of Kerala Electricity Supply Code 2014. The action of KSEBL is not only arbitrary but also illegal and violative of the fundamental rights of the appellant. Appellant is not responsible for the mistakes made by the KSEBL employees; it is clearly stated in regulation 110 (7) of Kerala Electricity Supply Code 2014 that it is the duty of the employee of the KSEBL for reading the meter. The appellant is made a scapegoat of the mistake of the employees of KSEBL which is violative of the principles of natural justice and fundamental rights of the appellant.

It is arbitrary to demand such a huge amount in a short period; moreover, this arrear was not even communicated to the appellant at any point of time in the last 2 years. A mere perusal of the bills in the last year would show that there are no arrears pending.

Appellant had paid the monthly bill without any default over these years. Also, it is to be noted that this exorbitant bill was caused due to the inefficiency and careless attitude of KSEBL employees. Appellant has not performed any illegal activity. The appellant had installed all meters and followed all conditions prescribed by the authorities with utmost care and attention, while installing the Solar Power Plant. The action of respondent, issuing exorbitant amount is not only arbitrary but demotivating other consumers to install Solar Power Plant. Moreover, the mahasar and demand-cum-notice communications were issued to the appellant without any hearing or show cause notice. Appellant is denied of her opportunity to be heard which is violative of the principles of natural justice. Appellant had approached the Hon'ble High Court of Kerala vide W.P.(C) No. 28945/2021 and the Hon'ble High Court of Kerala passed an interim order staying the disconnection of electricity connection on 15.12.2021 for a month. The Hon'ble High Court of Kerala disposed the writ petition to avail remedy before Kerala State Electricity Regulatory Commission under Consumer

Grievance Redressal Forum and Electricity Ombudsman Regulations, 2005 and interim order is extended till the decision of redressal commission.

The cause of action arose on 19.11.2021 when the respondent issued the Demand Cum Disconnection Notice along with the Mahazar to the appellant, the place of occurrence is within the jurisdiction of Chairperson, Consumer Grievance Redressal Forum (Central). Appellant thereafter filed O.P.No. 75/2021-22 before CGRF (Central). The respondent thereupon filed a statement of facts. It is clearly admitted by the respondents that the mistake was caused from the part of their employee. Statement filed by the respondents also admits the procedural flaw from their part. All procedures followed by the appellant is proper. The mere admission of the mistake from the part of respondents entitles the appellant to be exonerated from all additional charges levied against the appellant. In the demand cum disconnection notice the amount stated was Rs.11,971/-, now the amount they propose is Rs. 8,603/-. The difference in the amount itself shows the non-application of mind and arbitrary nature of respondents. If the appellant did not raise her voice against this injustice, the respondents would have extracted this whole amount from the appellant. This shows the negligent attitude and malafide intention of the respondents.

Appellant apprehends that she is made a scapegoat for the irregularities made by the employees in KSEB. It is also to be noted that the regulation 134 and 136 of Supply Code does not apply in this case as the miscalculation was caused due to the negligence of the meter reader assigned by the respondents. It is also admitted by the respondent that thirty days' time was also not given to the appellant for paying the bills, which is also procedural flaw from the part of respondents. Appellant is being harassed by the respondents for raising her voice against the injustice. This is arbitrary illegal and violative of the fundamental rights of the appellant.

Appellant is not responsible for the mistakes made by the KSEB employees; it is clearly stated in regulation 110 (7) of Kerala Electricity Supply Code 2014 that it is the duty of the employee of the KSEB for reading the meter. The respondents could recover the amount from their employees as they have admitted the fact that it is the mistake caused by them. Appellant is not liable to pay such a huge amount as alleged by the respondent as she has done any irregularity. Moreover, the Appellant has installed Solar Power Plant and she is still receiving the same amount

of bill as received earlier. This, itself shows that there is no improper action is done by the Appellant. The malafide action of respondents is violative of the fundamental rights of the complaint enshrined under Article 14 and 21 of the Constitution of India.

The amount of Rs.8,603/- which is charged on the appellant is not explained. The present monthly bill of the appellant is less than Rs. 140/- on an average. There is no explanation as to how an amount of Rs.8,603/- seem to be demanded from the appellant. The actions of the officers in question are arbitrary and violative of the basic rights of the appellant.

Appellant had then filed argument note against the statement of facts filed by the respondents. Although as per CGRF order is without proper appreciation of facts and circumstances, CGRF has decided that the appellant is liable to pay Rs.8,603/-, which is the recalculated amount submitted by the respondents. The decision of the CGRF is arbitrary and biased. It is the duty of the meter reader to take the reading properly. Appellant is in no way liable to pay the exorbitant amount caused due to the irresponsible attitude of the respondents. Moreover, the mistake done by the respondent is admitted in the statement of facts filed by them. The CGRF order is without appreciating the above facts and biased hence, liable to be set aside.

The appellant requested to allow the appeal by setting aside the CGRF order and stop the disconnection procedure and to waive the exorbitant amount demanded from the appellant.

Arguments of the respondent:

The appellant installed & commissioned a solar plant in her premises on 3-12-2020. For all solar consumers special type of meter known as "Net Meter" is installing for meter reading, which has a provision for registering import (electricity consumed by consumer from KSEBL mains) and export (production of electricity from solar plant & injected to KSEBL Mains). Net sum of the two will be computed for issuing monthly invoice to consumers. If export is high KSEBL will give credit to the consumer and if import is high demand notice will be served to the consumer. Here monthly reading was taken by an employee from 01/2021 onwards. When a new employee was deputed for meter reading, he pointed out

some doubt regarding the entry of export/import reading to section authorities. Hence, Sub Engineer inspected the site and confirmed the mistake. For that he prepared a site mahzar on 19-11-2021 in the presence of the appellant and handed over one copy to the appellant. According to the mahzar, the billing section recalculated the invoices and found that Rs.8,275/- should be collected from the appellant. Instead of serving a separate bill as per Regulation 134 of Supply Code 2014, they attached this additional amount with regular monthly bill dated 19-11-2021. Aggrieved by this appellant filed complaint to all higher authorities including CMD of KSEBL & Chief Secretary to Government. As reply from these offices were not received as per her expectation, she filed WP(C) 28945/2021 before High Court of Kerala. Hon'ble Court after hearing both sides, on 17-01-2022 ordered to approach Consumer Grievance Redressal Forum for remedy.

Regulation 134 of Kerala Electricity Supply Code 2014 clarifies the realization of undercharged bills and over charged bills:- (1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill. Hence, the appellant is bound to pay the amount. But procedural lapse occurred from the part of Electrical Section, Palarivattom in intimating the appellant properly.

Meanwhile, the respondent verified all the records of the appellant and after down loading the meter reading data with the help of APTS Unit, Ernakulam, it is learnt that for the "import & export" reading were interchanged from the very beginning itself. Therefore, in the billing section, they recalculated the invoices and found that Rs.8,603/- to be collected from the appellant. But as the case was under the consideration of Hon'ble High Court of Kerala, waited for the decision of the Court for further proceedings.

Hon'ble Court after hearing both sides, on 17-01-2022 ordered to approach Consumer Grievance Redressal Forum for remedy. The appellant filed complaint No.75/201-22 before CGRF, Central Region. The Forum after conducting a hearing and arguments of both sides & after verifying all the records submitted from both sides ordered to revise the demand served to the appellant based on

downloaded meter data & and advised the appellant for payment of units actually consumed from KSEBL.

As per the Regulation 134 of Supply code 2014 clarifies the realization of under charged bills and over charged bills, the consumer is bound to pay the cost of energy actually consumed by the appellant. It is true that procedural lapse occurred in issuing short assessment bill, but it is not a loop hole for escaping from remitting electricity charges of own use.

Copy of Meter down loaded data and calculation sheet were served to the consumer on 05-03-2022 at appellant's premises.

Hon'ble Forum after conducting a hearing and arguments of both sides & after verifying all the records submitted from both sides ordered to revise the demand served to the petitioner based on downloaded meter data & and advised the petitioner to for payment of units actually consumed from KSEBL. This order was based on Regulation 134 of Supply code 2014 which clarifies the realization of under charged & over charged bills.

Analysis and findings:

The hearing of the case was conducted on 19-07-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Sri. Deago John K., Advocate was attended the hearing on behalf of the appellant and Smt. Latha. S., Assistant Executive Engineer, Electrical Sub Division, Palarivattom was attended the hearing from the respondent's side. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached 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 appellant installed the Solar Plant for the effective use of the renewal energy and also to reduce the energy bills. The Licensee has to provide net metering facility at the interconnection points of the appellant as per the Section 9 (1) of KSERC Regulation 2014 and Section 9 (5) & 9 (6) are as below:

9 (5) The meter reading shall be taken by the distribution licensee and a copy of the statement of reading of the net meter and the solar meter shall be handed over to the eligible consumer under proper acknowledgement, as soon as meter reading is taken.

9 (6) Commercial settlement of the drawal and injection of electricity by the eligible consumer during a billing period shall be made based on the statement of readings of the net meter.

This has been complied by the Licensee and net metering has been provided and the officials of the Licensee was regularly taking the meter reading.

As per Section 2 (16) of KSERC Regulation 2014, net meter is defined as:

2 (16) “net meter” means the bi-directional energy meter for measuring the quanta of electricity flowing in opposite directions and the net quantum of electricity consumed by the eligible consumer or injected into the distribution system of the licensee; which shall be an integral part of the net metering system.

The import and export of electric power by the distribution network is recorded and bills will be raised by the Licensee accordingly. Here, the meter reader noted the reading of import and export and both got interchanged. Actually, the appellatant was drawing the power from the Grid, which means input was higher than the output.

The Section 110 (1), (3) is clear about the meter reading procedure in which it is very clear that the employee of the Licensee or the person duly authorized by the Licensee for this purpose only to take the meter reading.

Then it is very clear that the employees of the Licensee only taken the meter reading and recorded wrongly, which was found out by the new person who posted for meter reading in place of the earlier person when he retired. Though the Licensee has provided proper training and orientation for this type of jobs, they are not sincere in this job. Licensee has to extend vigorous training for those staff to arrest the revenue loss.

This is a serious procedure lapses happened from the side of the Licensee (Electrical Section, Palarivattom), which has been accepted by the respondent.

The Section 134 (1) of Kerala Electricity Supply Code 2014, states “Under charged bills and over charged bills.- (1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.”

The Regulation 136 of Kerala Electricity Supply Code – “Recovery of arrears and its limitation” states- “(1) The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the

rates applicable for belated payments from the date on which such payments became due.

(2) The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice.”

As per the Regulations stated above, though there is a procedural lapse happened from the officials of the Licensee, the appellant is liable to pay for the energy consumed by her. However, the effort of the appellant to bring out such type of mistakes and procedural lapses are really laudable. It is noticed that the appellant is taken these efforts to set right the procedure than the money involved.

Decision: -

From the analysis of the arguments and the hearing, following decisions are hereby taken:

- (1) The appellant is liable to pay the bill amount.
- (2) The Licensee shall grant 12 months instalments without interest.
- (3) The order of CGRF, Central Region in OP No.75/2021-22 dated 05-04-2022 has been modified to this extend.
- (4) The Licensee has to extend formal vigorous training for the staff to avoid recurrence of such type of mistakes.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/030/2022/_____ dated _____.

Delivered to:

1. Smt. Nirmala Devi. S., Kishore Nivas, House No. 40/747, Palarivattom, Kochi, Ernakulam Dist. 682 025
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Palarivattom, 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.