

## **THE STATE ELECTRICITY OMBUDSMAN**

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### **APPEAL PETITION No. P/073/2022**

**(Present: A. Chandrakumara Nair)**

**Dated: 09<sup>th</sup> December, 2022**

Appellant : Sri. Tony Thomas,  
Managing Director,  
M/s. Unipack India Pvt. Ltd.,  
Binanipuram P.O., Edayar,  
Ernakulam 683502

Respondents : Secretary  
KSEBL, Vydyuthi Bhavanam,  
Pattom, Thiruvananthapuram  
Special Officer (Revenue),  
KSEBL, Vydyuthi Bhavanam,  
Pattom, Thiruvananthapuram  
Dy. Chief Engineer,  
KSE Board Ltd., Electrical Circle,  
Perumbavoor, Ernakulam Dist.  
Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Perumbavoor, Ernakulam Dist.  
Assistant Engineer,  
Electrical Section, KSEB Ltd.,  
Edayar, Ernakulam Dist.

### **ORDER**

#### **Background of the case:**

The appellant Sri. Tony Thomas is the Managing Director of M/s. Unipack India (P) Ltd. The appellant is an HT consumer of the Licensee (KSEBL) under Electrical Section, Edayar with consumer number 1357120052681. The appellant received a letter from the Licensee claiming a huge amount as arrears from 02/2019 to 12/2021 and also the notice of disconnection. The arrear was of Rs.19,69,950/- including interest. As the industrial unit was closed since 2018, there was no electricity consumption. The appellant represented to Special Officer (Revenue) for the relaxation of the minimum demand charges and then to Hon'ble

Minister of Electricity. The power was disconnected on 01-04-2021 and then the appellant paid Rs.3,50,000/- on 01-03-2022 and power reconnected during March 2022. The appellant filed petition to the Consumer Grievance Redressal Forum (CGRF), Central Region and CGRF (CR) ordered that the petitioner is liable to pay the arrear bill and granted instalment facility of 12 monthly instalments to make the payment.

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

**Arguments of the appellant:**

The appellant is mulcted with huge amounts by issuing notice dated 10/1/2022 by the 4th respondent, Executive Engineer regarding the temporary disconnection of electrical supply to the premise along with statement of arrears from 02/2019 to 12/2021. As per the statement, the total arrears due from the complainant is Rs.19,69,950/- including interest. The intimation also contained a communication issued by the 2<sup>nd</sup> respondent Special Officer (Revenue) threatening initiation of proceeding under relevant provisions of Electricity Act and Rules. As the unit of the appellant was remained closed from 2018 August onwards, no single unit of electricity was consumed by the appellant and thereafter on receiving the notice dated 10/01/2022, the appellant filed a representation dated 24/01/2022 before the Special Officer (Revenue) Kerala State Electricity Board for relaxation in minimum demand charges and interest on pending energy charges. As there was no response to the representation, the appellant again constrained to file representation dated 09/02/2022 to the Hon'ble Minister for Electricity and the same was forwarded to Chairman and Managing Director, Kerala state Electricity Board for further action. The complainant also made an application dated 20/04/2022 before Chief Managing Director, KSEB, Pattom, Thiruvananthapuram for waving minimum demand and interest on belated payment. The appellant also approached Hon'ble Minister for Industries for permission to restart the plant via the representation dated 09/02/2022 to the Hon'ble Minister for Electricity and on intervention of Industrial Department of the State Government, appellant was allowed to reopen the industrial establishment and accordingly directions were issued from the office of the Chairman & Managing Director, KSEB Ltd, Pattom,

Thiruvananthapuram to the Electrical Section, Edayar to reconnect electrical supply to the premise of the appellant. The appellant also paid an amount of Rs.3,50,000/- on 1/3/2022 towards pending electricity charges.

The appellant received communication dated 30/05/2022 from the Special Officer (Revenue) KSEB, denying the request for relaxation on minimum demand and interest on belated payment. It was stated that whatever be the reason for non-consumption and also irrespective of the actual quantum, the monthly minimum of 75% of the contract demand and the interest on belated payment shall be levied from the consumer.

The appellant is in huge financial constraints and it is only on the indulgence of Industrial Department of the State, the industrial establishment could restart functioning.

Being aggrieved, the appellant approached CGRF and sought relief for to set aside demand cum disconnection notice, to set aside communication dated 30-5-2022 denying the request for relaxation on minimum demand and interest on belated payment and direct the respondents to reconsider the application filed by the appellant before Chairman and Managing Director of Kerala State Electricity Board and waive the demand amount. The CGRF without considering the reliefs sought by the appellant passed an order that "*The petitioner is liable to pay the arrear bill amount issued by the licensee and the licensee shall grant installment facility of 12 monthly installments for making the payment*". The order is not legally sustainable and hence, this representation.

The appellant requested to this Authority to stay all further proceedings in pursuant to demand notices including the demand notice issued by the Special Officer (Revenue) dated 02-07-2022 for an amount of Rs.17,97,854/- and direct the respondents to not to disconnect power supply to the premises of the appellant, till the final disposal of the representation.

**Arguments of the respondent:**

In the light of the directive of the Government of Kerala, KSEBL had not taken any stringent measures to realize arrears from consumers during the covid induced pandemic period. After the normal period came back into state and subsequent to the lifting of restrictions by Government of Kerala, KSEBL started to issue arrear notice to consumers. Accordingly, the appellant was also issued notice

under section 56(1) of Indian Electricity Act, 2003 for realizing arrears from 2-2019 to 12/2021. In view of representations dated 24.1.2022, 9.2.2022 & 13.2.2022, the 2nd respondent allowed an instalment facility for the appellant to settle the arrears to the tune of Rs.14,78,289/- as on 18.3.2022 vide instalment schedule dated 8.3.2022. As the appellant was willing to pay an amount of Rs.3,50,000/- upfront and remitted the same on 11.3.2022, instalment facility was allowed to the appellant on 18.3.2022 to clear the balance dues and electricity supply to the appellant firm was also restored forthwith. It may be noticed that interest is incorporated on the next bill only after the payment of arrears.

Later the appellant vide letter dated 20.4.2022 raised certain contentions which were beyond the purview of the Indian Electricity Act, 2003, Kerala Electricity Supply Code, 2014 and the Tariff Order dated 8.7.2019 and accordingly denying the claims of the appellant, a reply was sent to the appellant vide email dated 30.5.2022.

One of the contentions was pertaining to relaxation in monthly minimum charge being demanded from the appellant's firm. According to Regulation 2(58) of the Code 2014, minimum charge means the charge payable by the consumer for a billing period as approved by the Commission in the Tariff Order. In view of general condition 2 and 6 under Part B of the Tariff Order dated 8.7.2019, billing demand shall be the Recorded Maximum Demand (RMD) for the month in kVA or 75% of the contract demand (CD) as per the agreement, whichever is higher and the monthly minimum charge applies even during the period of disconnection of power supply. As such the monthly minimum demand charge to be paid by the appellant's firm was as follows.

Contract Demand(kVA)	Minimum Demand (75% of CD) kVA	Rate per contract demand	Monthly minimum demand charge
179	134	340	45,560

Another contention of the appellant was with respect to imposing of interest on the appellant for belated payment. In the light of Regulation 131 of the Code 2014, "if the consumer fails to remit the bill amount on or before the due date, the licensee is entitled to recover interest on the amount of the bill at the rates specified in the Schedule of Miscellaneous Charges as per schedule 1 of the Code. As per SI. No. 12 of the Schedule 1 of the Code, rate of interest for delayed payment is 12%

per annum based on actual number of days from the due date up to a period of 30 days and thereafter at the rate of 18% per annum for the entire period of default from the due date.

Moreover, KSEBL vide B.O.(FTD) No.363/2020(KSEB/TRAC-D/Covid Pandemic -Tariff concession/2020-21) dated 30.5.2020 decided to waive 25% of the fixed charge applicable to industrial/commercial and private hospitals for the months from 3/2020 to 5/2020 and to defer the payment of balance fixed charge up to 15/ 12/2020 without levying interest during the deferred period. Accordingly, the appellant was allowed rebate of 35700 vide bill dated 2.7.2020 as shown below

Month	Billing demand (kVA)	Rate (Rs.)	Demand Charge (DC) (Rs.)
3/2020	134	340	45,560
4/2020	134	340	45,560
5/2020	152	340	51,680
Total			1,42,840
Rebate (25% of DC)			35,700

Apart from that KSEBL vide B.O (FTD) No.511/202 1 (KSEB/TRAC-D/Covid Pandemic -Tariff concession/2021-22) dated 2.7.2021 provided relief to the tune 25% of the fixed charge applicable to industrial/commercial consumers for the month of 05/2021 and allowed three equal instalments without interest to remit the balance dues after allowing relief up to 30.9.2021. The said rebate had already been allowed to the appellant firm vide bill dated 7.6.2021 and calculation details are shown below.

Month	Billing Demand (kVA)	Rate (Rs.)	Demand Charge (DC) (Rs.)
05/2021	134	340	45,560
Rebate (25% of DC)			11,390

Above all the appellant had been allowed instalment facility to settle the arrears due to KSEBL on 22.11.2018, 16.10.2019, 26.12.2019 also. Even though KSEBL has taken a lenient view, the appellant had failed to pay arrears promptly. In view of the facts mentioned above, it is conclusively clear that KSEBL has already passed on all the benefits extended by the Government of Kerala to all consumers

including the appellant firm on the strength of Section 108 of the Indian Electricity Act, 2003. Now the appellant is liable to pay an arrear of Rs.17,15,182/- as on 12.7.2022 from 4.2.2020 onwards.

The respondent is not in a position to offer remarks on the matters raised by the appellant pertaining to the Industrial Department of Kerala.

On the basis of the analysis of the arguments and the deliberations during the hearing, the Consumer Grievance Redressal Forum vide order dated 16.9.2022 in OP No.33/2022-2 rejected the contentions of the appellant.

The appellant was issued with a notice under Section 56(1) of the Indian Electricity Act 2003 for realizing the arrears from 02 / 2019 to 12/ 2021. As per the notice, the appellant was liable to pay an amount of Rs.19,69,950/ - as on 10.01.2022. The appellant paid an amount of Rs.3,50,000 - on 01.03.2022. Respondent No.2 allowed installment facilities on 18.03.2022 for the appellant to settle the balance amount of arrears as he had paid an amount of Rs.3,50,000/- and also in view of the representation made by the appellant.

Thereafter the appellant made a request before respondent No.3 for relaxation in the monthly minimum charge being demanded. But that request was denied as it was not possible to relax the minimum monthly charges in view of the regulations of the Kerala Electricity Supply Code, 2014 and as per the conditions of the tariff order.

The General Condition 6 under PART B - HT & EHT Tariff of the Tariff Order dated 08.07.2019 states that :- *"The monthly minimum charges payable shall be the minimum guarantee amount as per Minimum Guarantee Agreement, if any, or the billing demand as per condition 2 above, which is higher. This applies even during the period of disconnection of power supply"*. Hence, the appellant is bound to pay the minimum charges even during the period of the disconnection of power of supply and therefore no relaxation could be granted for the monthly minimum charges.

Appellant had made a request to waive the interest for belated payment. *Regulation 131(2) of the Kerala Electricity Supply Code 2014 under "Payment of bills and penal interest for belated payments" states that "If the consumer fails to*

*remit the bill amount on or before the due date, the licensee is entitled to recover interest on the amount of the bill at the rates specified in the Schedule of Miscellaneous charges as per schedule 1 of the Code." As per serial No. 12 of Schedule 1 of the Code, rate*

for delayed payment is 12% per annum based on the actual number of days from the due date up to a period of 30 days and thereafter at the rate of 18% per annum for the entire period of default from the due date.

The appellant had filed a petition before the Consumer Grievance Redressal Forum and the Forum had rejected all the contentions taken by the appellant. But the Forum had granted installment facility of 12 monthly installments for making the payment. The Consumer Forum has no jurisdiction to grant installment facility for the consumers.

The appellant had taken a contention that the demand notices issued are violative of Regulation 152 of Kerala Electricity Supply Code, 2014. Regulation 152 deals with the anomalies attributable to the licensee which are detected at the premises of the consumer. No anomalies are attributed to the licensee in the case of appellant and hence there is no violation of the said Regulation.

Considering the aforesaid facts regarding the contentions of the appellant raised against Regulations of Kerala Electricity Supply Code 2014 and the conditions of the Tariff Order dated 8.7.2019, the Appeal Petition No. P/073/2022 filed by Mis. Unipack India (P) Ltd. (LCN 3/8284) cannot be challenged before this Authority and hence, it may be dismissed with cost.

**Analysis and findings:**

The hearing of the case was conducted on 25-11-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Sri. Tony Thomas was attended the hearing and Sri. Anoop Mathew, Superintendent, KSEBL on behalf of Special Officer (Revenue)/KSEBL, TVM and Adv. Archana representing for Secretary, KSEBL, TVM, Dy. Chief Engineer, KSEBL, Perumbavoor, Executive Engineer, KSEBL, Aluva & Asst. Engineer, KSEBL, Edayar were 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.

An industry in the name M/s. Unipack (India) Pvt. Ltd. is functioning in Edayar, Aluva. The appellant is the Managing Director of this company. The company was initially set up for manufacturing carry bags. Though this has been planned to start by 2012, but could start functioning only during 2017 due to certain legal issues. The connection to this unit is HT connection with contract demand 179 kVA. The product of the company has been changed to M-Sand and the production was there for a short duration and then the year 2018 flood affected this industrial unit. Then the flood of the year 2019 also affected mildly to this unit.

The appellant's version was that the plant was closed down since the year 2019, but the energy bill of subsequent months during 2019, 2020 and up to April 2021 shows energy consumption. Hence, the contention of the appellant that the plant was closed down is not acceptable. Further, no energy consumption after April 2021 to March 2022 only because the power supply was disconnected during April 2021. There is no consumption recorded during the month September 2018, October 2018 and that of November 2018 was very less. This may be due to closing of this unit because of the flood. The appellant claim that during 2019 flood also affected this factory is not justifiable as the energy consumption was recorded during August 2019, September 2019 etc.

On examining the payment characteristics of the appellant, it is noted that since January 2018 onwards, not regular in making payments. Either the bill amount is partially paid or fully unpaid. Since March 2020 onwards no amount is paid by the appellant to the Licensee towards the energy charges. The security deposit of the appellant with the Licensee is Rs.4,95,000/-. The Licensee has apparently disconnected power only on 01-04-2021 and arrear amount is Rs.19,69,950/- as on 10-01-2022.

The contention of the appellant is about the billing of minimum charges. This is an HT service connection and tariff applicable is HT 1(A) which is demand based tariff in which the demand charge is the minimum charge payable to the



licensee as per the Section 2 (58) of the Kerala Electricity Supply Code 2014. The tariff order issued by the Kerala State Electricity Regulatory Commission states that “Billing demand shall be the recorded maximum demand (RMD) for the month in kVA or 75% of the contract demand as per agreement whichever is higher”. Here the contract demand is 179 kVA and 75% is 134 kVA. Even the consumer is not consuming any energy and if no demand is recorded by the meter, then also the consumer has to pay the demand charges for 134 kVA.

Next contention is about the charging of surcharge or interest for the payment delayed. Section 131 of Kerala Electricity Supply is very clear about this.

The regulation as per the Kerala Electricity Supply Code 2014:-

- Section 131 (1) The consumer shall pay to the licensee the full amount of the bill on or before the due date indicated therein, for which the licensee shall issue a receipt.
- Section 131 (2) If the consumer fails to remit the bill amount on or before the due date, the licensee is entitled to recover interest on the amount of the bill at the rates specified in the Schedule of Miscellaneous Charges as per schedule 1 of the Code.
- Section 131 (4) If the consumer fails to remit the amount even within such extended period, the licensee may disconnect the supply in accordance with the procedure specified in Chapter VIII of the Code.

The Schedule 1 of Supply Code 2014 states that the rate of interest is @ 12% if the delay is 30 days and 18% per annum for the whole period if the delay exceeds 30 days.

The Section 131 (4) is clear that if the consumer is fail to remit the payment even within the extended period, the Licensee may disconnect the supply. The Section 138 1(a) describes the disconnection: -

- Section 138 (1) The Licensee shall not disconnect the supply of electricity to any consumer except:

- (a) if the consumer defaults in payment of the dues payable to the licensee as per the bill or demand notice or any order issued by a competent authority, within the period stipulated therein;

The disconnection and dismantling procedure are to be executed by the Licensee before the arrear exceeding the security deposit. Here in this case, the arrear was accumulated since 2018 onwards and the disconnection effected only during April 2021. Then the arrears exceed abnormally above the security deposit. However, the consumer was making certain portion of the bill amount and from March 2020 onwards no payment was made. The disconnection effected only after a period of one year.

Section 141 The consumer is liable to pay the charges if any as approved by the Commission, during the period of disconnection also:

Provided that no charge shall be due to the licensee for the period which is in excess of one hundred and eighty days from the date of disconnection if the connection remains continuously disconnected for one hundred and eighty days except on the request of the consumer.

The above Section is clearly spelt out that no charges shall be leviable for the consumer by the Licensee in excess of 180 days from the date of disconnection if the connection remains continuously disconnected more than 180 days. Power disconnection on 01-04-2021, and demand charges were billed continuously, which is a violation of this Section. The demand charges are applicable only up to 180 days only up to 27-09-2021. That means from 28-09-2021 to the date of reconnection i.e. 11-03-2022, the demand charges should be billed.

**Decision: -**

From the analysis of the arguments and the hearing, following decision is hereby taken:

- (1) The appellant is not liable to pay the demand charges beyond 180 days of disconnection and accordingly the arrear amount is to be recalculated.

(2) The appellant is liable to pay the arrear bill amount as per the revised bill prepared in accordance with (1) above.

(3) The order of Consumer Grievance Redressal Forum (Central Region) is modified accordingly.

(4) The Licensee shall grant instalment facility as decided by Consumer Grievance Redressal Forum.

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

**ELECTRICITY OMBUDSMAN**

P/073/2022/ \_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sri. Tony Thomas, Managing Director, M/s. Unipack India Pvt. Ltd., Binanipuram P.O., Edayar, Ernakulam 683502
2. Secretary, KSEBL, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram
3. Special Officer (Revenue), KSEBL, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram
4. Dy. Chief Engineer, KSE Board Ltd., Electrical Circle, Perumbavoor, Ernakulam Dist.
5. Executive Engineer, Electrical Sub Division, KSEB Ltd., Perumbavoor, Ernakulam Dist.
6. Assistant Engineer, Electrical Section, KSEB Ltd., Edayar, 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.