

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/072/2022**(Present: A. Chandrakumaran Nair)****Dated: 16th December, 2022**

Appellant : Sri. Vinod M.M.,
Wind Flower Resorts And SPA,
Sidhartha Resort And Foods (P) Ltd.,
Annapoorna Estate, Pozhuthana. P.O.,
Wayanad Dist.

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kalpetta, Wayanad Dist.

ORDER**Background of the case:**

The appellant Sri. Vinod. V.M. is the General Manager of “The Wind Flower Resorts & Spa, which is a unit of Sidharta Resorts & Foods Pvt. Ltd. This resort is a consumer of Licensee (KSEBL) and the service connection is on HT and tariff applicable HT IVB consumer number LCN7/5754 under Vythiri, Electrical Section. The metering of the service connection is through CT & PT arrangement. The resort was functioning up to 23-03-2020 and was not functional from 23-03-2020 to 06-12-202 due to Covid-19 lockdown and restrictions. This resort was taken over by the Local Administration for the functioning of Covid-19 care center and this was functional from 09-05-2020 to 03-09-2020. On 19-05-2020, the Asst. Engineer noticed that the CT & PT unit installed at the premises was burned off and as per the direction of Dy. CE/KSEBL, the supply was restored by bypassing the CT PT unit. The CT PT unit was replaced by the appellant on 19-11-2020 after a gap of more than 6 months. The respondent issued bill to the appellant for Rs.17,31,018/- from 05/2020 to 11/2020.

The appellant filed petition to the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode and CGRF (NR) ordered that the penal billing done for three billing cycles is to be quashed and the average consumption billing done for the period from 05/2020 to 11/2020 is in order. Accordingly, the bill amount has been revised to Rs.12,37,377/-. Aggrieved by the decision of the Forum, the appellant filed appeal petition to this Authority.

Arguments of the appellant:

The electrical connection to the resort of the appellant, Wind Flower resort, Vythiri, is provided by erecting a CTPT. Due to the lockdown and restrictions imposed due to Covid 19 epidemic, the resort was not functioning from March 2020 to 6th December 2020. No guests were entertained during the period and no commercial activities were carried out in the resort during the said period.

During May 2020 the CT & PT transformer erected for providing electricity supply to the resort premises got burned up. It was informed by the officials of KSEB that since the Covid restrictions were in place making it difficult to immediately procure and get a new transformer as transport was restricted, for the time being, electric supply was restored by bypassing the meter. The new transformer could be erected only during November 2020.

Pozhuthana Panchayath had taken over appellant's resort for providing free quarantine facility during Covid pandemic and had utilized the rooms in the above resort from 9th May 2020 for the purpose of providing free quarantine facility to the public.

While so, appellant was surprised to receive electricity bills and meter penalty set out in the schedule hereunder.

Invoice No.	Consumption Month	Amount	Meter Penalty
<i>2102811801087</i>	May 2020	Rs.2,20,507.00	
<i>2402811808863</i>	June 2020	Rs.1,51,307.00	
<i>2102811816264</i>	July 2020	Rs.5,24,713.00	
<i>2102811823328</i>	August 2020	Rs.2,18,479.00	Rs.3,06,234/-
<i>2102811831130</i>	September 2020	Rs.2,18,479.00	
<i>2102811832231</i>	October 2020	Rs.2,18,479.00	

The resort was not functioning for the period from and inclusive of May 2020 to and inclusive of August 2020. The penalty amount was arrived at taking into consideration of the consumption for the months when the resort was functioning. As stated above, the resort was closed down from March 2020 onwards due to Covid lockdown and restrictions and was not functioning. Moreover, the transformer was burnt and could not be replaced in time due to Covid restrictions. It is because of reason attributable to neither the consumer nor the KSEB but due to the panic situation existed in connection with outbreak of Covid 19, that the transformer could not be replaced in time.

In the complaint filed before the CGRF, as OP.26/2021-22/269, CGRF was pleased to pass an order quashing the penal billing done for three billing cycles and had ordered that the average consumption billing done for the period of consumption from 01-05-2020 to 19-11-2020 be reckoned by taking the average consumption from 01-10-2020 to 31-03-2020. Such a finding arrived at by the CGRF is erroneous and contrary to facts and law.

At the outset, the Covid-19 pandemic has disrupted all the normal functioning of all enterprises and organizations and the resultant lockdown has impaired the movement of people and fully restricted vehicular traffic. It is in this context the subject matter of the complaint has to be viewed and a lenient view ought to have been taken by the CGRF

All the events which led to the filing of the above complaint including the flashing off of the CTPT unit installed in the appellant's premises occurred during the Covid-19 pandemic and the resultant national lock down imposed by the Central Government.

The running of the appellants establishment was abruptly stopped from March 2020 due to the national lock down and thereafter the Pozhuthana Grama Panchayath had taken over the entire property for the purpose of using the same as a quarantine facility and the management of the property had no control or possession over the same during the period when it was taken over, presumably under the provisions of the disaster Management Act.

During the said period, none of the employees or the management could enter the property not did they have access to the property. During the time when the CTPT unit was damaged and asked to be replaced, the Covid-19 pandemic was at its peak and lockdown was the norm. Vehicular traffic including lorry transport etc., were strictly prohibited and restrictions were imposed on the opening of the units which were to supply the materials. Under such circumstances, it was humanely impossible to replace the CTPT within the time prescribed. The respondent which ought to have stood by the consumer during the times of pandemic has now adopted an inimical attitude in demanding exorbitant amounts from the appellant.

The entire property of the appellant was taken over by the Pozhuthana Grama Panchayath as per the order of the District Collector, Wayanad, and was functioning as Covid care centre from 09-05-2020 to 03-09-2020. During the said time the management, its employees not guests were allowed into the premises and the same was fully under the control of the Panchayath.

Thus, due to the lockdown and restrictions imposed due to Covid 19 epidemic the resort was not functioning from March 2020 to 6th December 2020 as the same could be put to use only during December after completing the maintenance work. No guests were entertained during the period and no commercial activities were carried out in the resort during the said period.

During May 2020 the CT & PT transformer erected, for providing electricity supply to the resort premises got burned up. It was informed by the officials of KSEB that since the Covid restrictions were in place making it difficult to immediately procure and get a new transformer as transport was restricted, for the time being, electric supply was restored by bypassing the electric meter. The new transformer could be erected only during November 2020.

On perusal of the impugned order issued by the CGRF, it is seen that the fresh assessment is to be made on the basis of average monthly consumption during the period when the resort was working, ie., before the covid pandemic. Such an assessment is arbitrary considering the admitted fact that the property was used as Covid centre during the pandemic and naturally the consumption

would be much less compared to the period when the same was used for the purpose of tourism.

The above fact was not considered by the CGRF and therefore the calculation made on the basis of average consumption during the period when the resort was functioning is erroneous as it is evident that no commercial activity was undertaken in the resort during the said periods when it was used as Covid Care center, where the consumption would be much less.

Also, the penalty amount of Rs. 3,06,234/- charged is arbitrary and excessive and not liable to be charged. It is respectfully submitted that the resort was not functioning for the relevant period as stated above and we believe that the penalty amount was arrived at taking into consideration the consumption for the months when the resort was functioning.

As stated above, the resort was closed down from March 2020 onwards due to Covid lockdown and restrictions and was not functioning. Moreover, the transformer was burned and could not be replaced in time due to covid restrictions. It is because of reason attributable to neither the consumer nor the KSEB but due to the panic situation existed in connection with outbreak of Covid 19, that the transformer could not be replaced in time.

Under the circumstances, it is therefore just and necessary in the interest of justice to waive off the impugned electricity bills bearing Nos. *2102811801087*, *2102811808863*, *2102811816264*, *2102811823328*, *2102811831130*, *2102811832231*, and the penalty amount demanded and to reconsider the current bills for the 7 months period when the resort was not functioning by charging for the said period only the connected load amount/charges. It is prayed that to your good self to, take into consideration the difficult times the entire tourism industry is facing especially the consumer herein who has been badly and adversely hit by the Covid pandemic.

The Covid-19 pandemic was an unprecedented pandemic which could not be foreseen and all the rules, laws and regulations made were not framed taking into consideration the Covid Pandemic. During the desperate times, the respondent being a public service, ought not cling on to technicalities as it is settled

proposition of law that all the rules of procedure are the handmaid of justice and the fact remains that the object of prescribing procedure is to advance the cause of justice. Therefore, considering the bonafides of the complainant and the havoc caused by the pandemic, the respondent erred in relying on technicalities and ought to have waived off the impugned bills.

The Covid19 pandemic was unforeseeable and in the nature of a force majeure and therefore, the respondent ought not have placed excessive reliance on the contract between the parties.

Therefore, considering the fact that the property was not under the control of the complainant and taken over by the district administration under the provisions of an Act and therefore the premises was not used by the complainant for the periods stated in the impugned bills, the grievance of the complaint may be redressed by allowing the prayer sought for in the complaint by setting aside the impugned bills bearing Nos. *2102811801087, 2102811808863, 2102811816264, 2102811823328, 2102811831130, 2102811832231* and to reconsider the current bills for the 7 months period when the resort was not functioning by charging for the said period only the connected load amount/charges.

Arguments of the respondent:

The Asst. Engineer Electrical Section Vythiri informed the Deputy Chief Engineer Electrical Circle, Kalpetta via an e mail dated 13-05-2020 that the CT & PT unit of the meter was burnt and requested for sanction to reconnect the supply bypassing the meter. As, by that time, the resort was taken over by the District Administration under Disaster Management Act to provide isolation facility to Covid -19 patients., the Deputy Chief Engineer accorded sanction for the same.

Later a notice was served on the appellant to replace the CT & PT unit within the stipulated time as per the provisions in the HT agreement and Kerala Electricity Supply Code 2014. But the appellant failed to discharge the bounden duty presumably due to pandemic induced crisis and its consequential disruptions.

Since the appellant failed to replace the meter within 02 months the respondent issued a penal bill for Rs.3,06,234/- as per provisions under General Conditions for HT & EHT Tariff 4(d) Part B of KSERC Tariff order dated 08-07-2019.

Finally, the newly purchased CT & PT unit was installed on 19-11-2020 ie. after a gap of over 06 months, nevertheless the respondent limited the penalization to 03 months as required by law.

The appellant, being felt aggrieved over the bills issued during the period 05/2020 to 11/2020 and penalty imposed, approached the CGRF (NR) in OP 26/2021-22. CGRF in its order dated 18-01-2022 quashed the impugned penal bill considering it as an exceptional case and also ordered to revise the bill for the usage period 04/2020 to 11/2020 (billing months 5/2020-12/2020) by reckoning an average of consumption from the period 01-01-2020 to 31-03-2020 (billing months 02/2020-4/2020)

The respondent Board vide its Office Order No.(DF)No.796/2022 (LAW 1/5676/2021) dated Tvpm 13-06-2022 accorded sanction for the compliance of the order under appeal. Accordingly, the respondent cancelled the impugned penal bill for Rs.3,06,234/- and also revised the monthly bills for the usage period 04/2020 to 11/2020 as mandated by the order. The fact has been intimated to the appellant via written communication.

The details of the revision of bills are as set out in the table below.

Consumption Month	Old Demand in Rs.	Revised Demand in Rs.	Difference in Rs.
05/2020	220507	181705	-38802
06/2020	151307	180176	28869
07/2020	524713	180176	-344537
08/2020	218479	180176	-38303
09/2020	218479	180176	-38303
10/2020	218479	180176	-38303
11/2020	179054	154792	-24262

Accordingly, a credit of Rs.5,22,510/- has been allowed to the appellant.

The appellant has now moved this Authority, aggrieved over the decision of CGRF(NR) and seeking a revision of monthly bills for the usage period 04/2020-11/2020.

Since the sheet anchor of the contention of the appellant is regarding the average reckoned for the meter faulty period, the respondent is limiting its contentions to that aspect only. The circumstances that led the computation on the basis of average consumption is a result of failure to adhere the provisions of agreement between the appellant and respondent Board and the failure to comply with the provisions of Supply Code 2014. It was the appellant, who failed to comply with the statutory and contractual obligations. Even though there was no violation of contractual obligation from the respondent side, given the pandemic condition, the respondent took a lenient view and accepted the Hon'ble CGRF order in toto.

The respondent is a third party; with regards to the taking over of the premises, occupancy rate and usage of electricity etc. Also, pertinent to note the submission of the appellant that even they were not allowed in the premises by the authorities during the time of take over.

The Regulation 125 of Kerala Electricity Supply Code 2014 has given unambiguous procedure to be followed in case of non-availability of meter reading. The respondent has reckoned an average as ordered by the CGRF and the bills were revised accordingly. It is luculent that the respondent vide BO No.(FTD) 363/2020(KSEB/TRAC-D/Covid-Pandemic-Tariff concession/2020-21 dated 30-05-2020 has ordered some relief measures to consumers as part of mitigating the ill effects of pandemic. Accordingly, the appellant was allowed rebate on Demand charges for the months of March, April & May 2020. This is the relief eligible to the appellant in terms of law.

Here in the subject case what is done by the respondent is absolutely within the confines of statutes rules and regulations as applicable in the case. The Regulation has provisions for dealing with instances where the quantum of electricity consumed cannot be measured due to some reasons or other and the same provisions have been adopted scrupulously by the respondent. The appellant

has also no case that the respondent has erred in any way whatsoever manner which affects his interest.

In the conspectus of the facts and circumstances mentioned afore, it is most respectfully submitted that there is no cause of action as alleged in the appeal.

For these facts and contentions and those to be urged during the hearing it is prayed before this Authority that the appeal may please be dismissed with appropriate orders. It is also most respectfully submitted that the delay in submitting the counterstatement was due to unavoidable reasons beyond the control of respondent and it is requested to condone the delay so occurred.

Version of appellant on the arguments of respondent:

The events which led to the filing of the above complaint including the flashing off of the CTPT unit installed in the complainant's premises occurred during the Covid-19 pandemic and the resultant national lock down imposed by the Central Government. The running of the appellant's establishment was abruptly stopped from March 2020 due to the national lock down and thereafter the Pozhuthana Grama Panchayath had taken over the entire property for the purpose of using the same as a quarantine facility and the management of the property had no control or possession over the same during the period when it was taken over, presumably under the provisions of the Disaster Management Act.

During May 2020 the CT & PT transformer erected for providing electricity supply to the resort premises got burned up. It was informed by the officials of KSEB that since the Covid restrictions were in place making it difficult to immediately procure and get a new transformer as transport was restricted. Only at the request of the District Administration, Wayanad, who had taken over the resort premises for providing quarantine facility, electric supply was restored by bypassing the electric meter by KSEB, which cannot at the request of the appellant. It is pertinent to note that since the resort was not functioning under the appellant during that period, the appellant had no need to request for reconnection by bypassing electric meter. The bypassing of electric meter was done as per the need and request of the District Administration who were using the premises as quarantine facility. The

KSEB had done the bypassing not at the request of the appellant and the same is against provision of law.

Analysis and findings:

The hearing was conducted on 06-12-2022 in the PWD Rest House, Westhill, Kozhikode. The appellant was not attended the hearing even after delaying the hearing by one hour. The appellant appeared before the Ombudsman in the evening and he was asked to submit the argument points, if any, within three days. The appellant submitted his points vide letter dated 08-12-2022. Tripthi Lakshman, Assistant Executive Engineer, Electrical Sub Division, Kalpetta and Sri. Eldo K. Philip, Nodal Officer (Litigation), KSEB Ltd., Kalpetta along with Adv. Manojkumar. M.C., Calicut 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.

The Wind Flower Resorts & Spa was closed since 23-03-2020 due to the Nation wide Covid restrictions imposed by the Govt. The resort has been taken over by the Pozhuthana Grama Panchayath to function as the Covid care centre as per the direction of District Collector. The Covid care centre was functional since 09-05-2020 to 03-09-2020. No resort activities are functioned during this time and the Covid care centre is not accessible for the resort staff or Managers. The CTPT units provided for the metering arrangements was burned off on 13-05-2022. As per the direction of the Dy. CE/KSEBL, the supply was restored by bypassing the metering arrangements.

The Section 118 of Kerala Electricity Supply Code 2014 deals with the replacement of damaged meter as follows: -

Section 118 (1) If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future

damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee.

Section 118 (2) The consumption during such period in which the supply was restored as per the above sub-regulation, shall be computed based on the average consumption during the previous billing cycle.

Section 118 (3) The bypassing shall be removed by replacement with a correct meter within the least possible time, at any rate within three working days for LT meters and within fifteen days for HT meters.

This Section states that for HT meters, the bypassing arrangement is to be removed within 15 days. The decision of bypassing the meter to restore the power supply was taken Suo motto by the KSEBL and not as per the request of the appellant. This decision was taken to provide power supply for the Covid care centre. Then, how the energy charges billed during the meter faulty period?

Section 125 of the Kerala Electricity Supply Code 2014 describes about the billing procedure during this period as follows: -

Section 125 (1) In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective:

Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available:

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.

Section 125 (2) Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter.

The bill for the meter defective period is to be prepared based on the average of previous three billing cycles. This procedure is adopted in this case. The previous billing cycles considered is from 01-01-2020 to 31-03-2020. The contention of the appellant is that during the months 01/2020, 02/2020 and

03/2020, the resorts was fully functioned and the consumption was more. 23-03-2020 onwards the resort was fully closed and no consumption would have recorded. During the period in which Covid care centre was functioned also the consumption would have been relatively low. Charging the consumer based on the average of high consumption for the months of low consumption is questioned by the appellant. The Section 125 (1) para 3 states any evidence given by consumer about conditions of occupancy of the concerned premises also to be considered. Accordingly, the consumption during the lean period to be calculated. The ratio of load which could be connected during the lean period to that of load connected to that of previous billing cycle is to be found out. This ratio is to be applied to the average of the previous billing cycle amount.

The delay in replacement of CTPT unit is only because of the all-Nation pandemic and further this premises was used for a social cause.

The CTPT unit was replaced only after the period of six months. The respondent had sent repeated correspondences to urge the appellant to replace the CTPT unit. The reasons stated by the appellant is: -

- (1) The resort is not accessible for the Staff and Managers and hence, the letters were received on closing the Covid Care Centre. The e-mail are also in the official computers in the office, which are also not accessible.
- (2) Due to the Covid restrictions, the CTPT unit manufacturer also was not providing the unit and hence, was not available.

When the consumer delayed to install the CTPT unit, the Licensee can charge 50% extra over the prevailing rates applicable for both element and energy as per the clause 4 (d) of General Conditions of tariff order Part B

- 4 (d) If any existing consumer, having elected to purchase and supply the meter for replacement of the defective meter in his premises, fails to do so within two months, such consumer will be charged 50% extra over the prevailing rates applicable to him for both demand and energy, for the said two months and one month thereafter.

This 50% extra charged by the respondent has been waived off as per the decision of CGRF and accordingly Rs.5,22,510/- has been reduced from the bill.

The resort was taken over by the Panchayat to operate as the Covid Care Centre, which is a social cause. Whether the appellant has to bear this energy expenses is a question? When this facility is provided by the Local Administration, basic amenities are to be provided by them and the expenses also.

Decision: -

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

- (1) The Licensee shall assess the percentage of connected load which could be used during the lean period with the previous billing cycle period and the same percentage amount of the average of three billing cycle is to be billed to the appellant.
- (2) Energy charges for 01-05-2020 to 03-09-2020 is to be borne by the Panchayath, who has operated the Covid care centre.
- (3) Appellant is liable to pay the charges assessed by the Licensee as per decision (1) above.

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

ELECTRICITY OMBUDSMAN

P/072/2022/_____ dated _____.

Delivered to:

- (1) Sri. Vinod M.M., Wind Flower Resorts And SPA, Sidhartha Resort And Foods (P) Ltd., Annapoorna Estate, Pozhuthana. P.O., Wayanad Dist.
- (2) Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kalpetta, Wayanad 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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode