

THE STATE ELECTRICITY OMBUDSMAN

D.H. Road & Foreshore Road Junction, Near Gandhi Square,

Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

Email: ombudsman.electricity@gmail.com

Appeal Petition No. P/035/2025 (Present A. Chandrakumaran Nair) Dated: 25-07-2025

Appellant : Shri. Tony Thomas
Managing Director
M/s. Unipack India Pvt. Ltd.
Edayar, Aluva,
Ernakulam dt - 683502

Respondent : 1. The Special Officer (Revenue)
KSE Board Ltd.,
Vydyuthibhavanam,
Pattom, Thiruvananthapuram.

2. The Deputy Chief Engineer
Electrical Circle, KSE Board Ltd.,
Perumbavoor, Ernakulam (DT)

ORDER

Background of the case

The appellant Shri. Tony Thomas is the Managing Director of Uni Pack (India) Pvt. Ltd. He has availed a HT Service connection for his Industry producing various types of gravels, M-sand etc. under the company named M/s. Unipack(India) Pvt. Ltd. This service connection is under the Electrical Section , Edayar of the Licensee which is under the Electrical Circle Perumbavoor. The appellant was not regular in remitting the current charges. As on 12/05/2025 the total outstanding amount is worked out to Rs. 39,51,044/- including the disputed amount of Rs. 2,47,003/-. The tariff of the consumer is HT 1 (A) with connected load 183.29 KW and contract demand

179 KVA. The consumer filed petition to various fora to delay the payment. The present demand of the petitioner is to quash the bill issued by the Licensee towards disincentive for the power factor correction for Rs.6,12,081/-. This demand notice for the power factor disincentive for a period from 2018-2022, which was in monthly bills. The appellant claimed that he was not aware of the low factor and hence he could not take remedy to improve the power factor. The respondent's version is that this disincentive was shown in the regular bills. The petitioner filed the petition to CGRF. CGRF issued order dated 25/03/2025 on completing procedure stating that the appellant is liable to pay the arrear and regular bill amount. Aggrieved by the decision of CGRF, this appeal petition is filed to this authority.

Arguments of the Appellant

The complainant is the Managing Director of M/s Unipack India Pvt. Ltd., a company registered under the Companies Act. The complainant has availed electricity connection to his Industrial Plant having consumer number 1357120052681 with HT 1(A) Industrial tariff from the Electrical Section, Edayar. The company was under financial distress even before the floods in 2018 and during the flood the raw materials stored for production along with machineries and finished goods were washed away in the floods. During the revival of company, the company was again hit by flood followed by Covid 19 pandemic. This venture has been commenced by availing huge amounts as loan from the bank. The plant was closed almost all the time during 2018 to 2022. However the power supply was not cut off till September 2022 and the bills could not be paid every month.

The complainant was heavily levied with disincentive on all those days and was not served with any prior informations or notices in this regard. If notices in this regard were given to the complainant, he should have been cautious about this and there by an amount of Rs. 6,12,081/- should not have been in these bills. The complainant has approached the CGRF and this Honourable Authority against the regular charges demanded for the period and orders were obtained in favour of the complainant. But the complainant is mulcted with another demand including the charges due to low power factor.

Being aggrieved, the complainant approached CGRF against the said demand and the Honourable CGRF has issued order dated 25.3.2025 deciding that the complainant is liable to pay the area and regular bill amount issued by the licensee. And further directed that OTS shall be allowed to the complaint.

This complaint is filed against the demand and the order of the CGRF to the extent of demanding charges for the lower power factor. Though the desirable power factor is stipulated in the Tariff order approved by the KSERC it is

evident that the licensee had not issued any intimation with regard to the installation of proper capacitor in order to attain the desirable power factor. Admittedly the premise was under the constant inspection of the licensee. The officers of the licensee were visiting the premises on every month. But no prior intimation with regard to the power factor is intimated to the complainant. The duty cast upon the licensee cannot be viewed casually especially when the officers are inspecting the premises regularly. As such there is violation of natural justice in issuing the demand which includes the amounts due to lower power factor. Hence the demand is liable to be set aside.

The demand notices issued are per se illegal and violative of Regulation 152 of the Kerala Electricity Supply Code 2014. Opportunity of being heard was denied to the complainant and hence violative of natural justice

Realization of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months. The limitation of 2 years dealt in regulation 136 is also applicable to the present case.

To set aside the demand notice issued by the respondents to the extent it demand the amounts for lower power factor..

Arguments of the Respondent

The Petitioner, M/s. Unipack India (P) Limited (LCN: 3/8284) is an HT live consumer under the Electrical Section, Edayar in the Electrical Circle, Perumbavoor, not regular in remittance of monthly bills of current charges since the period 2018 onwards. The outstanding principal current charge dues of the petitioner consumer as on 12.05.2025, as per 'System Enrgise' details are Normal Bill - Rs.924628+ Interest Bill - Rs.2779413 +Dispute Amount -Rs. 247003. The connected load of the consumer is 183.29 KW and contract demand is 179 KVA. The consumer is billed under HTI (A) Industrial tariff. The order dated 16.09.2022 of the Hon'ble CGRF (Central Region), Ernakulam in OP No.33/2022-23 filed by the petitioner consumer challenging the outstanding arrear demand of Rs.19,69,950/- issued by the the Special Officer (Revenue) directing the petitioner to remit the current charge arrears in 12 installments is not seen complied so far.

Then an appeal petition was filed by the petitioner consumer, Unipack India Pvt. Ltd. before the Hon'ble State Electricity Ombudsman vide Appeal Petition No. P/073/2022 on 11.10.2022 for the arrears amounting to Rs.19,69,950/- including the interest during the period 02/2019 to 12/2019. The Hon'ble

Ombudsman Ordered in 09.12.2022 that the petitioner is not liable to pay the demand charges beyond 180 days of disconnection and accordingly the arrear amounts to be recalculated. The Order of the State Electricity Ombudsman was not agreeable to KSEBL, since as per Regulation 141 of the Kerala State Electricity Supply Code, 2014 the petitioner is liable to pay the charges if any as approved by the Regulatory Commission, during the period of disconnection also. The Board challenged the order of Ombudsman by filing WP(C) No.23877/2023 before the Hon'ble High Court of Kerala and the High Court Stayed the operation and implementation of order dated 09.12.2022 of Ombudsman in Appeal No.P/073/2022 by its Interim Order dated 24.07.2023. The writ petition, WP(C) No. 23877/2023 is still pending before the Hon'ble High Court of Kerala for a final verdict.

The consumer again filed OP No.115/2023-24 challenging the demand notice dated 18.02.2024 for Rs.2051836/- issued by the Special Officer (Revenue) before Honb'le CGRF(CR) and the Interim Order by CGRF (CR) in this OP dated 04.03.2024 directed the first respondent, the Special Officer (Revenue) not to disconnect the supply, if the consumer deposits 50% of the disputed amount. Thereby, the petitioner consumer remitted Rs.10,26,000/- on 11.03.2024. The Second respondent had issued an Arrear Notice dated 18.12.2023 to the petitioner invoking Section 56(1) of the Electricity Act 2003 read with Clause 138 and 139 of the Kerala Electricity Supply Code 2014. Then, a notice of disconnection as per Section 56(1) of Electricity Act 2003 was served for arrears amounting to Rs.20,51,836/- on 18.02.2024. Since the petitioner consumer is irregular in making their payments, remittance once made shall not be adjusted against that particular invoice. The system deducts the amounts paid as per the order of priority envisaged in Regulation 133 of the Kerala Electricity Supply Code, 2014 in the following order of priority: (i) interest on electricity duty arrears, (ii) electricity duty arrears, (iii) interest on electricity charge arrears, (iv) electricity charge arrears, (v) dues of current month.

As per regulation 131(2) of the Kerala Electricity Supply 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 Section No.12 of the Schedule 1 of the Code, rate of interest 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. Then the Hon'ble CGRF(CR), Ernakulam ordered that the respondent shall adjust all payments made by the petitioner in accordance with Regulation 133 of the Kerala Electricity Supply Code, 2014, keeping in dispute the amount found non- payable by the Hon'ble Kerala Electricity Ombudsman in its order dated December 9th, 2022,

on Appeal Petition No. P/073/2022 until the final decision of the Hon'ble High Court of Kerala. Paralleled to this the consumer filed WP(C) No.9645/2024 before Hon'ble High Court of Kerala on 11.03.2023 and the Hon'ble High Court of Kerala disposed the Writ Petition on 13.03.2024. Here the mala fide intention of the petitioner is to delay the remittance procedure by filing Appeal Petitions before various Legal Fora is very much clear. The Chronology of Events is listed below indicating the major disputes between the petitioner and the respondent KSEB Ltd.

In the Agreement of HT Supply executed between the petitioner and the licensee as per Regulation 103 (3) of the Kerala State Electricity Supply Code, 2014 in 'Clause 18 (b)' of the said agreement, it clearly states that: *"In cases where the consumer is unable to consume energy, due to lockout, strike of employees of the consumer, major breakdown of machinery or plant, which to the satisfaction of the Licensee is responsible for the non- consumption of energy by the consumer, or other force majeure conditions over which the consumer has no control, he shall resume consumption of energy as soon as reasonably can and he shall promptly intimate the Licensee the reasons for non- consumption. In any event the consumer shall be bound to pay the Licensee the fixed minimum charge as approved by the Kerala State Electricity Regulatory Commission, irrespective of the question as to whether any energy has been consumed or not, whatever be the reason for non- consumption and also irrespective of the actual quantity consumed. However, the Licensee shall have the right to take periodical shut down as and when required for the purpose of routine maintenance after giving reasonable notice to the consumer and no claim for rebate or refund of charges on this account shall be entertained by the Licensee."* It is true that the flood and Covid pandemic had affected all industries and commercial activities. The power sector especially discoms of the country were equally affected. However, reliefs to all electricity consumers under the state of Kerala were extended and the petitioner's firm also enjoyed a relief in current charges by reducing 25% of fixed charges during the months 03/2020, 04/2020, 05/2020 and 07/2021. In addition, KSEBL generously sanctioned installment facility to those consumers requested for the same for clearing electricity arrears. The petitioner also enjoyed the same facility of clearing dues in installments.

KSEBL cannot issue an exorbitant bill to a consumer as it functions in accordance with the provisions of the Electricity Act, 2003 & the Kerala Electricity Supply Code, 2014. It can issue bills as per the Regulations notified by the KSERC from time to time. In the Agreement of HT Supply [Exhibit R2-1] executed between the petitioner and the licensee as per Regulation 103 (3) of the Kerala State Electricity Supply Code, 2014 - in 'Clause 13 (b)' of the said agreement, it clearly states that: *"The average power factor, incentive for high power factor and disincentive for low power factor of the plant and apparatus*

owned and operated by the consumer at individual points of supply shall be as provided in the Tariff order issued by the Kerala State Electricity Regulatory Commission. The average power factor shall be determined by the ratio of the kWh and KVAh recorded monthly." Hence as per Clause 13 (b) of the HT agreement executed by the petitioner consumer and the KSEBL, he is bound to remit the disincentive for low power factor as envisaged under Regulation 103(3) of Supply Code, 2014. Ignorance of a clause in signed contact agreement made by the petitioner will not exempt the petitioner from liability of disincentive for low power factor.

As per the Tariff Order issued by the Kerala State Electricity Regulatory Commission (KSERC) with effect from 05.12.2024 onwards, the power factor incentive/disincentive shall continue to be calculated using the same procedure and rates followed till April to December-2024. The tariff mentioned in this Schedule shall apply to consumers to whom the Kerala State Electricity Board Limited, or other distribution licensees has undertaken or undertakes to supply electricity, notwithstanding anything to the contrary contained in any agreement entered into with any consumer earlier by the Kerala State Electricity Board, or other distribution licensees or Government of Kerala or in any of the Tariff Regulations or rules and / or orders previously issued. The rates specified in this Schedule are exclusive of Electricity Duty and/ or surcharge and/or any other cess, taxes, minimum fees, duties and other impositions existing or that may be levied or imposed in future by the Government or the Commission, which are payable in addition to the charges payable as per the tariff mentioned in this Schedule.

The following incentive and disincentive shall be applicable to LT industrial consumers with a connected load of and above 20 kW, HT&EHT Consumers and Bulk consumers and distribution licensees for power factor improvement as per KERALA STATE ELECTRICITY REGULATORY COMMISSION'S Schedule of Tariff Orders and Terms and Conditions for Retail Supply of Electricity by KSEBL (For the period 2018 to 2024)

Kerala State Electricity Board Limited HT & EHT Consumer Personal Ledger for the Bill period January 2018 to February 2025[Exhibit R2- 2] clearly shows the petitioner consumer regularly made lag in power factor range in meter readings and hence a total disincentive for Rs.6,22,690/- has charged in monthly current bills for the period January 2018 to February 2025, as against the petitioner's contention that disincentive of Rs.6,12,081/- charged for the period 2018 to 2022.

In reply to the petitioner's OP. No.107/2024-25, the Hon'ble Consumer Grievance Redressal Forum after having examined the petition and the statement of facts of the respondent considering all the facts and

circumstances in detail and perusing all the documents of both sides, comes to the following observations, conclusions and decisions that the petitioner's argument that he has been heavily levied with the disincentive all those days he claimed and he was not served any prior informations or notices in this regard is baseless since the petitioner is a monthly billed consumer and details like incentives and disincentives are clearly mentioned in each bills. More over the Hon'ble Consumer Grievance Redressal Forum concluded that the petitioner was well aware about the disincentives due to low power factor. So, As per KSERC'S schedule of tariff order and Terms & conditions for retail supply of Electricity by KSEBL (for period 2018 to 2024) penalty will be attracted if power factor falls below 0.95. Hence petitioner has to improve power factor as and when required and decided that the petitioner is liable to pay the arrear and regular bill amount issued by the licensee. Regulation 152 of the Kerala Electricity Supply Code, 2014 deals with the anomalies attributable to the licensee which are detected in the premises of the consumer. Mentioning Regulation 152 in this context is contradictory to facts. The only aim of the petitioner consumer is to delay the payment of current charge by employing delaying tactics.

KSEBL has the right to bill the petitioner based on the Tariff Order being issued by Commission from time to time as well as the Agreement executed with the consumer. The Regulation 136 of the Kerala Electricity Supply Code, 2014 deals with the recovery of arrears and its limitation, but here in this context, the petitioner is a monthly billed consumer and details like incentives and disincentives are clearly mentioned in each bills. More over the petitioner was well aware about the disincentives due to low power factor. So, As per KSERC'S schedule of tariff order and Terms & conditions for retail supply of Electricity by KSEBL (for period 2018 to 2024) penalty will be attracted if power factor falls below 0.95. Hence petitioner has to improve power factor as and when required and decided that the petitioner is liable to pay the arrear and regular bill amount issued by the licensee. Limitation period for collection not arises in this matter since the petitioner was served with monthly bills regularly by the licensee.

KSEBL is a Public Sector Undertaking and it functions as per rules and regulations as established by the statutes. Considering the contentions of the petitioner challenging Regulations of Kerala Electricity Supply Code, 2014 and the condition of the Tariff Order issued by KSERC, the petition filed by M/s. Unipack India (P) Ltd. (LCN: 3/8284) may be dismissed with cost. The petitioner may be directed to clear dues including power factor disincentive for the entire period and KSEBL may be allowed to proceed with disconnection procedures if the consumer is not willing to clear dues within the specific period of time for realizing current charge arrears.

Analysis and findings

The hearing of this appeal petition was conducted on 16/07/2025 at 11:00 a.m. in the Office of the State Electricity Ombudsman, D.H.Road, Ernakulam(dt). The hearing was attended by the appellant Shri. Tony Thomas and the respondents, the Deputy Chief Engineer represented by Nodal Officer(L)Sri. T.V Joseph, Electrical Circle, Perumbavoor and the Smt. Sindya.P.Chacko, Senior Superintendent, Office of the SOR, Thiruvananthapuram dt.

The appellant is running an Industry which is a Crusher Unit manufacturing different grades of metal, and M-Sand etc. The service connection is HT with tariff HT 1(A). The appellant is seen to be a regular defaulter in current charges which accumulated to 40 lakhs. Then the appellant had filed petition to various fora, and still this amount is outstanding. The present petition is filed against the arrear bill issued by the Licensee for Rs. 6,12,081/- which is the arrear of power factor disincentive. The appellant's version is that the factory was totally affeted by the flood of 2018, and then the Covid 19. Then the plant was almost idle during the period from 2018 to 2022. Eventhough the appellant is not consuming any energy, he is bound to pay the minimum charges as per the Clause.18(b) of the Agreement.

"In cases where the consumer is unable to consume energy, due to lockout, strike of employees of the consumer, major breakdown of machinery or plant, which to the satisfaction of the Licensee is responsible for the non- consumption of energy by the consumer, or other force majeure conditions over which the consumer has no control, he shall resume consumption of energy as soon as reasonably can and he shall promptly intimate the Licensee the reasons for non- consumption. In any event the consumer shall be bound to pay the Licensee the fixed minimum charge as approved by the Kerala State Electricity Regulatory Commission, irrespective of the question as to whether any energy has been consumed or not, whatever be the reason for non-consumption and also irrespective of the actual quantity consumed. However, the Licensee shall have the right to take periodical shut down as and when required for the purpose of routine maintenance after giving reasonable notice to the consumer and no claim for rebate or refund of charges on this account shall be entertained by the Licensee."

Then the Clause 13(b) of the agreement describes about the power factor.

"The average power factor, incentive for high power factor and disincentive for low power factor of the plant and apparatus owned and operated by the consumer at individual points of supply shall be as provided in the Tariff order issued by the Kerala State Electricity Regulatory Commission. The average power factor shall be determined by the ratio of the kWh and KVAh recorded monthly."

The quality of power available in a distribution system is greatly depend on the load connected to this power distribution systems. So it is an important responsibility of each consumer to compensate the laging power factor by connecting suitable power factor correction system. Now APFC (Automotive Power Factor Control) Panel are connected to the system to compensate the laging power factor depends on the load connected to system. The Kerala State Electricity Regulatory Commission by its tariff orders, stipulated that the consumer is maintaining power factor above 0.95 and upto 1 will get an incentive and charge power factor penalty for maintaining the lower power factor.

PF range (lag)	Incentive Penalty
Above 0.95 and upto 1	Incentive for 0.50% of the energy charge for each 0.01 unit increase in power factor from 0.95
0.90 and upto 0.95	Penalty @ 0.50% of the energy charges for every 0.01 unit fall in power factor below 0.95 and upto 0.90
Below 0.90	Penalty @ 1% of the energy charge for every 0.01 unit fall in PF from 0.90

In view of the above, the consumers are bound to maintain the required power factor, failing which penalty is payable. The next point is to be examined, is whether the P.F penalty is billed along with monthly bill? Or why the need of an arrear bill?

The respondent has produced the bills of certain months which shows that the PF penalty also included in the bill. The Section 56 (2) of the Electricity Act 2003 states that the Licensee could recover the arrears for any period of the same is reflected on the monthly bills.

Section 56.(2) *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.*

The arrear bill is raised as per the **regulation 134** of the Supply Code 2014.

134.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.

(2) If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount.

(3) The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque.

The recovery of arrears and its limitation described in **regulation 136** of the Supply Code 2014.

136.Recovery of arrears and its limitation.-

(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.

(3) No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.

(4) If the consumer fails to remit the amount of arrears with interest on or before the due date indicated in the bill or in the demand notice, the licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions

(5) The licensee may formulate a scheme for one-time settlement of long pending arrears and implement the scheme with prior approval of the Commission:

Provided that such one-time settlement schemes shall be open only for short duration.

As such the arrear bill issued by the Licensee is sustainable and the appellant is bound to pay. 136(5) states that the Licensee may formulate a scheme for OTS (One Time Settlement) for a long pending arrears.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. I here by agree with the decision of CGRF the order dated 25/03/2025.
2. No other costs sanctioned.

ELECTRICITY OMBUDSMAN

No. P/035/2025/_____ dated: 25/07/2025.

Delivered to:

1. Shri. Tony Thomas, Managing Director, M/s. Unipack India Pvt. Ltd., Aluva, Ernakulam (Dist.) - 683502
2. The Special Officer (Revenue), KSE Board Ltd., Vidyuthibhavanam, Pattom, Thiruvananthapuram
3. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd., Perumbavoor, 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, Consumer Grievance Redressal Forum, 220 kV Sub Station Compound, HMT Colony P.O, Kalamassery - 683503

