

**STATE ELECTRICITY OMBUDSMAN**  
THAANATH BUILDING CLUB JUNCTION POOKKATTUPADI ROAD  
EDAPPALLY TOLL KOCHI 682024

Phone 04842575488 +919447216341 Email : [ombudsman.electricity@gmail.com](mailto:ombudsman.electricity@gmail.com)

---

**REPRESENTATION No: P21/08**

*Appellant* : Sri P.M.James Partner ,  
High Range Tea Factory,  
PUTTADY (Po) Vandanmedu Idukki District

*Respondent:* Kerala State Electricity Board  
*Represented by*  
The special Officer (Revenue)  
KSE Board Vaidyuthi Bhavanam  
Pattom Thiruvananthapuram 695004

**ORDER**

Sri P.M.James, Partner ,High Range Tea Factory, PUTTADY (Po) Vandanmedu submitted a representation on 07.08.2008 seeking the following relief :

*Being under threat of dismantling pray that the KSE Board may be directed to withdraw the illegal demands raised by them*

Counter statements of the Respondent was obtained along with various connected documents and hearing of both the parties conducted on 5.11.2008, 5.12.2008 and 14.01.2009 .

M/s High Range Tea Factory had been an HT Consumer with Consumer Code 29/3456 under Kattappana Electrical Section with Contract Demand 200KV A. Earlier there were two LT Industrial Connections in the premises with Consumer Numbers 341/VMD and 2432/VMD in the name of Sri P.M.Mathew and Sri P.M.Paul respectively.

The APTS of KSEB inspected the premises of consumer no:341/VMD in 3/91 and found that the connected load was 117KW against the sanctioned load of 91KW. The load was regularized in July 1993 by paying additional CD of Rs 35310/- in five installments. The APTS inspected the premises of consumer no:2432/VMD in 10/91 and found that the connected load was 90KW against the sanctioned load of 55KW. The load was regularized in July 1993 by paying additional CD of Rs 36600/- in five installments. Later when an audit party pointed out in 8/97 that the above consumers are to be billed under deemed HT category the premises were again inspected by the Assistant Executive Engineer in 5/98 and reported that the connected load of the consumers were more than 100KV A as pointed out by APTS. The LT consumer 341/VMD was allotted HT

Consumer number 29/3456 and 2432/VMD was allotted 29/3457. The Special Officer (Revenue) issued invoice at Deemed HT Rates for the period 9/98 to 1/99 to both the consumers. OP number 5774/99 and 8122/99 were filed by the consumers in the Hon: High Court which were disposed in 10/2005 and 11/2005 with direction to the Appellants to approach the appellate authority with appeals. Consumer no:2432/VMD(HT No:29/3457) only filed appeals before the Chief Engineer Commercial.

Meanwhile both the services were merged in to one HT connection vide no:29/3456 with connected load 200KV A as desired by the consumers. This HT service was disconnected on 18/3/2006 due to non payment of regular monthly charges.

The Chief Engineer after hearing all the parties concerned issued order on 30.3.2007 to the Special Officer to :

- Ø Issue arrear claims at HT Tariff related to both 341/VMD and 2432/VMD (29/3456 and 29/3457) from the date of detecting the load to be above 100KV A, as per rules and issue demand notice to M/s High Range Tea Factory (Consumer No:29/3456) since they are liable to pay dues from both the old consumers.
- Ø The arrear claim shall be prepared in accordance with the Orders of the Board from time to time related to billing of Deemed HT Consumers.

In response to the letter dated 18.6.2007 from the consumer the Special Officer sent a letter dated 22.10.2007 narrating the details of arrears due from the consumer which was followed up by Dismantling notice dated 25.2.2008. The amount payable by the Appellant as per the above notice was Rs 51,84,216/- (Principal amount 3/91 to 11/2007 : 46,84,751 plus Interest upto 29.2.2008 : 4,99,465). The consumer approached Hon : High Court with OP9329/08 in which the Hon: High Court directed them to approach the CGRF of KSEB. The CGRF dismissed the Petition and upheld the claims of the respondents.

The representation with the pleas noted above is submitted to the under signed in the above back ground. The representation could not be disposed within the statutory time limit since more time was needed to analyze the issues involved and many sittings were required to analyze the documents.

- I. The contentions/arguments/points raised by the Appellant in the Representation, during the hearing and in the Argument Note are summarized below
1. In the counter affidavit on OP 5774/99 the Respondent s had undertaken that the bills under HT Tariff will be withdrawn and will issue demands under LT Tariff. This has never happened.
  2. The KSEB cannot unilaterally categorize the Appellant under HT Tariff without notice. The appellant had contended that there is no connected load as stated by the KSEB. But they never inspected the premises to verify the contention and the action of the respondent is highly arbitrary and illegal
  3. If the board had found that the connected load was more than the sanctioned load they could take action based upon the clause 42 of Conditions of Supply of Electrical Energy .they have not done it.
  4. The demand includes arrear current charges for a long period of 8 years. This is barred by Limitation.

5. The Chief Engineer (Commercial) in his order dated 30.3.2007 decided that the consumer is liable to be treated as HT Consumer unilaterally. This is illegal and arbitrary.

II. The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below

1. The finding of the APTS that the consumer number 341/VMD and 2432/VMD had connected load above 100KV A had been agreed by them since they had remitted the additional CD in July 1993 after requesting and obtaining installments. They had regularly paid Fixed charges for the enhanced load at LT IV rates without any protest upto the month of 8/98. The fact that the load as reported by the APTS were existing in 1998 also was seen confirmed by the AEE in his inspection in 5/98. The consumer had complaints only when HT Tariff was made applicable.
2. The amendment to the Conditions of Supply Regulations issued on 04.01.1983 and the subsequent Board Orders had empowered the Board to treat all consumers with connected load above 100KV A as deemed HT consumers. This had been challenged in the Hon: High Court and the High Court had upheld the position of the Board on the matter.
3. Arrears due from the Appellant from 10/1991 onwards at HT Tariff was calculated as per the guidelines contained in the order dated 30.3.2007 of Chief Engineer Commercial which in turn was issued after hearing the appeal of the Appellant as per orders of Hon: High Court on OP 8122/99. The arrears were calculated in accordance with the orders of KSEB and Circular instructions on the matter from time to time.
4. It was held in Southern India Marine Products Vs KSEB (1995) KLT P.167 that so far as the consumption charges which had failed to be collected by Board the provision of Limitation Act will not apply.

III. Discussion and Findings

1. The Regulations under Section 79(J) of the Electricity (Supply) Act 1948 termed as Conditions of Supply of Electrical Energy was amended by the KSEB on 04.01.1983 to the effect that all the consumers with connected load above 100KV A shall be treated as HT consumers for all purposes. This amendment was subsequently upheld by the Hon: High Court. By another amendment on 31.7.1999 the Board again allowed consumers with Connected Load above 100KV A but below 150KV A to be connected up under LT category wef 01.07.1999. Existing deemed HT consumers with CL between 100KV A and 150KV A were allowed to opt between LT or HT by an order dated 20.1.2000, with the condition that those who do not opt shall be treated as LT Consumer wef 1.3.2000. Several orders/clarifications were issued on the matter in between and there after.

In short, the amendments empowered the Board to bill the consumers with connected load above 100KV A as HT consumers between 04.01.1983 and 1.3.2000.

2. Under this circumstance the contention of the Appellant that the demand raised against consumer no: 341/VMD and 2432/VMD (29/3456 and 29/3457) under HT Tariff from 1991 onwards is arbitrary and illegal can not be accepted.

3. The Appellant has no case that the connected load was less than 100 KV A from 1991 onwards. They have paid additional CD for regularizing the additional load, they have paid fixed charges under LT IV for the Total Connected load for years together without recording any complaint or protest.

4. If the Consumer had actually reduced connected load as contended by him later in 1997, it was his duty to inform the matter to the appropriate authorities supported by new Installation completion report, wiring test report etc itself and get it approved by the concerned authorities after paying testing fees . The Appellant has no claims that these procedures have been followed by him . Instead of this the Appellant had produced a copy of the letter written by him to the Assistant Engineer on 03.10.1997 in which some one has made a remarks about the connected load being around 83.15 HP only. The Appellant could not state who the inspecting staff was. This document was produced in the Hon:High Court also with the OP 5774/99. The Respondent had alleged that the document is a forged one. The genuineness of the document is doubtful. The Appellant could not substantiate on the official who had made the remarks, and the genuineness of the document. This paper will not in any way substitute the procedural formalities mentioned earlier. More over the concerned Assistant Executive Engineer has inspected the premises in 5/98 and made official report on the correctness of the enhanced connected load. In the above circumstances the contention that the connected load had actually been reduced in 1997 or there after cannot be approved.

5. Another point raised by the Appellant is that the respondents had undertaken in the Counter affidavit of OP 5774/99 that the bills under HT Tariff will be withdrawn and will issue demands under LT Tariff. They produced a copy of the Counter affidavit also. There is no signature of the Respondent (deponent) in it. More over the Hon: Judge in the judgment on OP 5774/99 dated 28<sup>th</sup> October 2005 has noted that ‘there is no counter affidavit’ in the case. This is a deplorable situation. In view of the doubtful nature of the above two documents produced to substantiate the claims I confine my self to comment that the contentions are not accepted.

6. Another contention of the Appellant is that the KSEB could have taken action on the additional load in accordance with the Conditions of Supply of Electrical Energy. The appellant himself having regularized the additional load in accordance with the regulations as per instructions of KSEB this argument do not deserve any consideration.

7. The contention that, the claims related to a long period of 1991 to 2001 are barred by limitation, have to be looked seriously. The arrear claims are for the period prior to the Electricity Act 2003 and hence Section 56(2) of the Act 2003 can not be made applicable. The consumption figures are not under challenge and the rates payable are supported by

the Regulations as noted earlier. Hence the arrears are claims 'which had failed to be collected' by Board and I concur with the view of the respondent that the provision of Limitation Act will not apply.

8. Even though the claims are not barred by limitation it should be pointed out that there is a serious lapse on the part of the respondent KSEB that they did not commence billing under HT Tariff as and when the additional load was regularized in July 1993. This only shows the pathetic way in which Revenue Billing, Revenue Inspection and other functions were carried out in the area. Had the respondents done it in time the whole litigation and blocking of revenue could have been avoided. The interest on the arrears for the period from 1991 to 9/98 shall not be collected from the consumer.

9. The Deemed HT consumers who had not given option before 29.2.2000 are to be billed at LT rates from 1.3.2000 as per the BO dated 20.01.2000. The arrears for the period from 1.3.2000 to 1/2001 are to be revised as above.

#### IV. Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The Representation submitted by the Appellant on 07.08.2008 stands dismissed.*
2. *The Respondent may proceed with the realization of the arrears as per rules and regulations after incorporating the minor corrections noted above.*
3. *No order on costs.*

Dated this the 28<sup>th</sup> day of January 2009,

P.PARAMESWARAN  
Electricity Ombudsman

No P / / dated

- Forwarded to:
1. Sri P.M.James Partner ,  
High Range Tea Factory,  
PUTTADY (Po) Vandanmedu Idukki District
  - 2 The special Officer (Revenue)  
KSE Board Vaidyuthi Bhavanam  
Pattom Thiruvananthapuram 695004

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010
2. The Secretary ,KSE Board,  
Vaidyuthi Bhavanam ,Thiruvananthapuram 695004
3. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, Power House buildings  
Power House Road ERNAKULAM 682018
4. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, Vaidyuthi Bhavanam  
Gandhi Road Kozhikode 673032
5. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, Vaidyuthi Bhavanam  
KOTTARAKKARA