

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.kerala.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail.com

Appeal Petition No: P/187/2011

(Present: Sri.T.P.Vivekanandan)

Appellant : Sri.Paul Thomas,
House No XVIII/297, Chakkalackal, Near Nirmala College,
Poothole P.O, Thrissur-680 004.

Respondent : The Assistant Secretary,
Electricity Department,
Municipal Corporation Office, Thrissur.

ORDER.**Background of the Case.**

Sri. Paul Thomas is a consumer with Connection No.7035-C, of Electricity Department, Thrissur Municipal Corporation, which is a Licensee for Distribution of Power in parts of Thrissur Corporation area. The consumer had defaulted payment of current charges, alleging excess Meter reading for the consecutive 13 Nos of spot bills issued to him, during the period 17.05.04 to 18.05.06. The defaulted amount of Rs.9720/= was remitted on 04.07.2006 for which the Licensee had collected Rs.6140/= as interest for the belated payment. He had submitted Petition before the CGRF on 03.05.2008 and the Forum did not allow the prayers. Aggrieved by the above decision of CGRF, the consumer submitted Appeal before the Electricity Ombudsman on 30.01.2009 and the Ombudsman allowed most of the requests by ordering to refund the excess amounts realized from the consumer with interest at twice the bank rate with in one month from the date of receipt of its Order dated 28.05.2009. The consumer again submitted another Petition before the CGRF, Electricity Department, Thrissur Corporation, on 11.10.2010, questioning the rate of interest allowed to him, the period taken for the interest calculation etc. among other things. This Petition was partly allowed and disposed of by the CGRF on 29.11.2010. The consumer preferred Appeal before this Authority, as he is still aggrieved by the decision of CGRF, Electricity Department, Thrissur Municipal Corporation.

Argument of the Appellant:-

- (1). The Appellant has the complaint that the orders of the CGRF was not complied with by the Respondent fully. It has ordered to refund an amount of Rs.49/= as per item No 2 and Rs.106/=, as per item No 3 to the consumer. But these amounts were not refunded by the Respondent.
- (2). The Appellant has advanced the following argument for consideration as per item No 4 of the Petition filed before CGRF. He did not remit the Bi-monthly current charge bill dated 17.05.2004, due to disputes in the bill amount. Though he had submitted a written complaint, the Licensee did not respond and not issued any revised bill. In the subsequent Bi-monthly bills issued to him, the arrear amount was

not shown as is required by Law. The Respondent had taken action to recover the arrears after two years vide notice issued on 22.06.2006. According to the Appellant, the Licensee has no right to recover the arrears after two years. He quoted the relevant rules of section 56 (2) of Electricity Act 2003, and clause 18 (8) of Electricity Supply Code, 2005.

(3). The Appellant has adduced another argument that in the case of belated payment, the licensee is charging 18% interest from the consumer for the entire period of default. So he argues that this principle is also applicable in cases of the consumers who were over charged and later receive the refund. As such he is eligible for 18% interest for the belated amount received by him, as the existing law should be mutually applicable and cannot be made one sided as it is discriminatory. On the Hearing day, the Appellant summarized his complaints as follows;

A). The bill dated 17.5.2004 for Rs 1227/- was remitted by him only on 4.7.2006, after the receipt of arrear notice on 22.6.2006, issued after two years and is therefore time barred. Hence the said amount plus the interest collected from him for the belated payment has to be refunded with Interest since the arrear was not shown in the subsequent bills issued to him, as required by Law.

B). The Ombudsman in its Order has directed to give 12 % interest to the excess amount charged from him with in a period of two months. But the Respondent refunded the amount only after one and half years. But as per the new amendment recently made in the Regulations by KSERC, there is provision to give 18% interest for belated payments of arrear amounts. Therefore he is also eligible for 18% interest and not 12 % allowed by the Respondent.

C). He has raised objections before the Licensee in time, against the 13 numbers of Bi-monthly bills issued to him, from 17.5.2004 onwards. But neither was there any response from the opposite party nor they issued the revised bills. Hence they are bound to refund the interest charged from him for the payments made by him.

D). Then finally, he has requested to allow necessary compensation and cost, for the numerous Petitions filed before various Forums as the Respondent's actions has compelled him to do so in the wake of denial of benefits due as per Law in time , that caused him monetary loss, hardship and mental agony.

Argument of Respondent: -

The Respondent denies all the averments contained in the Petition except to the extent he is expressing admitted in the statement of facts submitted before this Forum and is as follows.

Sri Paul Thomas has remitted the 13 Nos: of bills pertaining to the period of 17.5.04 to 18.5.2006 on 4.7.2006 only. As per the Ombudsman's Order dated 28.5.2009, in the petition filed by the consumer, it was ordered to refund the interest portion collected at double the Bank rate. The amount was refunded on 25.3.2010, by making adjustment in his future bills. Since the consumer has protested against the adjustment of amount in his future Bills, the said amount was later refunded to him on 27.9. 2010. Again the consumer lodged petition before the CGRF against the period taken for the interest calculation and the Forum has ordered to issue the interest up to 29.11.2010, which was abided.

The Respondent has denied the contention of the Appellant raised in the first para. He swears that the amount claimed by the Appellant vide item 2 and 3 of the Petition to CGRF i.e. (Rs.60+Rs.47+Rs.48) was refunded to him with interest vide Cheque No.175551 on 07.02.2011.

Regarding the complaint of Appellant that the bill dated 17.5.2004 was time barred and this arrear amount was not shown in the subsequent monthly bills, the Respondent has stated that this aspect had been examined by the CGRF in detail and denied the contention of the Appellant. He argues that spot

bill was issued on 17.05.2004 itself and since the spot system is in vogue, the meter reader gives the bill on the spot according to the Meter readings and hence no arrears are recorded in the bill. That is the reason for non recording of arrear amount in subsequent bills. Therefore the version that the bill amount claimed is time barred after two years should not be accepted.

The Respondent has denied the argument of the Appellant that he is eligible for 18% interest for belated payments. According to Respondent, no rules or provisions allow to sanction 18% interest for the over charged amount from consumer. The Hon: CGRF did not allow this request of the Appellant.

Analysis and Findings: -

The Case was posted for hearing on 28.07.2011, in my chamber at Edappally, Ernakulum. Sri Paul Thomas and Sri. Jomon C.J, Senior Superintendent, Electricity Department, Thrissur Corporation, has represented the Appellant and Respondent sides respectively and they have presented the case on the lines stated above. On perusal of the appeal petition filed by the Appellant, the counter statement furnished by the Respondent, Reply to counter submitted by the Appellant and examining the documents of both sides and considering the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions thereof.

Regarding the allegation of non receipt of certain amounts, the Appellant has later admitted the receipt of the same by him. Hence the remaining issues are;

- 1) Whether the spot bill dated 17.5.2004 is time barred?
- 2) Whether the interest allowed at double the bank rate towards refund of excess amount is in order?
- 3) Whether the interest charged for the 13 Nos: of spot bills paid late by the consumer is justifiable since no action was taken for the complaints lodged against those bills?
- 4) Whether any compensation is payable for the numerous cases the consumer was compelled to file and the consequent mental agony and the hardships experienced thereof?

Issue No 1: The main contention of the Appellant is based on section 56 (2) of Electricity Act, 2003, and clause 18 (8) of the Kerala Electricity Supply Code, 2005, which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied". Here the disputed bill No.168446 dated 17.05.2004 pertains to the energy consumed for the bi-month period 15.03.2004 to 17.05.2004. This is a spot bill and the Appellant has not denied the receipt of the said bill. He has not remitted the bill amount due to the dispute in the quantity of units used by him and filed a complaint against it, before the Licensee, in time. He has also defaulted payment of 12 other subsequent spot bills due to the same reason. He has cited the following provisions of the Kerala Electricity supply Code, 2005, in support of his argument. The Clause 24 (2) of the Supply Code, states "On a complaint by any consumer regarding the correctness of the bill, the Licensee shall immediately carry out a review and issue a revised bill and appropriately adjust the bill amount, if the review establishes that the bill is incorrect. If in the review it was found the consumer was overcharged, the amount overcharged along with interest at twice the bank rate may be adjusted in subsequent bill".

The Appellant did not remit the electricity charges, for his electric service connection starting from the impugned bill (bill dated 17.05.2004) and the subsequent 12 bills spanning for more than two years which were all challenged by him before the Licensee. The basis of his complaint was stated to be that an additional Energy Meter has been installed by the consumer himself at his house (other than the Licensee's Meter) and the reading recorded in his Meter differed from the reading of the Licensee's

Meter and is stated to be lower than that shown in the Bills. Hence the cause for the dispute. If the consumer has any complaint or dispute in the working of the Meter or its recordings of energy, he should approach the Licensee with a Complaint (which he has done) and if he does not get his grievance redressed, he should have approached the Electrical Inspector or the CGRF. The Licensee's attitude and negligence towards the complaints lodged by the consumer in this case, by not taking any action or giving a suitable reply, is deplorable. At the same time the said action of installing an additional Meter by the consumer himself in the Electric Circuit of his house is against the prevailing Electricity rules and provisions (vide Clause 26) of the Electricity Terms and Conditions of Supply, 2005. Doing an unlawful act and then raising a dispute with the Licensee on that basis and not remitting the Bills in time on that ground by the consumer, is found to be not justifiable.

It is relevant to refer the provisions of Terms and Conditions of Supply, 2005, vide clause 37 (1) - Disputes in bill"..... However, the bill should be paid on or before the due date originally fixed, and adjustment, if any, will be made only in subsequent bills. The amount so paid will be regarded as advance to the credit of the consumer's account until such time as the invoices in dispute are fully settled'. The consumer should have remitted the bill without fail and seek other legal options, as mentioned above, than making default in paying the electricity charges for more than two years and then claiming the benefit of 'Limitation bar of two years' for refunding the Electricity charges already paid (for the energy he has consumed), is not a correct step.

The Bi-monthly spot bills were served on the consumer regularly but were defaulted for payment by filing a complaint to the Licensee. It is also noted that there is serious lapses on the part of the Licensee in not taking proper action in time, on the complaints received from the Appellant. The Licensee also had failed to show the arrear amount in the subsequent spot bills which reveals lack of proper auditing and supervision on their side. The argument of the Respondent that the Spot Billers (meter readers) are not supposed to issue the arrear bills but are directed to issue the spot bills according to the meter reading (energy consumption) only may be practically correct, but it is not maintainable as per the existing Law. The Licensee should have prepared the Defaulters list and issued notice of arrears as per Law or should have specifically instructed the spot billers to include the arrears as an item in the spot bills, wherever required. This did not happen in the present case. But the consumer is liable to pay the spot bill amount as such or deposit an amount equivalent to the previous six month's average, under protest, within the time specified in the bill, even if he has any genuine complaints on the correctness of the bill, pending disposal of dispute between him and the Licensee, as per Section 56(1) of Indian Electricity Act, 2003.

Further, the consumer has not raised any complaint before this Forum on the correctness of the 13 numbers of spot bills which was under dispute with the Licensee for the period 5/2004 to 6/2006. Moreover, it is reported that he has remitted all the pending bills on receipt of arrear notice in 6/2006, without any correction being made in the energy meter readings taken (energy consumption recorded by the Licensee) which shows that the original spot bills issued to him were correct. Considering all the above facts I do not agree with the arguments of the Appellant that the bill dated 17.05.2004 was not payable by the consumer as it being time barred.

Another important matter which came to my attention on perusal of the File is that the question of the "Limitation due to time bar of the Bill" has already been heard and decided by the Hon: Consumer Disputes Redressal Forum, Thrissur, in the Petition No C.C. 294/07, filed by the Appellant and ordered

on 31st March, 2009, as “....this view is not correct because the usage is continuing and the payment are in continuation”.

Issue No 2: Another contention of the Appellant is that he is eligible for 18% interest for the belated refund of the amount overcharged from him. This authority had once examined this request and orders were issued on this matter while deciding the Representation No P/47/09 dated 26.05.2009, filed by the same consumer. It was ordered to pay double the bank rate as interest to the refund amount. The Bank rate is reported as 6% which means the consumer will get 12% interest for the refunded amount.

The Clause 23 of Kerala Electricity Supply Code, 2005, amended vide notification No. KSERC/ 111/ Supply Code fourth amendment, 2008, dated 24.10.2008, states that “in case of belated payments, penal interest at the rate of 12% per annum based on actual number of days of delay 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 shall be charged by the Licensee”. This clause is applicable in case of levying interest by the Licensee for belated payments made by the consumers from 24.10.2008 onwards. Prior to this amendment, it read as “in case of belated payments penal interest at twice the bank rate based on actual number of days of delay from due date may be charged by the licensee”.

But in clause 24 (6) of the Kerala Electricity Supply Code, 2005, it is stated that, “if it is established that after payment of the bill, the licensee has over charged the consumer, the excess amount shall be repaid with in two months with interest at twice the bank rate”. The Supply Code specifically provided separate clauses in levying the interest portion for belated payments from the consumer’s side (to the Licensee) and the refund of over charged amount from the Licensee’s side (back to the consumer). The existing rule allows the refunding of the excess amount overcharged from the consumer with interest at twice the bank rate only. We have to bear that the Law of the land, I E Act, 2003, authorizes the Hon: KSERC to formulate the Electricity Supply Regulations after due thought and conducting Public opinions on the same. Once the Regulations are made and implemented it has to be abided by all. Hence the action of the Licensee to refund the amount at double the Bank rate is found to be in order as per the existing rules.

Issue No 3: This relate to the interest levied on the 13 Nos of Spot bills remitted by the consumer on 4.7.2006. The Appellant during the hearing argued that he had defaulted the payments for electricity charges since the Licensee did not take any action on his complaints or got his Bills revised. This attitude cannot be accepted as the consumer is liable to pay the electricity charges for the energy he has consumed and is therefore bound to pay the same with in the due date of the Bill issued to him. In case he has disputes with the bill he can remit an equivalent amount or the average amount of the previous months, as per Section 56(1) of I E Act, 2003, detailed above. In short, in the case of default of payment of electricity charges, the consumer is bound to pay interest for the belated payments made by him.

Issue No 4: It is noted that numerous complaints were lodged by the consumer with the Licensee during the disputed period, but were all discarded by the Respondent by taking no action on the same. Further no communication was seen issued to the consumer on the complaints filed but preferred a indifferent posture of keeping mum which is not conducive for maintaining a consumer friendly attitude for protecting the interest of consumers as envisaged in the I E Act, 2003.

Decisions:

From the foregoing discussions done above and the findings and conclusions arrived at, I come to the following decisions;

- 1) The decision on the Limitation bar of the Bill dated 17.5.2004, has already been given by the Hon: CDRF, Thrissur, in the Petition No C.C. 294/07, filed by the Appellant and has rejected the request to declare it as Time barred. I am also of the view that the Bill was not time barred as the Bill was live through the litigations filed in the Hon: CDRF Court, Thrissur during the disputed period and for other reasons stated in the Analysis done above.
- 2). As per the existing rules, the amount over charged by the Licensee and ordered for refund is eligible for an interest at double the Bank rate only. Hence as long as there is specific Regulation to the same effect, the interest payable by the Licensee to the consumer for refunded amount is decided as double the Bank rate itself.
- 3). The consumer is bound to pay the Electricity Bills issued to him with in the due date of the bill. If he is aggrieved or has disputes with the Bill, he can lodge complaints with the Licensee and get it addressed. But if the dispute is not settled in time, he is required to remit the same amount or an average amount based on previous months, under protest, as per section 56(1) of the I E Act, 2003. Since the consumer failed to pay the bills after filing complaints with the Licensee, it is certain that the defaulted Bills will carry interest from the due date to the day of remittance. Hence the action of Respondent in the levy of interest for belated payments is found to be in order.
- 4). The consumer is found to have lodged numerous complaints and the Licensee took an indifferent attitude or neglect and did not take any action or responded to the same, which is a serious matter showing deficiency in service and therefore I am inclined to impose Rs 250/- (Rs Two hundred fifty only) as compensation, payable by the Licensee to the consumer. The amount shall be paid to the appellant with in two months of this order.

Having concluded, decided and ordered as above, the Appeal Petition No P/187/ 2011, filed by the Appellant, Sri. Paul Thomas, stands disposed of accordingly. Dated the 2nd of February, 2012,

ELECRICITY OMBUDSMAN.

No.P.187/2011/ **Dated 02.02.2012.**

Forwarded to:

- (1). Sri.Paul Thomas C, Chakkalackal House, Near Nirmala College, Poothole P.O, Thrissur-4
- (2). The Assistant Secretary, Electricity Department, Thrissur Corporation, Thrissur.

Copy to:

- (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom, Thiruvananthapuram.
- (3). The Chairperson, CGRF, Electricity Department, Thrissur Municipal Corporation, Thrissur.