

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NOS: P/200/2011, P/201/2011, P/202/2011, P/203/2011 and P/204/2011.

(Present: T P Vivekanandan)

APPELLANT : Sri.T.K. Kunjumoideenkutty  
Proprietor, Hillway Tourist Home,  
Chalakydy, Thrissur Dt.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division, KSEB, Chalakydy.

ORDER.

Background of the Case: -

The appellant is running a tourist home by name 'Hillway Tourist Home' at Anamala Road, Chalakydy. The appellant is a consumer under Electrical Section, KSEB, Chalakydy and is having five electric connections in the said building complex with consumer numbers, 1200, 4137, 4515, 2282 and 4136 with LT VII A-commercial tariff. The appellant states that he had filed a complaint on 3-2-2006, regarding certain faults in the Electric supply prevailing at his above premises like sudden break in the supply to electrical equipments leading to its damage. The electric service connections of the premises of Hillway Tourist Home, Chalakydy, were inspected by the Section officials on 14-2-2006. The following abnormalities were noticed by them and recorded it in the site mahazar prepared which was witnessed by the representative of the consumer.

- 1). The energy meter of 3 phase service connection, consumer no. 2282 was found tampered by damaging the MRT seals provided on it including the terminal cover seal. A change over switch was installed to interconnect supply with consumer no.1531.
- 2). The energy meter of single phase consumer No. 1200 was found tampered by damaging the seals on either side of it. The meter was also found not working properly.
- 3). The energy meter of 3 phase connection, consumer no.4515 was found tampered by damaging MRT seals.
- 4). The energy meter of single phase connection, consumer no.4136 was found tampered by damaging MRT seals including terminal cover seals.
- 5). The meter of consumer no. 4137, the three phase connection was found tampered by damaging the MRT seals.

The Electric supply to all the above 5 Nos of consumer numbers were immediately disconnected. Provisional assessment bills as shown below were served on the consumer in respect of the five consumer numbers.

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Consumer No 1200	invoice no. 58523	dated 16-2-2006	for Rs. 19008/-
"	4137	" 58525	" " for Rs. 170997/-
"	4515	" 58509	" 15-2-2006 forRs. 336124/-
"	2282	" 58503	" " for Rs. 215399/-
"	4136	" 58527	" 16-2-2006 for Rs. 34973/-

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The appellant had filed a petition dated 20-2-2006 against the provisional assessment bills before the the Asst. Engineer, Chalakudy on which a personal hearing was conducted on 23-2-2006. The A.E. had confirmed the provisional assessment bill vide proceedings No. DB11/ 2005-2006/212 dated 25-2-2006. In the meantime a hearing was also conducted by the Executive Engineer, Electrical Division, Chalakudy, as per the direction of the Member (Distribution) and passed orders upholding the decision of the Asst. Engineer. The appellant approached the Hon: High Court of Kerala vide WP 9402 of 2006, seeking reconnection of supply for all the 5 electric Connections and for staying further proceedings on the provisional bills issued to him. The Hon: High Court disposed of the Writ petition by directing the Deputy Chief Engineer to consider and dispose of the Appeals filed, under section 127 of Electricity Act 2003. The Court also directed the A.E. to reconnect the power supply if the consumer remits an amount of 3 lacs. A hearing of the case was conducted by the Dy. Chief Engineer on 22-5-2006 and passed orders rejecting the petition of the consumer vide proceedings No.AE111/21`/2006-07/5350 dated 7-7-2006. There after the Appeal Petition lying before the Member (Distribution) was also got dismissed without hearing the law and facts involved and going into the merits of the case. So the consumer moved to the Hon: High Court and the Hon: Court had relegated the matter to the CGRF, vide judgment dated 5-2-2010 in W.P. (C) No. 6500 of 2007. Accordingly the appellant filed a petition before the CGRF on 16-4-2010 which was dismissed vide Order No.CGRF-CR/Comp 06/2010-11 dated 4-12-2010. Aggrieved by the order of CGRF, the appellant submitted this Appeal Petition dated 28-2-2011 before this Authority.

ARGUMENTS OF THE APPELLANT: -

The arguments of the appellant are based on the brief facts of the case which are narrated above. The main contentions in the Petitions, in all the 5 cases, are the following.

- 1). Firstly he argues that instead of deciding the issue referred to it by the Hon: High Court, the CGRF has passed an order and a time frame also was given to do certain things, which are not at all within the jurisdiction of CGRF. The hearing was done in the month of August and the order is seen to have passed on 4-12-2010 and it was received by the appellant only on 11-2-2011. The whole affair before the Forum is something fishy and suspicious. The appellant submits that the matters were stated in the complaint before the CGRF which also may be taken to consider as part of this affidavit. Another contention of the appellant is that he is an expatriate from Dubai. His venture to settle down in Kerala is practically in shambles. The Board has taken hasty steps to realize the amount from him and if it so happens, then he will be put to irreparable injury, loss and hardship. He also submits that unless the order is stayed immediately, he will be forced to close down the hotel.
- 2). The Inspection officials did not find any device or foreign materials fixed to the meter or on any machinery, to tap electricity or indulging in any unauthorized use of electricity by him. Mere

absence of seal is not sufficient. The mahazar shows that the meters were working properly. No tampering is done inside the meter. If the seal is broken it has to be replaced as per rules. The absence of seal is not tampering. The KSEB has no case that the consumer was indulged in the act of theft, tampering or misuse of energy. Instead of changing the seals of the Meter, the respondent has issued a penal bill for payment which is against the law.

3), The bill issued is incorrect and the calculation method used is against the rules prevailing. The correct quantum of electricity used in previous months is available with KSEB and hence average consumption can be easily found out. The calculation based on connected load is incorrect.

4). He informed KSEB about the leakage of electricity as he wanted to install air conditioners. If the intention was malafide he would not have approached KSEB with complaints of leakage.

5). There is an allegation that the consumption has increased after the replacement of Meters. The appellant purchased the property recently and is an honest gentleman. It is a tourist home and later many of the rooms were provided with air conditioners and new electrical appliances and other extra facilities were provided. That was the reason for increase in consumption in the meter readings after the incident.

6). Instead of deciding the issue referred to it by the Hon: High Court, the CGRF has gone far beyond the powers conferred on it. The order of CGRF about; (a) the time frame fixed for doing certain things by the consumer (b) the negligence of Board officials are the examples to cite.

The reliefs which the Appellant sought are to set aside all the proceedings of the respondent and execution of the order passed by the CGRF, Ernakulam.

#### ARGUMENTS OF THE RESPONDENT: -

The Respondent, the AEE, Electrical Sub Division, Chalakudy has filed the counter statement of the Appeal Petition stating that all the averments in it except which are admitted, are false and hence denied.

The respondent states that all the consumer numbers mentioned are coming under the jurisdiction of Electrical Section, Chalakudy. The respondent has denied that the appellant had filed a complaint about leakage of electricity in his premises. But on 14-2-2006, the authorized officials of KSEB had inspected the premises of the consumer. Upon checking the power meters and other apparatus, it was noticed that the meter seals on both left and right sides of all the energy meters were deliberately loosened to make fishy adjustments for making nonfunctioning of the meter in line with the interest of the consumer.

Another argument raised by the respondent is that finding of any foreign device is not an inevitable one to substantiate the looping of electricity. Besides, the two seals of the power meters were deliberately loosened only to make adjustments in the functioning of the same meters. Had only one seal of the meter is loosened, it could have been comprehensible to a certain extent that no dishonest activity is undertaken, albeit the intention was fishy in nature. It was because of the working condition of the meters that the seals of the meters were broken and the one bolt to erect the seal was also damaged to make adjustments in the functioning of the meter easily. The breaking of the seal of the Meter and its holding bolt is a serious offence.

It is also argued that on a careful reading of the section 126 of I E Act 2003, it shows that it is certain that connecting of a particular device is not a must for the assessing officer to reach the

conclusion of unauthorized use of electricity. If any abnormality could be found by the assessing officer which can lead reasonably to a judicious conclusion of unauthorized use of electricity, it has to be considered. The word tamper means, as per the Oxford Dictionary, "to make changes to something without permission especially in order to damage". This shows the breaking of the seals as a dishonest act. The consumption of all the consumers has increased after changing the Meters. The bills issued after inspection are true and correct and is payable by the consumer.

The respondent argues that the bill issued consequent to the inspection done on 14-2-2006 is absolutely correct. The assessment by the respondent is done in line with Section 126 of the Electricity Act, 2003. If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months for all other categories. The multiple 1.5 times used in the bill is taken by virtue of section 126 (5) of I E Act, 2003. Hence the complainant has no locus standi to aver that the calculation and multiple taken are incorrect. A very judicious conclusion was drawn by the respondent in reckoning the material facts of the case detected at the time of inspection which itself mentioned in the site mahazar unequivocally proves it. Taking the total connected load to quantify the exact consumption is the universal method in case of the abnormality as stated supra.

Another point is that, according to the exhibits submitted in WP© 2311/07, the date of registration of purchase Deed is on 12.7.2004. Hence the averment of the consumer that the property was purchased recently is false and totally baseless. The consumer has not informed the leakage of electricity to the office of the licensee. The averments made by the appellant in the matter of installation and operation of meters were absolutely incorrect. As the inspection was conducted on 14.2.2006 the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, which was published on 17-3-2006, has no relevance in this issue.

ANALYSIS AND FINDINGS: -

The Hearing of all the 5 cases serially numbered from P/200/2011 to P/204/2011, was done on 6/9/2011, 28.12.2011, 14.3.2012 (adjourned as per request of the appellant) and on 10/5/2012, in my chamber at Edappally, Kochi and Mr. M.K. Moosakutty, Counsel for the appellant and Mr. P.P. Harif, represented the Appellant's side and Mr. M.V. Jose, Assistant Exe. Engineer, Electrical Sub Division, Chalakudy, the opposite side. On perusing the Petition, the counter of the Respondent, the documents filed and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

In all the Appeal Petitions, P/200 to P/204 (5 Cases), filed against the provisional assessment bills, it is seen raised against the same consumer but having different electric connections and deals with similar issues of dispute, subject matter and cause of action for the case and hence they are all dealt with and analyzed and decided on a common platform and judgment issued accordingly together.

The charge against the consumer is the unauthorized use of electricity against 5 consumer Nos, namely; 1200, 2282, 4136, 4137 & 4515, belonging to him. The officials of KSEB inspected the consumer's premises on 14.2.2006 and detected some abnormalities in 5 Nos of connections and prepared a Mahazar recording it. They suspected tampering of the energy Meters and hence

provisional assessment bills were issued against those 5 consumer Nos. The Appeal filed before the Deputy Chief Engineer, by the appellant against the provisional bills, were also dismissed.

The first submission of the appellant is that the appeal was considered and decided without going into the merits and not examining the questions of law and facts involved. He alleges that the Deputy Chief Engineer was making a new case which was not made by the assessing officer. I have gone through the proceedings of the Deputy Chief Engineer issued on the Appeal filed by the consumer. It is seen that a personal hearing was conducted and according to the findings of the Dy. C.E, he was convinced that the consumer has indulged in the abstraction of electricity illegally and found the method of penalization, adopted by the Assistant Engineer in billing the consumer, for the anomalies committed by the consumer as very reasonable. In view of the factual position stated aforesaid, the first argument advanced by the appellant that the Dy CE did not go into the merits of the case is not found having merit.

Secondly the appellant adduced an argument that the Inspection team did not find any devices fitted on the meter or on the equipments or to the premises or to the machinery for looping the electricity. According to the appellant, mere absence of seal is not sufficient to prove unauthorized use of electricity or looping the electricity and as per site mahazar the meters were working properly. The respondent denies this contention saying that two seals each of all the 5 Nos. of power meters were blatantly loosened to make adjustments in the functioning of the meter. As per Regulation 43 of KSEB Terms and Conditions of Supply 2005, it is the duty of the consumer to provide and maintain sufficient protection to the metering and associated devices to the satisfaction of the Board. The 'mahazar' details the condition of the meter seals in all the meters as in a very loosened state and the representative of the appellant who witnessed the mahazar has not raised any dispute on this anomaly detected. Hence the mahazar is acceptable.

The averment of the appellant is that the Board officials had not mentioned any case of indulging in the theft of electricity or misuse of electricity or unauthorized use of electricity in the site mahazar. Hence the question here to be answered is whether any theft of electricity or tampering of meter has happened? A case of suspicion of tampering of meter for abstraction of energy has occurred because the seals of all the five meters were found broken or were in loose condition during the inspection. The respondent had taken action against the consumer as per Regulation 50 (1) of the KSEB Terms and Conditions of Supply 2005. This regulation provides that if the assessing officer arrives to the conclusion that the consumer is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment, the electricity charges payable by such person or by any other person benefitted by such use, as per Section 126 of the Indian Electricity Act, 2003. It is apt to take an examination of the consumption pattern of the consumer, before and after the meter change on 10-4-2006, to prove whether the unauthorized use of electricity has taken place or not. The CGRF has examined this aspect and they have found that the consumption recorded in the new meters, after replacement, is 3 to 20 times more than that in the old meters except in one connection, consumer no. 4136.

Further the appellant raised various objections with regard to assessment made and also relating to holding him guilty for unauthorized use of electricity. The Bill was seen prepared by assessing the average consumption of the consumer for the previous 6 months prior to date of inspection, based on the connected load of the electric service, detected during the inspection.

The appellant questions the method of assessing the average energy consumption and thereby the calculation of the bill amount on the basis of the total connected load. According to him, the correct quantum of electricity used by the consumer was recorded in the meter on all previous occasions and the average consumption for the previous six months can be easily found out from the same meter readings. I am also of the view that the assessment made based on connected load is not a correct step when there is specific rule to assess it, noting the previous or succeeding consumption pattern, with a good meter.

The KSEB argues that the assessment by the respondent is done in line with section 126 (5) of Electricity Act 2003, which reads as;

“(5)- If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services unless the onus is rebutted by the person, occupier or possessor of such premises or place”. Hence the “period of assessment” of penal charges is in order but I feel that the true average consumption estimated by the assessing officer, based on the connected load is not justifiable and hence the method of assessment is found incorrect.

Another accusation of the appellant is regarding the delay caused to receive the order of CGRF. He alleges that the whole affair before the CGRF is something fishy and suspicious. Since the basis of this allegation is not clearly stated or proved other than delay in pronouncing the judgment, it does not deserve any merit in the case. Further the delay to receive the order has not made any hardship to the appellant because he had been given the opportunity to file the appeal within 30 days after receipt of the order.

- 1). Case P/200/ 2011- Consumer No 4136 : - LT VII A- commercial tariff. As per the site mahazar, the two meter seals on the left and right side of meter cover are found loosened and the meter terminal cover seal was missing. The bill was raised, based on connected load, its diversity factor and time of operation (10 Hrs per day) and the penal charges fixed @ 1.5 times for the previous six months prior to inspection, under section 126 of I E Act 2003, which comes to Rs. 34973/-, after deducting the already remitted amount for the same period.
- 2). Case P/201/ 2011- Consumer No. 4515: - LT VII A- commercial tariff. As per the mahazar, the right side seal was in a broken condition, the left side seal in a loosened state and its bolt was in damaged condition. The connected load was 15512 watts. The bill was issued for Rs. 336124.00
- 3). Case P/202/ 2011- Consumer No. 4137: - LT VII A- commercial tariff. As per the Mahazar the right and left meter seals were found loosened. The terminal cover seal was found intact. The total connected load was found as 9331 watts. The billing was done for Rs 170997.00
- 4). Case P/203/ 2011- Consumer No.1200: - LT VII A- commercial tariff. As per the mahazar, the right and left meter seals are found loosened. The terminal cover seal was found intact. The Meter was found not working. The connected load was a motor of 1.5 hp (1120 watts) capacity. The bill was seen raised for Rs 19008.00.

On a perusal of the Meter readings and the energy consumption pattern of the consumers, prior to the surprise inspection conducted on 14.2.2006 and after the replacement of the meter in 4/06, which is reproduced below;

Bi-month Consumption details of the Consumers before and after the Inspection in 02/2006: -

<u>Consumer No</u>	<u>Average use for the Period 4/05 to 2/06</u>	<u>Meter Changed on</u>	<u>Average use for the 3 bimonths 6/06 to 10/06</u>	<u>Diff: in Average Before &amp; After</u>
1200	63 units/bimonth	10.4.06	117 units/bimonth	54 units
2282	453 units/ "	"	1890 units/ "	1437 units
4515	140 units/ "	"	1334 units/ "	1194 units
4136	65 units/ "	"	-Nil-	-
4137	239 units/ "	"	898 units/ "	659 units

From the average bi-monthly energy consumption pattern, showed in the table above, it is noticed that there was considerable increase in energy consumption in the said 4 Nos electric connections, out of the 5 connections listed. It is argued by the appellant that he had purchased the Tourist home recently and later many rooms were fitted with Air conditioners and new electrical appliances were fitted and other extra facilities were provided which was the reason for the increase in the energy consumption. This averment does not stand proved as no documents of Application fee, Test fee, additional Cash Deposit etc. that has to be remitted at the KSEB office, for the regularization of additional load, was produced by the appellant. Further, the respondent also refutes the argument of additional load connected by the consumer and hence the argument is not acceptable.

The main allegation against the consumer by the respondent is that the 'seals' provided to the 5 Nos. of Meters were found either damaged, lost or loosened in all the 5 cases, which can be considered as a circumstantial evidence, to make facility for illegal abstraction of energy by the consumer. The mere fact of absence of seals, seals in damaged state or loosened condition can not be considered as a conclusive proof of illegal abstraction of energy or tampering of Energy Meter. It can be taken as corroborative evidence provided if some foreign materials supposed to be used for the illegal abstraction of energy are also found along with the damage of seals. But in situations like 'seals' of meter found loosened, broken or lost only, if noticed for the first time, as per clause 27 (5) of Electricity Supply Code, 2005, the meter seals have to be replaced and got it witnessed by the consumer or his duly authorized representative. In such cases if repetition of irregularities is found on the seals as stated above, it is treated as an anomaly committed by the consumer and charges including tampering of the Meter for illegal abstraction of energy can be booked and can be proceeded against him, as per Law. In the present case, no theft case was reported at the Police Station and no criminal case was filed. Hence, in the absence of any material evidence to substantiate the allegation other than the Meter seals in loosened state, the charge of theft/tampering of meter or unauthorized use of energy under section 126 of IE Act 2003, against the four consumer Nos. 4136, 4137, 4515 and 1200 is not proved conclusively. It is also certain that the meters were not working properly and recording the correct quantum of energy during the period of 4/05 to 2/06. Therefore the penal bills issued against the same

consumer Nos are decided to be set aside. But the respondent can revise the bimonthly bills at normal rate, for the same 4 consumer Nos: 4136, 4137, 4515 and 1200 for the period of 4/05 to 2/06, at the true average consumption obtained after changing the Meter, since the consumer is bound to pay for the actual energy he has consumed.

DECISION: -

The appellant does not dispute the fact that, there was a surprise inspection on the 5 Nos of Electric connections belonging to the 'Hillway Tourist home', on 14.2.2006. The site mahazar was prepared on all the disputed 5 consumer Nos, recording the anomalies detected during the inspection and got it witnessed by the appellant's staff working at the Tourist home. This site mahazar is also not disputed by the consumer. Based on the analysis done and the findings and the conclusions arrived at, which is detailed above, I come to the following decisions there of.

1). The Appeal Petitions No: P/200/ 2011 on Consumer No. 4136: - The appeal is allowed and the penal bill raised for Rs 34973/- stand cancelled. The consumer No 4136 has a NIL consumption after replacing the meter and hence it requires no fresh billing.

2). The Appeal Petitions No: P/201/ 2011 on Consumer No. 4515: - The appeal is partly allowed and the penal bill raised for Rs 3,36,124/- stands cancelled. But the respondent is eligible for raising the normal bill for the period 4/05 to 2/06, at the rate of true average consumption (1334 units/ bimonth), obtained after changing the meter with due credit given to the amount already remitted for the same period, as it is established that the meter was not recording the correct energy consumed during this period.

3). The Appeal Petitions No: P/202/ 2011 on Consumer No. 4137: - The appeal is partly allowed and the penal bill raised for Rs 1,70,997/- stands cancelled. But the respondent is eligible for raising the normal bill for the period 4/05 to 2/06, at the rate of true average consumption (898units/ bimonth), obtained after changing the meter with due credit given to the amount already remitted for the same period, as it is established that the meter was not recording the correct energy consumed during this period.

4). The Appeal Petitions No: P/203/ 2011 on Consumer No. 1200 : - The appeal is partly allowed and the penal bill raised for Rs 19008/- stand cancelled. But the respondent is eligible for raising the normal bill for the period 4/05 to 2/06, at the rate of true average consumption (117 units/ bimonth), obtained after changing the meter with due credit given to the amount already remitted for the same period, as it is established that the meter was not recording the correct energy consumed during this period.

The revised bill shall be payable by the consumer with in 30 days of the new bill date. On the other hand, if any sum is found to be refunded to the consumer after the revision of the bills as ordered now, it shall be adjusted in his future bills, provided the refund amount will vanish in six month's adjustment, based on the present average consumption. If the refund sum is more, the whole amount shall be refunded with interest as per rules, with in 60 days of this order. The action taken by the respondent on each electric connection shall be intimated to the consumer with the calculation statement of the bill with in 60 days of this order.



5). The Appeal Petitions No: P/204/ 2011- Consumer No.2282: - LT VII A- commercial tariff.

As per the mahazar, the right and left meter seals of the Meter are found in loosened state. Further, it is alleged (recorded in the mahazar) that in the same building there was another electric connection with consumer No 1531, and a change over switch was seen provided for tapping the electric supply, either from Consumer Nos 2282 or 1531, by interconnection through wires. The appellant has not objected this finding. This suggests that there was unauthorized use of electricity going on in the premises of consumer No 2282. This irregularity committed by the consumer constitutes a clear case of violation under section 126-(6) b (ii) -unauthorized use of electricity -of I E Act 2003. The Change over switch and the interconnection of different electric connections was not an approved one by the Respondent (Licensee KSEB). Moreover, the inter-connection of wire and extension of electric Supply for other purpose or premises constitute an unauthorized act. Hence I am of the view that the Charge leveled against the consumer No. 2282 stands proved and therefore he is liable to pay the penal charges raised against him. But the assessment already done need revision as follows.

As per section 126 (5) of Indian Electricity Act, 2003, if the assessing officer is convinced of the unauthorized use of electricity by the consumer, he shall be assessed for the previous six months prior to date of inspection at 1.5 times the normal bill. The previous average of the consumer prior to the inspection in 2/06 was 453 units per bi-month while it was 1890 units per bi-month after the replacement of the Meter. Hence the penal bill shall be revised taking the true average energy as 1890 units X 3 bi-months = 5670 units (instead of 13 kw x 0.75 x 10 Hrs x 30 days x 6 months = 17550 units). This much units of energy has to be penalized at 1.5 times the tariff rate with due credit given to the amount already remitted for the same period.

Having concluded and decided as above, it is ordered accordingly and the Appeal Petitions Nos: P/200/2011 to P/204/2011 (5 Cases) stands allowed to the extent ordered and is disposed of as such. No order on costs. Dated the 15<sup>th</sup> of June, 2012.

**Electricity Ombudsman.**

Ref No: P/200/2011, P/201/2011, P/202/2011, P/203/2011 and P/204/2011 dated 15.6.2012/1256

Forwarded to

- 1) Sri.T.K Kunjumoideenkutty  
Proprietor, Hillway Tourist Home, Chalakudy,
- 2).The Assistant Executive Engineer,  
Electrical Sub Division, KSEB, Chalakudy.

Copy to

- 1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB, Vydhyuthibhavanam, Pattom,  
Thiruvananthapuram-4.
- 3). The Chairperson, Consumer Grievance Redressal Forum, Power  
House, Ernakulam-682018.