

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P /285/2012

(Present: T P Vivekanandan)

Appellant: M/s Poabs Estate Pvt. Ltd,
Seethakundu P.O, Nelliampathy,
Palakkad.

Respondents: 1. The Deputy Chief Engineer,
Electrical Circle, KSEBoard, Vidyuthibhavanam,
Palakkad.
2. The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Kollengode, Palakkad.

ORDER.

Background of the case: -

The appellant has dispute with KSEB over the penal bills issued on his three Nos of Electrical connections (consumer Nos. 2205, 2206, and 204) under Electrical Sub Division, Kollengode. The connections were given to the consumer under LT V Agricultural tariff. The date of connection of electric supply to consumer 2205 and 2206 were on 3rd March 2006. While so on 4-8-2006, the APTS of KSEB inspected the premises of the consumer and detected the following anomalies committed in respect of the above connections, namely;

- 1). Consumer No. 204 - This connection was seen misused for pumping water for domestic purposes. Also the Y- phase current coil of the Energy meter was not recording the consumption.
- 2). Consumer No. 2205 - Misuse detected by extending power supply from the Con. No. 2205, LT-V- Agl tariff to Con. No. 1303, LT IV-Industrial by joining the connections through a power cable.
- 3). Consumer No. 2206 - In this case also detected misuse of power from the agricultural service connection No 2206 to the water tank of Industrial service No 1303 (LT IV tariff).

On the basis of inspection, penal bills amounting to Rs. 35490/-, Rs. 163350/-, and Rs. 4305/- respectively were issued to the appellant by the respondent. Aggrieved by this, the appellant had submitted a petition dated 25.8.2006, before the Deputy Chief Engineer (Dy CE), Electrical Circle, Palakkad, after paying 1/3rd of the Bill amount and the petition was dismissed vide order no. GB2/ Rev/06-07/1644 dated 18-10-2006. Aggrieved by this order, the appellant had filed Appeals dated 2.11.2006 and 23.4.2007 before the Chairman, KSEB and the Electricity Ombudsman respectively. While the said Appeals were pending for decision, demand notices were issued by KSEB directing the consumer to pay the balance amount or to face disconnection if failed to pay the same. Hence

the appellant preferred W.P.(C) No.14142/2007 before the Hon High Court of Kerala and the court disposed of the Petition on 09-03-2012 with direction to appellant to approach the Ombudsman, for rehearing and also directed this Forum to dispose of the Petition filed, as per Law after giving an opportunity of hearing the appellant.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his petition submitted before this Forum. The appellant is not agreeable with the penal bills issued due to the following reasons:

- a). Though the appellant was receiving invoices regularly, the meter was not read after 9/2005 as can be seen from the bimonthly invoices and the present reading recorded in invoice issued in 7/06 is indicated as D/L. Similarly the previous invoices also indicate a D/L condition.
- b). The average consumption of 1012 units bimonthly would have been arrived at based on the consumption prior to 7/05, and adding 50% to it for non-working of one phase and it is not fare.
- c). Consumer No. 2206 was energized only on 03-03-2006. The reassessment was done for the period from 1/06 to 7/06. As per the statement of the Sub Engineer in charge the reassessment was made on the ground that the electricity from this connection is possible to utilize for filling water for the LT IV connection. The penal bill for Rs. 4305/- was not issued for unauthorized additional load detected during the inspection, but due to the assumptions and possibilities dreamt by the Inspection Squad. The consumer is not liable to pay any bill prepared on the basis of whims and fancies of the staff of the licensee.
- d).The appellant had represented to the Chairman, KSEBoard against the finding of Dy. Chief Engineer which is still pending. The final order was not passed with the consent of both the parties as per section 127 (5) of the Electricity Act 2003.The appellant had paid Rs. 67,715/- (11830+1435+54450) being 1/3rd of the disputed amount by way of cash to the licensee as per section 127 (2) of the Electricity Act 2003.

The appellant has also submitted a detailed argument note before this Authority on 30-5-2012. The main points adduced in this notes are the following.

The consumer has been assessed for Rs.35490/- for misuse of tariff- pumping water for domestic purpose in respect of consumer number 204. By letter dated 18.08.2006, the appellant had requested the Assistant Engineer to reconsider the reassessment done. The appellant had remitted 1/3rd of the invoice amount ie. Rs.11, 830/- and filed a petition before the Deputy Chief Engineer, Electrical Circle, Palakkad on 25.08.2006. The Deputy Chief Engineer, in his order dated 18.10.06, limited the reassessment done for a period of three months. Accordingly a revised invoice for Rs. 14,732/- was issued on 28.10.2006.

The workers of the Labor Colony might have used the water from Con no: 204 for domestic purpose. But the water is mainly being used for agricultural purpose. Even if there were misuse, the reassessment of demand in respect of consumer no: 204 is not correct because;

- 1).The meter was not read after 9/2005, though the premises was kept open on all days and average bimonthly consumption of 1012 units were invoiced during 11/05, 1/2006, 3/2006, 5/2006 and 1/2006 with the remarks D/L.
- 2). The non-functioning of one of the phase of the meter does not mean that the fault was there prior to 9/2005. The bill was issued based on bimonthly average consumption of 1012 arrived at.

Hence adding 50% to the recorded consumption to arrive at the true energy consumption is not applicable in this case as the average consumption was taken to prepare the bimonthly invoices. The assessment should have been done with the average consumption recorded by the replaced meter after watching consumption for 3 months after changing the meter, if the average for a period of six months prior to the date of inspection cannot be fixed.

As per article 126 (5) of Electricity Act 2003, if the assessing officer reaches to the conclusion that an authorized use of electricity has been taken place, it shall be presumed that 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 refuted by the person, occupier or possessor of such premises or place. As per article 126 (6) of the Act, the assessment shall be made at a rate equal to one and half times the tariff rate applicable for the relevant category of services specified in sub section (5). This means that the reassessment shall be for a period of three months and the rate shall be that applicable to agricultural consumers.

Consumer Nos. 2205 and 2206.

The consumers have been reassessed for Rs.1, 63,350/- and Rs.4305/- for suspected misuse of tariff by utilizing them for industrial purpose also. The reassessment was based on the following.

Consumer no.2205- Assessed for unauthorized additional load of 22 KW @ 1.5 times of Rs.50/- per KW per day for 90 days plus 10% of the amount thus arrived as duty.

Consumer no: 2206- Assessed for misuse of tariff by utilizing the water from the pump for industrial purpose.

The appellant have remitted Rs.54450/- and Rs.1345/- respectively and filed petitions before the Deputy Chief Engineer, Electrical Circle, Palakkad on 25.08.2006. The Deputy Chief Engineer, in his order dated 18.10.02006, upheld the reassessment already made. All the above consumers are under LT V tariff and bimonthly invoices are being issued. The services to consumer nos. 2205 and 2206 were given on 03.03.2006 with IR 7 and 5 respectively and the reading, as per site mahazar, at the time of inspection on 04.08.2006 were 753 and 753. The FR as per readings taken on 15.07.2006 by the spot biller was 1398 and 1153 respectively.

Consumer No: 1303 : is an Industrial Consumer and is housed on the other side of the premises where the Agricultural connections with consumer no: 2205, 2206 and 2207 exist. This unit is a coffee pulping plant and functions only in the coffee harvesting season from October to February every year. This fact can be verified with the monthly invoices of the consumers for the previous years. During 3/2006 an invoice for Rs.1791/- was issued to the consumer for a consumption of 93 units and light consumption of 184 units. During the period 4/06 to 8/09 the consumption was recorded as 0 and invoices for Rs. 708/- (FC+meter rent) were issued. The amounts were remitted in time and the service connection with consumer no: 1303 was not under disconnection at the time of inspection. Due to the above reasons, misuse of electricity for running the industrial unit with consumer no: 1303 is not correct.

The Sub-Engineer in charge, Electrical Section, Nelliampathy, has stated the following during the hearing held on 25.09.2006 by the Deputy CE, Electrical Circle, Palakkad. The cables of consumer nos: 1303 and 2205 were lying nearby. No connection in both the ends. Cables were

not seen joined together during the inspection. The meter was seen functioning properly. The meter seal was intact. Though the cables were not seen joined together, the possibility of misuse was a fact. Based on that assumption the penal bill (Rs.163350/-) was issued. It is also seen that an amount of Rs.14850/- (10% of Rs.148500/-charged at 1.5 times of Rs.50/KW/day for 90 days) as duty even though the duty is supposed to be collected for energy consumption only.

In Con. No: 2206, the Sub Engineer has stated that the penal bill was issued on the ground that the electricity from the connections is possible to utilize for filling the water tank, meant to fill from the LT IV connection 1303. It may be noted that there is a separate motor connected to consumer no: 1303 for pumping water to the water tank of the coffee pulping plant and that the squad had not detected pumping water to the tank by the pump connected to consumer No:2206. From the statements of the Sub-Engineer, it is clear that the inspection squad had not detected any misuse of electricity in the premises of consumer Nos. 2205 and 2206 during the inspection. As per article 126 (5) of the Electricity Act 2003, the reassessment for the above shall be for a period of three months and the rate shall be that applicable to agricultural consumers.

As per article 21 (o) of the Act, the bill issued to a consumer shall contain the contact details of Consumer Grievance Redressal Forum and Ombudsman, constituted under section 42 of the Act. The notices or invoices by which the reassessment was made do not contain the above details.

Charging fixed charges based on the unauthorized load is not contemplated in Article 126 of the Act. As monthly fixed charges have been invoiced for consumer no:1303, the load of the consumer cannot be treated as unauthorized additional load and charging per day rate for the same load is not justifiable even if there was misuse.

As no misuse of tariff was physically detected during the inspection and the reassessments were made purely on assumptions as agreed by the Sub Engineer, in his statements recorded by the Deputy Chief Engineer, Electrical Circle, Palakkad and reproduced in his order No.GB2/Rev/06-07/644 dated 18.10.2006, the appellant requests that the reassessment invoices may be quashed and directions issued to refund the amount already remitted immediately with interest at double the bank rate, as it will take years to adjust the amount in bimonthly invoices.

The reliefs which the Appellant sought are: -

1. To quash the invoices for Rs. 1,63,350/- and Rs. 4305/- in respect of consumers numbers 2205 and 2206 as they were made purely on the assumptions and possibilities and not due to any misuse detected during the inspection.
2. To revise the invoice in respect of consumer number 204 for an average consumption of 1012 units bimonthly as the above unit is not the recorded consumption.

Arguments of the Respondent: -

The respondent has submitted the statement of facts opposing the contentions raised by the appellant. The contentions of the respondent are the following.

During the inspection by APTS on 4.8.2006, misuse of energy has been found from consumer No. 204 (agricultural connection) to pump water for domestic purpose. It was also found that, Y-phase current coil of the meter was not recording the energy. A provisional penal bill for a period of six months had been issued after taking the average bimonthly consumption as 1012 units on the basis of inspection. Aggrieved by this bill, the appellant approached the appellate authority

after remitting $1/3^{\text{rd}}$ of the penal bill. The appellate authority corrected the bill and also reduced the penal period to 3 months from 6 months. The energy use is seasonal, as proved from the consumption pattern of consumer. This caused to take the average consumption as the last month's energy usage i.e. 1012 units during the door locked period.

Another contention is that during the period from 9/2005 to 7/2006, the meter reading was not available as the motor shed was kept under locked condition. The reading in 7/2005 was 19306 units and when the APTS inspected it on 4.8.2006, the reading in the meter was noted as 26885 in the site mahazar. So the consumption for the period from 7/2005 to 8/2006 (13 months) was $(26885-19306) = 7579$ units. Hence the average bimonthly consumption for the above period was $(7579/13) \times 2 = 1166$ units. The consumer is very much prompt in remitting the current charge payments and KSEB assessed the average use per bi-month as 1012 units. So the average taken as 1012 units is correct for calculating the penal bill for the misuse of power in respect of con. 204.

The APTS detected extension of LT V power supply from the consumer No 2205 to the LT IV consumer No 1303 to run the motors installed. In the site mahazar it was clearly mentioned that two cables joined together to extend the power from LT V to LT IV connection. The connected load in the consumer No. 1303 is 22 KW. Here the penal bill is prepared for the unauthorized extension of power supply. Here the KSEB wants to compensate the financial loss by way of the misuse of power done by the consumer by giving a penal bill. As the period of power supply extension was not clearly known, as per the provision in the Electricity Act 2003, the period for penalization can be taken from the date of connection 03.03.2006 to 04.08.2006, the date of APTS inspection i.e. for a period of 5 months. KSEBoard had acted genuinely and given the penal bill for the wrong action of the consumer.

During the inspection APTS detected misuse of power from agricultural connection No.2206 to LT IV connection. A penal bill in LT IV tariff for the misuse of power was issued. The penal bill is prepared based up on the actual consumption in the Con. No. 2206 and amounts to Rs. 4305/-. This amount was remitted by the consumer.

Hence it is prayed to allow the penal bills issued to the consumer consequent to the inspection of APTS in Con. No: 204, 2205 and 2206 and request to issue necessary favorable orders.

Analysis and Findings: -

On examining the Appeal Petition, the statement of facts of the Respondent, the arguments of the Petitioner and the opposite side, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

Aggrieved by the demand notices issued by KSEB, the appellant preferred W.P.(C) No.14142/2007, before the Hon High Court and the court disposed of the petition on 09-03-2012 with a direction to the appellant to approach the Ombudsman and also directed this Forum to dispose it as per Law after giving an opportunity of hearing the appellant. Accordingly, the Hearing was done on 30.5.2012, in my Chamber at Edappally. The appellant was represented by Sri. P Reguvaran and the opposite side by Sri. Sreejith AEE, Electrical Sub division, Kollengode, and Sri Asokan PC, Asst. Engineer, Electrical Section, Nelliampathy. They have argued the Case on the lines stated above.

I have carefully considered the respective submissions made by both parties and the records submitted by them. The Meter was seen functioning properly and the meter seals were intact. The penal bills in respect of consumers Nos. 204, 2205 and 2206 were prepared and issued on the charges of misuse of energy. The appellant argues that the calculation in the provisional Bill of consumer No. 204 is not correct, as the average consumption of 1012 units is not the recorded energy consumption and 50% more was added to it to compensate the y-phase current loss. Not only that, the invoices for Rs1,63,350/- and Rs 4305/- in respect of Con. Nos.2205 and 2206 were made purely on assumptions and possibilities and not on any misuse detected in the inspection.

Now, coming to Con. No.204, it is even doubted by the appellant that there are chances that the Workers in the Colony may have used water from this agricultural connection for domestic use. The issue that has to be decided in this matter is whether the penal Bill preferred by KSEB is correct and as per rules. This is a case of usage of electricity, for the purpose other than for which it was authorized, coming under Section 126 of Electricity Act - 'Unauthorized use of electricity'.

The Electric connections under consumer No. 2205 and 2206 were effected on 3.3.2006 under LT V-Agl tariff. The consumer had another connection No. 1303 under industrial tariff. In this case the allegation against the consumer is that he utilized the low tariff Agricultural connection for the benefit of industrial connection No.1303. But the appellant argues that the connection (1303) was mainly used for the coffee pulping plant and functions only in the coffee harvesting season from October to February every year. However it is noted that, after effecting the electric connection to Con. Nos. 2205 and 2206, the consumption in Con. No. 1303, has decreased considerably when compared to the consumption of previous years. The appellant has not furnished any explanation for this phenomenon.

In the Hearing of Appeal Petition before the Dy. Chief Engineer, Electrical Circle, Palakkad, the Sub Engineer in charge, had deposed that the cables of 2 connections were not seen joined during the time of inspection. Hence the site mahazar and the deposition given by the Sub Engineer are contradictory. The Sub Engineer also deposed that the cables of Con. Nos. 2205 and 1303 were lying nearby and no connection in both the ends.

The appellant has accused the KSEB of not taking the meter readings in time. The respondents say it was due to door locked condition that prevented them from taking the meter readings. This does not seem to me as correct. There are strict rules in KSEB Conditions of Supply, to deal such cases. During the instance of locked up premises, the consumer is issued Notice to keep open the premises at a particular date and time and to give facilities for reading the meter to the Board's employee. If the consumer fails to keep open the premises and give facilities for taking the meter reading as afore-said, without giving proper reasons, the supply shall be disconnected with due notice. Though the door locked period extended to over one year the concerned officials of the Board miserably failed to take proper action against the consumer.

The misuse of energy by the consumer was detected by the APTS on 4-8-2006. The Section 126 (5) of the Act reads; "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 agriculture services and for 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”.

There was a surprise inspection on the Consumer Nos. 204, 2205 and 2206, of the appellant by the APTS of KSEB and the Section officials on 4.8.2006 and prepared a site mahazar. The site mahazar recording the anomalies detected during inspection was prepared by the Sub Engineer in Charge of Electrical section, Nelliampathy and the same is seen witnessed by two persons of the ‘Poabs Estates Pvt Ltd’. The energy meters of the said Electric connections were stated as working properly. The facts of inspection and preparation of site mahazar are not disputed by the opposite side. The irregularities noted in the mahazar are related to misuse of tariff i.e. using energy given for a low tariff connection for a higher tariff usage, which comes under the offence ‘unauthorized use of Electricity’, as per Section 126 of I E Act, 2003.

The point for decision is “whether there was any misuse of energy supplied to the consumer in respect of the three Consumer Nos. stated above and if so what is the actual penal amount payable by the consumer?

Consumer No. 204- LT-V tariff –Agricultural connection:-

In the mahazar it is seen stated that the energy meter was recording the energy of R & B phases and not recording any energy consumed in Y-phase. This means only 2/3rd of energy consumed is being recorded in the meter. Secondly it is stated that the consumer is indulged in the irregularity of misusing energy by pumping water from an agricultural tariff connection for domestic purpose. The appellant says that the water is mainly used for agricultural purpose but might have used by the workers of the Labor colony. Since the site mahazar with the details of anomaly of misuse was witnessed by two persons of the appellant and the appellant himself has an apprehension that the Workers might have used it, I find the charge leveled against the appellant as proved.

Consumer No 2205- LT-V tariff –Agricultural connection:-

The site mahazar prepared on Consumer No. 2205 is seen recorded as; (Malayalam translated to English version) –

“.....LT-three phase cable is drawn from the Main switch of Consumer No. 2205 and found to have jointed with the cable of Consumer No 1303 with the aid of insulated copper wire. During the said inspection both the connections were not working. A 15 hp motor, 1 x 13 hp motor and 1x1 hp motor were seen connected to Con. No. 1303. Using the cable referred above, coming from Con. No. 2205, it is possible to operate the entire load connected to Con. No. 1303. It is convinced that misuse of energy has taken place in the Agriculturalconnection, by using it for industrial purpose. As for proof, the photograph of the Cable jointed, has been taken. The meter is working properly and the meter seals are intact during inspection. The same facts have been recorded after showing and convincing the Electrician of the Firm, Sri. Johnson, who was present during the inspection”.

The ‘mahazar’ is very clear and specifically states that the cables from different connections were joined together for the purpose of misuse of energy, by way of using a lower tariff (LT V-Agl) connection (Con.No. 2205) for a higher tariff Con.No.1303 (LT IV-Industrial) activity, and the photo of the irregularity done i.e. ‘Cable Jointed’ portion, was also taken and recorded for proof. Hence I am convinced that there was misuse of tariff for the consumer and is liable to be penalized under Section 126-Unauthorized use of electricity. The penalty has to be fixed at the respective tariff applicable to the purpose for which the connection was misused. The Clause 27 A (f) of the Kerala

Electricity Supply code, 2005, under the sub head 'Method of assessment of electricity charges payable in case of unauthorized use of electricity and theft of electricity' reads: -The assessment under this section shall be made at a rate equal to one and half the tariff applicable for the relevant category of service specified in sub clause (e)". This was the rule in force till 15.6.2007. The Respondent interpreted the applicable tariff for assessment as LT VIII, meant for Temporary extension of supply, the rate for which is Rs.50 per K.W per day as the charges. But the KSEB itself has clarified this later by issuing a guideline on this matter in Circular No.77/IGP camp/2010/135 dated 31/3/2010 which is as follows;

"Assessment – in terms of section 126 of the Electricity Act 2003 is the means available to the KSEB for recovery of civil liabilities from a consumer who has indulged in unauthorized use of electricity including power theft. *Assessment should be done at two times the rate applicable for the tariff envisaged for the purpose, for which electricity was being used unauthorizedly, with retrospective effect for the entire period for which the unauthorized use was taking place, if it is reliably known. If the period of such unauthorized use is not known, the period of assessment may be limited to one year"*.

Here it is specified that the tariff applicable is the relevant tariff applicable for the misused purpose. In this case, the unauthorized use of electricity by the Appellant was made for running the industrial loads of consumer No 1303 (22KW load) from the Agricultural Connection No 2205, (10 HP load). So I am inclined to believe that the consumer is liable to be penalized under LT IV- industrial tariff only and not under LT VIII-Temporary extension tariff.

In a similar Case, in OP No 3054 of 2001, (J.D.T Islam Orphanage Committee Vs KSEB), the Hon High Court of Kerala, ruled that the Board cannot levy penal energy charges under LT VIII tariff for unauthorized extension. The Hon Court observed that *".....There is no dispute that LT VIII tariff was intended for temporary extensions. But there is no provision under the Conditions of Supply or Tariff notification that the unauthorized extension shall be treated as temporary extension for the purpose of tariff.In the absence of any provision enabling the Board to levy energy charges under LT VIII tariff for the alleged un-authorized extension , billing at penal rates on the basis of connected load on daily basis is impermissible"*. Though the Court ruling relies mainly on the erstwhile 'Conditions of Supply 1990 and the Indian Electricity Act, 1910' specifically, I think the crux of the issue in both the Cases are the same, i.e. the eligible tariff for imposing the penal charges for the offence of unauthorized extension taken by a Consumer.

It is noted that the consumer No 1303 has recorded an energy consumption of 1939 units during 3/2005 to 8/2005, but has almost recorded nil consumption during the same period in the latter years.

Consumer No 2206- LT-V tariff –Agricultural connection:-

The site mahazar describes that, during inspection it was seen possible as facilities exist for pumping water, using the 10 HP motor of the Agricultural connection No. 2206, for filling the 'concrete tank' built, for the purpose of industrial connection No 1303, thus causing misuse of energy. The allegation is that a 'lower tariff energy was misused for a higher tariff applicable purpose'.

The main point of contention of the appellant is that Con. No. 1303-LT IV Industrial Unit is a Coffee pulping plant and functions only in the Coffee harvesting season of October to February

every year. This argument seems correct except for the year 2005 when it was noticed that the consumer No 1303 has recorded an energy consumption of 1939 units during the period, in between 3/2005 to 8/2005, but has almost recorded nil consumption during the same period in the latter years. The reason for this anomaly is not explained by the appellant. Hence I feel merit in the findings of the respondent.

The deposition said to be made by the Sub Engineer in Charge, Electrical Section, Nelliampathy, before the Deputy Chief Engineer, during the Appeal Petition hearing conducted on 25.9.2006, (produced before this Forum by the appellant), is found to differ much from what he himself has written in the Site Mahazar prepared, after the APTS inspection done on 4.8.2006. Since the site mahazar was not disputed and the same was got witnessed by two independent persons of the appellant's Firm, I take the recordings made in it as genuine and true.

The deposition of Sub Engineer in charge, before the Dy CE, Palaghat, during the Appeal Petition hearing of this Case in 2006, as pointed out by the appellant seems to me as something fishy. To clear the doubts and the intrigue about the shifts in the Sub Engineer's version, from what he himself has recorded in the Site mahazar, calls for a detailed investigation and explanation sought from him, by KSEB. His deposition before the Dy CE does not appear to be credit worthy and can not be relied upon for the same reason.

DECISION: -

Based on the analysis done detailed above and the conclusions and findings arrived at, I take the following decisions;

1). Consumer No. 204- LT-V tariff –Agricultural connection:-

The Dy CE, Palaghat, on filing the appeal petition has reduced the penalization to three months, totaling to Rs 14782/-, from the original bill of Rs 35490/- and the party has paid the amount. The consumer was seen assessed at the rate of 1012 units as average consumption for the disputed period. The respondent is seen to have added 50% to this average to account for the Y-phase loss. This method of 50 % addition is found to be not correct. The average energy consumption of the consumer can be assessed from the previous meter readings, say that of 7/2005 (=19306 units) and 8/2006 (=26885 units) which means a consumption of $(26885 - 19306) = 7579$ units for 13 months i.e. an average energy use of 583 units per month or 1166 units per bi-month. Since the misuse of energy stands proved, the consumer is liable to pay penal charges at one and half times the domestic tariff rate, for 3 months @1166 units per bi-month. It is made clear that the penal assessment should be made for the purpose for which the connection was misused and not on the originally assigned tariff. Hence the respondent shall revise the Bill as decided above and the excess amount collected from the consumer shall be adjusted in his future bills.

2). Consumer No 2205- LT-V tariff –Agricultural connection:-

Though it is proved that unauthorized extension of Power Supply has taken place, it is also found illegal to apply the LT VIII-tariff in this case and therefore the assessment done for the misuse needs revision. Here the date of connection of the Electric service (Con.No.2205) is noted as 3.3.2006 and the misuse of tariff was detected on 4.8.2006, i.e. just after 5 months. Hence I decide that the disputed bill dated 9.8.2006 for Rs.163350/- shall be revised, limiting the period of assessment for five months and at a rate of one and half times the industrial tariff (both on fixed

and energy charges), for the misuse of energy for the unauthorized extension of 22KW load taken from Con. No. 2205 to No. 1303 (LT IV) connection. The excess amount collected, if any, shall be refunded with interest, if the sum to be refunded is more than Rs 25000/-. If it is less, the same amount shall be adjusted in the consumer's future bills.

3). Consumer No 2206- LT-V tariff –Agricultural connection:-

I find that the penal bill issued dated 9.8.2006 for Rs 4305/- is as per rules and is hereby confirmed.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer stands allowed to the extent ordered and stands disposed of. No order on costs.

Dated the 19th of October, 2012,

Electricity Ombudsman.

Ref : No P/285/2012/ 1431/ Dated 30.10.2012.

Forwarded to : 1). M/s Poabs Estate Pvt. Ltd.

Seethakundu P.O.

Nelliyampathy,

Palakkad

2).The Deputy Chief Engineer,

Electrical Circle, KSEBoard, Vyduthibhavanam,

Palakkad.

3).The Assistant Executive Engineer,

Electrical Sub Division, KSEBoard

Kollengode, Palakkad.

Copy to: - 1).The Secretary, Kerala State Electricity Regulatory Commission,

KPFCBhavanam,Vellayambalam, Thiruvananthapuram-10

2).The Secretary, KSEBoard,

VyduthiBhavanam, Pattom, Thiruvananthapuram-4.

3).The Chairperson, Consumer Grievance Redressal Forum,

KSEB, VyduthiBhavanam, Gandhi Road, Kozhikode-32.