

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P /216/2011.

(Present: T P Vivekanandan)

Appellant : Sri. K. Sreedharan Pillai- MA, BL,  
P.K.M. Building, MaithriNager,  
Venjaramoodu, Thiruvananthapuram Dt. Pin: 695607.

Respondents : The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Venjaramoodu, Thiruvananthapuram.

ORDER.

Background of the case:

The appellant is a consumer under Electrical Section, Venjaramoodu and the said connection No.19712 was provided on 17-5-2008. From the very beginning itself, the KSEB started billing the consumer under LT VI B-(non domestic) tariff and accordingly levied fixed charge of Rs. 440/- per month. The appellant's request to change the tariff, to LT 1 A-domestic rate, was not considered by KSEB, in spite of complaints submitted by him. The appellant discontinued the payment of bills (electricity charges), and then requested for the disconnection of his electric connection, the same was done on 1.1.2009 and later dismantled the service on 12.10.2009. Afterwards the respondent had taken steps to recover the arrears of electricity dues through Revenue Recovery action. Being aggrieved by this action of KSEB, the petitioner filed a complaint before the CGRF, Kottarakkara on 29.12.2010, and the same was disposed of, by ordering to realize the bills under LT VI-B tariff up to 1.1.2009, vide order No. OP 592/2011 dated 18.3.2011. Aggrieved by the said order of CGRF, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his petition submitted before this Forum. The appellant has got electric connection from KSEB, Venjaramoodu, to his building No. NP/1087/A to D, allotted by the Panchayath and is situated in Re. Survey No.402/2-3. The said building is under one roof and is fully used for residential and personal purposes like reading room, store room etc. The Panchayath has issued a certificate showing the said building (No. NP/1087/A-D), as exclusively using for residential purpose. The complainant had paid a CD amount of Rs.1200/- and OYEC amount of Rs.1500/- on 15.05.2008, for getting the said electric connection and received the same on 17.05.2008. But KSEB billed the consumer under LT VI B tariff plan, which is meant for commercial buildings and levied a fixed charge of Rs.440/- per month. The complainant made oral and written complainants to the KSEB authorities to change the tariff to LT 1(a), meant for

domestic purpose and also produced the certificates issued by the Nellanad Grama Panchayath, but all in vain. Due to serious errors in billing based on commercial tariff, and thereupon default, the complainant requested the Licensee to cut the electric service connection to consumer no:19712, from 01.01.2009. Since the licensee gave a deaf ear to all the complainants, the complainant filed OP No.592/2010, before the Hon: CGRF, Kottarakkara.

Nature of reliefs sought: -

- 1).To rectify the errors in tariff fixation and billing of consumer No. 19712, Venjaramood, and to change the tariff fixed for the said building NP/ 1087/A-D as that of LT 1(a) plan meant for domestic/residential buildings from LT VI (B) - Commercial plan.
- 2).That orders may be passed to reinstate the electric connection in the said building retaining the CD and OYEC amount already remitted by the complainant on 15-5-2008.
- 3).To stay all proceedings of the KSEB authorities including R R action against the complainant till the disposal of this complaint.

On the hearing day the appellant stated as follows; He is ready to pay 3 month's electricity bills as ordered by the CGRF, provided the interest is withdrawn and he is willing to take a fresh connection on remitting the required fees like OYEC charges.

Arguments of the Respondent: -

The respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following.

- 1). The appellant had applied for electric connection (Consumer no: 19712) for running a tuition Centre by remitting the required fees on 15.5.2008, to the premises having four independent rooms under one roof. The building was constructed in a separate compound near the dwelling place of the appellant. There was an electric connection with consumer number 9532 under LT 1 (a) domestic tariff given to the residence of the appellant. The total connected load of the tuition Centre was 3020 watts comprising of 33 light points, 12 plug points, 8 fan points and one power plug point and the connection was effected on 17.5.2008. The consumer was running a tuition centre at the time of effecting the electric connection and so the tariff was fixed as LT VIB-meant for non-domestic purposes and accordingly the fixed charge of Rs.55/- per KW per month amounting to Rs.440/- (Rs.55x 4 KW x 2 months) was charged through the bimonthly bills.
- 2). It is submitted that as per the feasibility report, test report and in the sketch of the service connection application of the consumer, the Overseer and the Assistant Engineer had clearly written the purpose of the installation, as for running a tuition centre by the appellant and hence the tariff of the consumer was fixed as LT VI B-non domestic.
- 3). The wiring diagram submitted by the consumer affixing the contractor's and the consumer's signature clearly indicates that the first three rooms were for running class rooms and the fourth room was for running a computer laboratory. It is true that the consumer applied for tariff change on 25<sup>th</sup> October 2008, after the lapse of 5 months, without remitting the electricity charge arrears due for the period. Since the appellant did not remit the electricity bill the electric connection was disconnected on 1<sup>st</sup> January 2009 and it was dismantled on 12<sup>th</sup> October 2009. It was then sent for revenue recovery action as per rules after adjusting the security deposit on 6<sup>th</sup> January 2011.

4).After getting direction from the Hon CGRF, the premises was inspected and the photos of the four rooms at the present condition were taken and were submitted to the Hon CGRF. A lot of benches, desks, black board, almirahs containing books, a number of UPS etc. are found in the four rooms at the time of inspection. It is evident that the premise was not at all intended to be used for domestic purpose. Further, there exists no provision like kitchen, waterline, chimney etc. in the building premises to treat as a domestic one. The remnants of a tuition centre such as a lot of benches, desks, black board and almirahs containing books, a number of UPS etc. are found still at the premises. There is no provision for latrine and bathroom in the building. All the four rooms are built as independent rooms with entrance from a common verandah under the same roof. The appellant has a dwelling place with a separate electric connection (consumer number 9532) near the premises under dispute.

5).The wiring sketch signed and submitted by the appellant and the electrical contractor of the appellant reveals that the wiring of the premises was done for running a tuition centre, fitted with a computer laboratory. After getting the order from the Hon CGRF (south) a notice amounting Rs.1558/- was issued considering all charges under LT VIB tariff up to 1<sup>st</sup> January 2009 which was not yet remitted by the appellant. Since the consumer has not remitted any amount by the way of the electricity charges, the appellant is not entitled to any of the reliefs sought.

*Analysis and Findings: -*

On examining the Petition, the statement of facts of the Respondent, perusing the documents and considering all the facts and circumstances of the case, this Forum comes to the following conclusions and findings, leading to the final decisions thereof.

The Hearing of the case was done on 24.04.2012, at Trivandrum and Sri. K. Sreedharan Pillai and S. Sreekumar, represented for the Appellant's side, and the Asst. Exe. Engineer, Electrical Sub Division, Venjaramoodu, represented the opposite side.

The main argument of the appellant is that he had applied for electric connection to his building No. 1087/A-D under domestic tariff and KSEB denied it and assigned a higher tariff. The appellant has produced a certificate issued by the Panchayath in support of his claim. The 1<sup>st</sup> bill issued to the consumer on 19.8.2008, was for a sum of Rs. 729/- under LT VI-B non domestic tariff and he filed a complaint dated 25.10.2008 to the Assistant Engineer, Electrical Section, Venjaramoodu, against it and did not pay the bill. The subsequent bi-monthly bills dated 17/10/2008, 16/12/2008, 13/2/2009, 16/4/2009, 10/6/2009, 12/8/2009 and 12/10/2009 were also not paid by him.

As no action was taken regarding his complaint dated 25/10/2008, the appellant submitted a request dated 1/1/2009 to the Asst. Executive Engineer to disconnect the electric supply and the service was disconnected on 1.1.2009 itself and the connection was dismantled on 12.10.2009. The last bill for Rs. 3950/-, including the arrears, was issued on 12/10/2009. Due to nonpayment of the bill, KSEB initiated Revenue Recovery action as contemplated in the rules, for the recovery

of outstanding dues. The consumer challenges the RR action and the fixation of LT VI B tariff, as well as the Bills raised under that tariff, on the electric connection provided by KSEB to him.

The main dispute in this case relates to the tariff assigned to the appellant's building No. 1087/ A to D having four rooms. The tariff of a consumer is fixed based on the nature of activity or the purpose for which the electrical energy was used by him. The KSEB is supposed to assign the tariff of a consumer based on the directions, guide lines and notifications issued from time to time, by the Hon KSERC, which is the empowered body to classify the appropriate tariff of a particular class of consumers. The residential certificate issued by the Panchayath may be based on the purpose shown in the application filed before it. It is very clear that the 'tariff fixation' is not at all depend on the certificate issued by the Panchayath, but as per Hon: KSERC notifications only.

The bi-monthly bills were served on the consumer regularly but were defaulted for payment by merely filing a complaint to the respondent. The consumer is bound to pay the bill within the time specified in the bill, even if he has any genuine complaints on the correctness of the bill or on the fixation of tariff etc. pending disposal of the dispute between him and KSEB, as per Section 56 (1) of Indian Electricity Act, 2003. Again, Clause 37 of the KSEB Terms and Conditions insists ".....The correction or revision of the demand shall be made only after ascertaining the bona fides of the complaint. However, the bill should be paid on or before the due date originally fixed, and adjustments, will be made only in the 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."

But it is seen that, the appellant has failed to pay the regular electricity bills, after availing the Electric service connection. Similarly, the respondent has failed to give any suitable reply, to the complaint dated 25.10.2008 of the consumer, till 2/2009. By that time, the appellant had applied for disconnection of supply i.e. on 1/1/2009. Though the appellant had produced a residential certificate from the Panchayath, it is not the criteria for fixing the eligible tariff of a consumer.

As per the existing provisions the consumer is liable to pay the energy charges up to the date of disconnection and thereafter fixed charges alone for a maximum six months or till it is dismantled. The connection was dismantled on 12.10.2009. Under clause 25 (4) of The Electricity Supply Code, 2005, it reads; " if the service connection stands disconnected for more than six months, Licensee shall arrange dismantling the same on 15 days notice and no charges shall be due to the Licensee for the period, which is in excess of six months from the date of disconnection". The respondent has not adhered to this provision, in realizing the fixed charges after disconnection of supply, but has raised bills up to the day of dismantling in 12/2009, which is inadmissible. However, the party is bound to pay the electricity charges for the period during which he has consumed energy.

DECISION: -

If the consumer has a complaint that his tariff is wrongly fixed, it is the respondent's duty to visit the site, verify the same and set it right if the complaint is genuine. If not, explain to the consumer why he was allotted a different tariff or issue a reply stating the principles of tariff fixation and the reason why he was treated under a different tariff, in the particular case. This step was not seen done by the respondent till the Electric service was disconnected.

It may appear that a Kitchen and bathroom is a minimum requirement for a home, and independent rooms with a common verandah for entry and exit does not appear as belonging to a residential type building etc. These conventions are general in nature, but a residential home, even with lesser facilities cannot be ruled out, at least for argument sake. It is expected in such situations to arrange a surprise inspection, with independent witnesses to confirm, what activity is going on in the consumer's premises and determine the purpose for which the electrical energy is being used and then proceed to fix the eligible tariff accordingly.

The respondent has vehemently opposed the contention of the appellant that his building is a residential one. The respondent has produced a number of documents such as copy of application for service connection, copy of test report, inspection report etc. which shows that, the purpose for connection of the building is for a tuition Centre that attracts LT VI B tariff, under the existing provisions of tariff categorization. According to the respondent there is any Kitchen or bathrooms in the building. Moreover, all the four rooms are built as independent rooms with entrance to a common verandah, under the same roof. Further, it is revealed in the inspection conducted by the KSEB, as per CGRF's direction, that the remnants of tuition centre such as a lot of benches, desks, black board, and almirahs containing books, a number of UPS etc. were found at the rooms. The photos taken of the appellant's (building) rooms shows benches and desks, Black board etc which gives the impression of a tuition centre, as alleged by the respondent. The single rooms and the amenities provided on the building, also suggest it to be not meant for residential purpose. There is nothing to disbelieve the contentions of KSEB, in this regard and these suggest to me as a tuition centre rather than a residential house and I am inclined to accept the argument that the Electric supply was intended for running a tuition centre.

Hence I endorse the decision of the CGRF. The consumer may be billed at LT VI B-tariff for the period from 5/2008, (the date of connection) to 1.1.2009, (the date of disconnection). Since the respondent failed to give a suitable reply or take action within a month of the complaint lodged on 25.10.2008, no fixed charges need be claimed from him during the period of disconnection

after 1/2009, up to dismantling of the service, treating him as a domestic consumer from 1/2009 and no fixed charge is applicable for domestic consumers. Further, the 1<sup>st</sup> bill dated 19.8.2008 for Rs729/ may be reviewed since the energy charge seems high, for a consumption of 6 units. The final bill considering all the above, may be issued after deducting the security deposit collected from him, with 30 days time given, for the due date of the Bill, for making payment.

The RR action taken against the appellant shall be dropped, once the final bill as ordered now, is paid by the consumer. Also, if the consumer remits the final dues as stated above, he may be given fresh connection, on paying the estimated cost, for giving a new connection, as per rules. The consumer has agreed to take a separate connection on the Hearing before this Forum.

If the consumer fails to make payment in time, the respondent may levy interest or surcharge, on the final amount arrived at as above, for the late payments. It is made clear that no interest or surcharge need be payable by the consumer, during the Petition pending period, before the CGRF and this Forum.

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

Dated the 14<sup>th</sup> of November, 2012.

Electricity Ombudsman.

Ref. No. P/ 216/ 2011 / 1447/ Dated 14.11.2012.

Forwarded to

- 1).Sri.K.SreedharanPillai,  
P.K.M. Building, MaithriNager,  
Venjaramoodu, Thiruvananthapuram.
- 2).The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Venjaramoodu, Thiruvananthapuram

Copy to:

- (1). The Secretary. Kerala State Electricity Regulatory Commission,  
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,  
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vydyuthibhavanam, Kottarakkara.