

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/028/2016

(Present: V.V. Sathyarajan)

Dated: 17th August 2016

Appellant : Sri. P. Vasu
S/o Palakkal Konnan,
Kanniampuram P.O.,
Ottappalam,
Palakkad

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Shornur, Palakkad.

ORDER**Background of the case:**

The appellant, Sri P. Vasu, is a consumer with consumer number 9208 under Electrical Section, Ottappalam. During 1988 the appellant availed the service connection with a connected load of 3 kW under LT VII A tariff. As the appellant defaulted payment of Rs. 318.00 (Bill No. 0310446 dated 13-03-2001), his service was disconnected on 30-06-2001. Even though the appellant remitted the bill amount along with interest and other expenses amounting to Rs. 343.00 on 02-07-2001, the service connection was not restored. On enquiry, it was informed that an arrear amount of Rs. 3,308.00 was pending towards the adjustment invoice issued for the period from 9/1998 to 5/2000. It is alleged that only after remitting the adjustment invoice amounting to Rs. 3,308.00 the appellant is entitled to get the service reconnected. Aggrieved against this, the appellant approached various courts for the redressal of his grievances, but failed. The appellant was issued another demand notice dated 29-09-2014 for Rs.24771/- comprising fixed charges, meter rent for the disconnected period from 30-6-2001 to 30-9-2014 by the respondent.

Against the judgements and decrees in OS No. 346/2001 Munsiff Court, Ottappalam dated 12-08-2005, AS No. 125/2005 of Sub Court Ottappalam dated 28-08-2011, OS No. 444/2004 of Munsiff Court, Ottappalam dated 30-06-2009, AS No. 36/2009 of Sub Court, Ottappalam dated 26-02-2014; the appellant filed regular second appeals before the Hon'ble High Court

of Kerala vide RSA No. 412/2012 and RSA No. 973/2014 respectively. The Hon'ble High Court disposed of the cases vide judgement dated 05-11-2014 directing the appellant to invoke Regulation 37 of the KSEB Terms and Conditions of Supply, 2005. Such motion shall be made by the appellant on or before 30-11-2014 and directed the respondent Board to reconnect the supply after carrying out the statutory formalities and such reconnection shall be done immediately on depositing one third of the demanded amount as per bill dated 29-09-2014. The recovery of balance amount depends upon the outcome of the motion made under Regulation 37 referred to above. The appellant remitted an amount Rs. 11,565.00 including arrear amount of Rs.3308/- vide receipt No. 65330141126102133 dated 26-11-2014 as per the order of the Hon'ble High Court and the service got reconnected.

Accordingly, the Executive Engineer, Electrical Division, Shornur after conducting a personal hearing, disposed of the petition vide order dated 30-05-2015 by holding that the adjustment invoice issued to the appellant for Rs. 3,308.00 is in order and reassessed the arrear electricity charges for the period from 30-6-2001 to 30-12-2001 as Rs.1932/- and charges for new connection as Rs.5200/- in addition to the arrear amount of Rs. 3,308.00. It was also directed to adjust the balance amount of Rs.1,125/- (11565-10440{3308+1932+5200}) in the future electricity bills. Still aggrieved, the appellant preferred a complaint before the Hon'ble Consumer Grievance Redressal Forum, Kozhikode vide OP No. 42/2015-16 and the same was dismissed on 09-03-2016. Against the order of CGRF, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

1. The appellant has availed an electric connection with consumer No. 9208 to his shop building bearing No. 7/269 situated at Kanniampuram under the Ottappalam Municipality during the year 1988. The connected load was 3 kW under Single Phase, LT-VII A tariff. The consumer is running a petty shop (No. 11/276) and has only 5 to 6 numbers of points/connection, adequate for meeting the requirement of lighting at the shop, dealing in vegetables/fruits and other merchandises of common use and the lights used were/are only tube lights. Therefore, the electricity consumption has been minimum and optimal conforming to the use of the lighting at the said shop.

2. The consumer had been paying the electric bills in time saving a single occasion when a default occurred, without intent, in payment of Bill No. 0310446 dated 13-03-2001. The default was fined at Rs. 18.00 and the aggregate bill for the said occasion was Rs. 318.00 (Three Hundred and Eighteen). The connection was disconnected by the Kerala State Electricity Board, as per rules, on 30-06-2001. Though the bill amount was remitted by the appellant on 04-07-2001, the connection was not restored by the authorities. On enquiries, the appellant was informed that a sum of Rs. 3,308.00 (Three Thousand Three Hundred and Eight) is due from the appellant

for payment towards adjustment invoices preferred by the respondent for the year 1998.

3. The said stances of the Kerala State Electricity Board was objected to by the appellant for the reasons and rationale that the consumption pattern at the said shop was limited to the use of 4 tube lights and 3 (40 Watts) bulbs and going by the user of the lighting at the said shop for a maximum of SIX hours, the consumption could not have been found enough to raise an adjustment invoice, especially in the light of the fact that there were / are no other electrical gadgets installed in use at the shop. In normal circumstances, the type of connection approved by the Kerala State Electricity Board in such cases is not LT-VII A as borne in the bills raised. It is well founded that electric connection is installed by the Kerala State Electricity Board after due inspection and satisfying themselves of the number of electric points estimated consumption, type of tariff, load connected and safety measurements including the location of installation of the meter. These cannot be denied by the Kerala State Electricity Board at any point of time and the consumer's case is also nothing but the default in more than one way by the KSEB, in connecting and charging the consumers.

4. The Kerala State Electricity Board, Electrical Section, Ottappalam still maintains that the adjustment invoices raised by them is in conformity with their records. However, no record is maintained by the said Section in this regard as ascertained by this appellant through an RTI query, raised on 13-10-2014, remain to be answered by the Section even as on date. The appellant is being replied to since then that the subject is under examination.

5. There is no truth in the stance taken by the Kerala State Electricity Board, Electrical Section, Ottappalam that they were unable to disconnect the supply as provided under the rules, while maintaining that the supply was disconnected on 30-06-2001 on temporary basis. The appellant is a petty shop owner and is a common man who is not supported by anyone including political personalities. As such the Kerala State Electricity Board stand that they could not disconnect the supply after six months because of resistances from the consumer is most likely untrue. The Kerala State Electricity Board ought to have lodged a Police complaint against the consumer for the resistances, which they did not and therefore it is only a well-knit excuse to camouflage their own lapses. This lapse could only be converted in the form of fixed charges for the period from 30-06-2001 to 30-09-2014 victimizing this consumer and imposing on him an additional charge of Rs. 24,771.00 in addition to Rs. 3,308.00. In the circumstances explained the appellant is not liable to pay the said amount to Kerala State Electricity Board.

6. The relevant Sections/Sub sections of Electricity Act read with Kerala Electricity Rules/Regulations very clearly envisage that the Kerala State Electricity Board is vested with the duty and responsibility of realistic assessment of the usage capacity after careful and need-based power requirement of the consumer. In this respect it is relevant to mention that had the inspection of the shop premises been proper, the officials ought to have come to the conclusion that the consumer DOES NOT require the load and tariff that he has been allotted. There is no gain saying the fact that the appellant has not complained or having been allotted a higher tariff. However, the Executive Engineer confirms by his letter that the consumption pattern by this appellant has never been demanding of the higher connected load and average energy consumption cannot exceed 55 units per month.

7. The Executive Engineer, Electrical Division, Shornur in his order dated 30-05-2015 has gone on record that the consumption pattern as per the spot billing as it existed until 05/2000 and after 06/2000 has been compared and the energy charges billed to the consumer @ Rs. 3,318.00, in the absence of details supplied. This is despite seeking details therefore under the RTI provisions as back as OCTOBER, 2014. The energy consumption of the appellant has never been beyond 50 (FIFTY). The appellant had sought of the Kerala State Electricity Board authorities to permit him a usage limit of 100 (HUNDRED) units and the energy charge paid by this appellant has been in conformity with the energy charges in force, i.e. Rs. 300.00 (Three Hundred) per month. By the said levy of charges, Kerala State Electricity Board authorities ought to have been aware of the misapplication of the higher tariff (LT-VII A), which remains to be reasons, cited as above the appellant is not liable to pay the said amount to Kerala State Electricity Board.

8. The fact that the Executive Engineer, Electrical Division, Shornur has confirmed that the bill has been issued to the appellant based on the average consumption. The Kerala State Electricity Board is yet to produce material evidence substantiating their claim and that the connected load to this appellant is sustainable and is within the objective and scope of the rules in force.

9. As the Kerala State Electricity Board authorities were reluctant to consider numerous requests in person and in writing, this appellant had to take recourse to judicial remedy and consequent orders of the Hon'ble High Court, Ernakulam has been duly complied with by this appellant.

10. The appellant was directed by the Executive Engineer, Shornur on 04-03-2015 and 25-03-2015 to present himself for a meeting to consider the matter and it was attended by him on 22-04-2015 (FN) along with his legal

representative. The matter transpired at the meeting, however, did not consider the reasonable and rational stances of the appellant, as may be perused from the Minutes circulated on 30-05-2015. Aggrieved by the said irrational demand of the Kerala State Electricity Board to pay for the energy charges NOT consumed by this appellant is the cause for this prayer before the Hon'ble Kerala State Electricity Board Consumer Commission for Settlement of Disputes. It is prayed that this appellant may please be relieved of the unnecessary hassle borne by him on account of the irrational illogical stances of the Kerala State Electricity Board.

Nature of relief sought:

- i) To withdraw the bill for energy charges amounting to Rs. 3,308.00 as per Adjustment Invoice.
- ii) To withdraw the bill raised for charges NOT consumed but arbitrarily held to have been consumed as per Kerala State Electricity Board for the period from 07/2001 to 09/2014.
- iii) To rectify the error on the part of Kerala State Electricity Board to subject a petty shopkeeper to a higher connected load and enlist him under Tariff LT-VII A.

Arguments of the respondent:

The appellant is having an electrical connection with Consumer No.9208 under Electrical Section, Ottappalam. The service connection to the premises of the above appellant was disconnected for non-payment of amount due under a spot bill for Rs. 318.00. The connection was disconnected on 30-06-2001, subsequently the amount as per the spot bill was remitted by the appellant on 04-07-2001, but on verification of the payment status of the appellant it is found that an amount of Rs. 3,308.00 was due towards electricity charges payable as per adjustment invoice issued for the period 9/98 to 5/2000. The adjustment invoice was issued for the energy actually consumed by the appellant based on the meter reading taken. The spot billing system was introduced on June 2000 and 'the Provisional Invoice Card System was abolished. As per the direction of the Board the spot bill has to be accepted even if there are previous arrears. As per Section 24 of the Indian Electricity Act, the Board is empowered to disconnect the service connection if it is found that there is any amount due from the consumer. Hence this service connection was not reconnected / restored.

The aggrieved appellant without availing the statutory remedies filed a suit for mandatory injunction vide OS No 346/2001 before the Hon'ble Munsiff Court, Ottappalam. The Hon'ble Court dismissed the suit after trial citing the decision rendered by the Hon'ble High Court of Kerala in OP 15099/2000. It was held by the Hon'ble Court that the suit is not maintainable since this civil court shall not entertain the suits challenging the correctness of the bill issued

by the KSEB and directed the appellant to exhaust alternative remedy available.

Against the findings in OS 346/2001 the appellant filed a Civil Revision Petition vide SI/2 55/2002 (CMP 5574/02) before the Hon'ble High Court Kerala at Ernakulam. The Hon'ble High Court remanded the matter and dismissed the case stating that the appellant has not asked for any declaratory relief in connection with the adjustment invoice. Another suit for mandatory as well as prohibitory injunction was filed by the appellant on 21-11-2004 before the Hon'ble Munsiff Court, Ottappalam vide OS 444/2004 to reconnect the supply and declare that the respondent Board have no right to claim any fixed charge or meter rent even after disconnection of electric connection. The Hon'ble Court held that the appellant is not entitled to any injunction decree against the respondent as per as issuance of subsequent bills after disconnection of electrical connection since he failed to remit the dues. Mandatory injunction is barred by Resjudicata since the appellant has earlier filed a suit for same relief.

Against the judgement of Munsiff Court, Ottappalam in OS 346/2001 the appellant filed an appeal suit before the Hon'ble Sub Court Ottappalam vide AS No. 125/2005. The Hon'ble Sub Court dismissed the appeal suit with cost to the respondent and observed that "if the appellant has got any dispute regarding the adjustment invoice bill issued in the year 1998 his remedy is to make a complaint in writing to the officer who has issued the bill if he still aggrieved he is to file a complaint before the Board who has got a power to review and still aggrieved the remedy is to approach CGRF and further to Ombudsman. It is seen that he has not resorted to any of these remedies under Section 37 of KSEB Terms and Conditions of Supply, 2005. Without exhausting these remedies the appellant can't content before the Civil Court.

The appellant also filed another appeal suit before the Hon'ble Sub Court, Ottappalam vide AS No. 36/2009 against the judgement of Munsiff Court, Ottappalam in OS No. 444/04. The Hon'ble Sub Court dismissed the appeal suit with cost to the respondent, and citing the judgement of the Hon'ble High Court of Kerala in Purushothaman vs. KSEB [2007(2) 782] it was held that "the Board has a right to withhold the connection if there is any due with respect to the same premises from a previous consumer. Moreover after coming into force of Electricity Act, 2003 if a person applies any electrical connection to a premises were there are previous dues until cleared the Board has no duty to give connection". The decision squarely applies to this case and the Board has no duty to give connection.

Against the judgements and decrees in OS 346/2001 Munsiff Court, Ottappalam dated 12-08-2005, AS 125/2005 of Sub Court, Ottappalam dated 28/08/2011, OS 444/2004 of Munsiff Court, Ottappalam dated 30-06-2009, AS 36/2009 of Sub Court, Ottappalam dated 26-02-2014; the appellant filed regular second appeals before the Hon'ble High Court of Kerala vide RSA No.

412/2012 and RSA No. 973/2014 respectively. The Hon'ble High Court disposed of the cases vide judgement dated 05-11-2014 directing that the remedy of the appellant is to invoke Regulation 37 of the KSEB Terms and Conditions of Supply, 2005. Such motion shall be made by the appellant on or before 30-11-2014 and directed the respondent Board to reconnect the supply after carrying out this statutory formalities and such reconnection shall be done immediately on the appellant depositing one third of the demanded amount as per bill dated 29-09-2014. The recovery of balance amount depends upon the outcome of the motion made under Regulation 37 referred to above.

Accordingly the Executive Engineer, Electrical Division, Shornur conducted a personal hearing with the appellant on 22-04-2015 and after considering the submissions and argument notes submitted on behalf of the appellant and Assistant Engineer Electrical Section Ottappalam, the Executive Engineer had dismissed the objection raised by the appellant vide order dated 30-05-2015 and found that the adjustment invoice issued to the appellant for Rs. 3308.00 is in order/correct. Though the connection was disconnected on 30-06-2001, the connection could not be dismantled due to the resistance from the appellant. Hence while re-affecting the connection on 26-11-2014 as per the judgement of the Hon'ble High Court of Kerala an arrear amount of Rs. 24,771.00 was due including FC & meter rent from 30-06-2001 to 09/2014 in addition to Rs. 3308.00. As per the order of the Hon'ble High Court an amount Rs.11,565.00 was remitted by the appellant vide receipt No. 65330141126102133 dated 26-11-2014. Considering these facts the Executive Engineer also ordered that the above connection is to be treated as dismantled from 30-12-2001 and the connection may be treated as new from 26-11-2014 by collecting necessary charges as applicable and revised the amount due as follows:

1. Additional bill dated 12-06-2000	Rs. 3,308.00
2. Current charge arrears	
a) Fixed charge per month from 30-06-2001 to 30-12-2001 (Rs.75 x 6 months)	Rs. 450.00
b) Meter rent from 05/2002 to 07/2014 (Rs. 10x147 months)	Rs. 1,470.00
c) Meter rent from 08/2014 to 09/2014 Rs.6 x 2 months	Rs. 12.00
Total electricity charge a+b+c	Rs. 1,932.00
3. Charges for new connection	
a) Cash deposit	Rs. 3,000.00
b) Application fee	Rs. 50.00
c) Amount of service connection estimate	Rs. 2,150.00
Total a+b+c	Rs. 5,200.00

Total amount to be paid by the consumer
 1+2+3=3308+1932+5200

Rs. 10,440.00

Since the appellant has already remitted an amount of Rs. 11,565.00 as per the order of the Hon'ble High court, the above amount may be deducted (11565 - 10440) and the surplus amount of Rs. 1,125.00 should be credited to the appellant as advance current charges and should be adjusted in the future bills.

Still not satisfied the appellant again preferred a complaint before the Hon'ble Consumer Grievance Redressal Forum, Kozhikode vide OP No. 42/2015-16. The Hon'ble Forum after conducting a detailed hearing on 29-10-2015, 17-12-2015 & 04-02-2016 and considering all the documents submitted and the deliberations held during the hearing found that the respondent licensee has considered the subject case with humanitarian concepts and allowed all the relaxations possible within the limits of the relevant rules and regulations and has no more scope of revision and hence is in order and decided to dismiss the petition. It is also kindly submitted that by continuously engaging the respondents in various litigations one after another, the appellant is unnecessarily making hardship to KSE Board Ltd and its officials.

Hence it is respectfully submitted that the appellant is not entitled for any relief sought for in the above petition and prayed before the Hon'ble Ombudsman to declare that the action of the respondent is well within the purview of the prevailing Rules and Regulations and is in order and prayed to dismiss the petition with cost.

Analysis and findings

The hearing of the case was conducted on 12-07-2016 in the Conference Hall, TMR Division, Shornur and the appellant's side was represented by Sri. P. Vasu and his advocate V.C. Janardhanan and the respondent's side by Sri Ravindranathan O.P., Assistant Executive Engineer, Electrical Sub Division, Shornur and Sri. Unnikrishnan K.K., Nodal Officer (Litigation) Electrical Circle, Shornur and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellant, the statement of facts of the respondent, 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.

The relevant facts giving rise to the instant appeal is against the issuance of the adjustment invoice for the period from 9/1998 to 5/2000 amounting to Rs. 3,308.00 and the arrear bill dated 29-09-2014 for Rs. 24,771.00 towards fixed charge and meter rent for the period from 30-06-2001 to 09/2014. The Hon'ble High Court of Kerala in its judgment dated 5th November 2014 in RSA

Nos. 973 of 2014 and 412 of 2012 disposed the petition directing the appellant to invoke Regulation 37 of the KSEB Terms and Conditions of Supply, 2005. The respondent shall reconnect the service after carrying out the statutory formalities and reconnection shall be done immediately on the appellant depositing 1/3rd of the demanded amount as per bill dated 29-09-2014. The recovery of the balance amount would depend upon the outcome of the motion made under Regulation 37 referred to above. The judgment of Hon'ble High Court in RSA Nos. 973 of 2014 and 412 of 2012 clearly says that **“the appellant who is the consumer has reportedly paid Rs. 318.00 and is willing to pay the balance amount of Rs. 3,308.00 under protest. I grant the appellant time till 30-11-2014 to pay the sum of Rs. 3,308.00 as stated”**.

The question left open by the Hon'ble High Court with regard to the bill dated 29-09-2014 for Rs. 24,771.00 served on the appellant. For that the appellant herein is directed to approach the authorities as per Regulation 37 of the KSEB Terms & Conditions of Supply, 2005 on or before 30-11-2014. Para 2 of the judgment of the Hon'ble High Court is extracted hereunder:

The appellant is more concerned with the bill dated 29-09-2014 for Rs. 24,771.00 served on him. The remedy of the appellant is to invoke Regulation 37 of the KSEB Terms & Conditions of Supply, 2005. Such motion shall be made by the appellant on or before 30-11-2014 in the circumstances.

The appellant remitted 1/3rd of the demanded amount in the bill dated 29-09-2014 i.e., Rs. 8,257.00 along with the adjustment invoice amount of Rs. 3,308.00 as agreed before the Hon'ble High Court on 26-11-2014. Accordingly the respondent reconnected the service of the appellant. As directed by the Hon'ble High Court the Executive Engineer, Electrical Division, Shornur conducted a personal hearing and passed an order vide No. GB/9208/OTP/2015-16/224 dated 30-05-2015. On a perusal of that order it can be found that the order is devoid of any arbitrariness or illegality. The excess amount of Rs. 24,771.00 charged by way of arrears for the period from 30-06-2001 to 09/2014 has been revised to Rs. 7,132.00 by limiting the period for 6 months from 30-06-2001 to 31-12-2001.

Thus the Executive Engineer rectified the mistake crept in the bill dated 29-09-2014. While issuing the proceedings, the Executive Engineer mentioned the additional bill dated 12-06-2000 and arrived at a finding that the amount claimed for Rs. 3,308.00 is correct. Probably this may be without understanding the direction issued by the Hon'ble High Court. The Hon'ble High Court has clearly indicated that the dispute regarding the bills for Rs. 318.00 and Rs. 3,308.00 raised in the Regular Second Appeals have become practically infructuous. In view of the above, I don't find any reason to interfere with the decision taken by the Executive Engineer in his order No. GB/9208/OTP/2015-16/224 dated 30-05-2015.

Decision

So, in view of the above findings, the appeal petition is disposed of directing the respondent to refund the excess amount remitted by the appellant (Rs. 8,237.00 – Rs. 7,132.00 = Rs. 1,105.00) against his future bills. The order of CGRF in OP No. 42/2015-16 dated 09-03-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/028/2016/_____ /Dated _____

Delivered to:

1. Sri. P. Vasu, S/o Palakkal Konnan, Kanniampuram P.O., Ottappalam, Palakkad
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Shornur, Palakkad.

Copy to:

3. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
4. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
5. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road, Kozhikode