

THE STATE ELECTRICITY OMBUDSMAN  
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9539913269  
Email:ombudsman.electricity@gmail.com

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APPEAL PETITION No. P/024/2018  
(Present: A.S. Dasappan)  
Dated: 26<sup>th</sup> June 2018

Appellant : Sri. Syriac Kurian  
Malayil House, Thattekkadu P.O.,  
Kothamangalam, Ernakulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd., Kothamangalam,  
Ernakulam

### **ORDER**

#### **Background of the case:**

The appellant is a consumer under Electrical Section, Keerampara. A three phase service connection with Consumer No. 11571339010598 in LT VII A tariff was issued in the name of Sri. Syriac Kurian, Maliyil, Palamattom, Thattekkad P.O., Kothamangalam, the appellant for running a resort with a sanctioned connected load of 16 kW. On 30.10.2013, Anti Power Theft Squad Wing conducted an inspection in the premises of the appellant and detected an Unauthorized Additional Load to the extent of 52 kW. A provisional short assessment bill to the tune of Rs. 2,28,124/- was issued to the appellant on 29.11.2013 as per Section 126 of Electricity Act 2003. Against the issuance of the bill the appellant approached the Hon'ble High Court of Kerala by filing W.P (C) No.31523/2013 which was dismissed directing the petitioner to pursue the appeal before Deputy Chief Engineer, Electrical Circle, Ernakulam by making deposit of 50% of the amount of penalty assessed and the Hon'ble Court also directed the Deputy Chief Engineer to consider the appeal as one filed within the stipulated time and shall proceed to dispose of the same on merits, vide judgment dated 06.01.2014. Later he filed W.A. No.705/2014 before Hon'ble High Court of Kerala. The Hon'ble Division Bench dismissed the Writ Appeal vide judgment dated 25.10.2016. Thereafter the appellant filed Petition vide complaint No.77/2017-18 before the CGRF-CR, Ernakulam and the CGRF decided to dismiss the complaint due to lack of merit, vide its order dated 17-03-2018. Aggrieved against this, the appellant has submitted the appeal petition before this Authority.

**Arguments of the appellant:**

The basic grievance of the appellant is that he has been charged for an unconnected load by way of short assessment bill. The contentions of the appellant are that the CGRF ought to have looked in to the causes and incidents leading to the issuance of the short assessment bill which is not tallying with the available voltage then and there in the locality and the date of acquiring the electrical equipments or the date of starting the resort. The Forum conveniently evaded answer to the material question regarding low voltage and functioning of the equipments in low voltage. While deciding the petition the Forum ought to have given emphasis to the principle that Regulation 145 of Kerala Electricity Supply Code, 2014 is equally applicable to the appellant and respondent.

The appellant is and always willing to remit the normal electricity charge arrears and what the appellant challenged is the short assessments bill for Rs. 2,28,124/-. The Forum erred in admitting the arbitrary act of respondents by which the respondents clubbed the highly prejudicial short assessment bill for Rs. 2,28,124/- with the normal electricity charge arrears. On the basis of the said reasons and the grounds allowed to be argued on hearing, the appellant has requested to issue an order to the licensee directing it;

- (a) To redress the grievances of the appellant by cancelling the short assessment bill and to accept the balance normal electricity charge arrears from the appellant.
- (b) To pay an amount of Rs. 5,000/- as cost to the appellant.

**Arguments of the respondent:**

The respondent's averments are the following.

On 30.10.2013, Anti Power Theft Squad Wing conducted an inspection in the premises of the appellant and detected an Unauthorized Additional Load to the extent of 52 kW. A provisional short assessment bill to the tune of Rs. 2,28,124/- was issued to the appellant on 29.11.2013 as per Section 126 of Electricity Act 2003. Against the issuance of the bill the appellant approached the Hon'ble High Court of Kerala by filing W.P (C) No.31523/2013. The Hon'ble High Court in its judgment dated 06.01.2014 dismissed the writ petition directing the petitioner to pursue the appeal before Deputy Chief Engineer, Electrical Circle, Ernakulam by making deposit of 50% of the amount of penalty assessed and the Hon'ble Court also directed the Deputy Chief Engineer to consider the appeal as one filed within the stipulated time and shall proceed to dispose of the same on merits. Though the appellant has remitted 50% of assessed amount on 10.06.2014 but has not approached the respondent till date. Later he filed W.A. No.705/2014 before Hon'ble High

Court of Kerala. The Hon'ble Division Bench dismissed the Writ Appeal vide judgment dated 25.10.2016.

As per the Regulation 145(5), consumer has to clear all arrear charges before dismantling the service connection. The service connection will stand dismantled only after clearing this arrear and hence the consumer is liable for remitting the arrears up to the date of dismantling.

As such the service connection was dismantled on 21.02.2014 and a total bill for Rs. 4,27,430/- was issued to the consumer including regular current charge pending for the period from 11/2013 to 02/2014 with interest as per the following break up details

Total assessed amount	Rs.	228,124.00
Remitted (50%)	Rs.	114,062.00
Balance	Rs.	114,062.00
Surcharge (11/2013 to 09/2017)	Rs.	94,105.00
Total	Rs.	208,167.00
CC pending (11/2013 to 02/2014)	Rs.	128,600.00
Surcharge	Rs.	90,663.00
Total Current Charge + Interest	Rs.	219,263.00
Grand Total	Rs.	427,430.00

As the total amount of Rs. 4,27,430/- has been arrived at by taking into account of all formalities and as per prevailing regulations in Kerala State Electricity Board Limited, the averment that the Board authorities are arbitrarily demanding huge amount is totally baseless.

The appellant is willfully misleading the Forum by hiding facts. Even though the respondent had already served the notice for One Time Settlement for remitting the dues with 6% surcharge, the appellant did not bother to avail the facility to settle the bill.

During the pendency of the case before Hon'ble High Court, no action for Revenue Recovery was initiated against the appellant, and the Revenue Recovery action was initiated only after the verdict.

The demand issued is legally due to Kerala State Electricity Board Limited as per Section 126 of Electricity Act 2003 and Regulation 136 (1) & (2) of Kerala Electricity Supply Code, 2014 and it is the liability on the part of the consumer to remit the bills and the appellant is bound to pay the same.

**Analysis and findings:**

The hearing of the case was conducted on 29-05-2018 and 05-06-2018 in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri Gopi N.K., Assistant Executive Engineer, Electrical Sub Division, Kothamangalam appeared for the respondent's side on 29-05-2018 and the appellant was absent. The appellant has requested for another date for hearing due to some inconveniences and accordingly he appeared for hearing the next scheduled hearing date on 05-6-2018. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority came to the following conclusions leading to the decision.

The contention of the appellant is that the 3 phase electric connection with 16 kW connected load was taken for the purpose of welding works under LT VII A tariff. But the respondent has stated that the service connection was given under VII A tariff for running a resort. As per the site mahazar prepared by the Anti Power Theft Squad Wing who conducted an inspection in the premises of the appellant on 30-10-2013 detects an Unauthorized Additional Load to the extent of 52 kW. The load details in the premises were light 8w-158 Nos., fan 60w-39 Nos., AC 21.5 ton (1200w) 32 Nos., AC 5 ton (4000w) - 1no, AC 8.5 ton (6500w) 2nos, water heater 2kW-4nos, and water pump 2HP - 1no. The total connected load comes to 68596 watts. These details are sufficient proof for establishing that the premises were a resort. It is the appellant's liability to give sufficient evidence regarding the date of starting of the resort in the premises. On detection of the unauthorized load the respondent had issued a short assessment bill for 2,28,124/- on 29-11-2013 as per Section 126 of Electricity Act 2003. Against this, the appellant approached the Hon. High Court of Kerala by filing WP ( c ) No.31523/2013 and the Hon. Court vide judgment dated 06-01-2014 dismissed the petition and directed the appellant to prefer an appeal before Deputy Chief Engineer, Electrical Circle, Ernakulam by remitting 50% of the short assessment bill assessed. In the judgment, the Hon. Court had made the following observations. "Based on the discussions contained herein above, this court arrives at a conclusion that all the contentions against the impugned order deserve no merit. This court has not arrived at any findings on the challenges raised on factual aspects, in view of availability of the effective remedy of statutory appeal, under Section 127 of the Act. it is brought to notice of this court that, the petitioner had already approached the appellate authority under Ext.P10 appeal and Ext P11 petition seeking exemption from payment of pre-deposit of 50%. In view of the above observations and findings, this court is of the opinion that the appellate authority has no power vested on it to grant waiver of the pre-condition for deposit of 50%. Having considered the fact that, the petitioner was pursuing challenges against the assessment in this writ petition, it is only just and proper to permit the petitioner to pursue the appeal after satisfying the pre-condition of deposit." Accordingly, the appellant

remitted 50% of the bill amount but failed to approach the Deputy Chief Engineer, Electrical Circle, Ernakulam as directed by the Hon. Court. Meanwhile, on 15-11-2013, the appellant had requested the Assistant Engineer to dismantle the service connection, but he remitted the dismantling charges only on 21-02-2014.

The main grievance of the appellant is that the CGRF had not looked in to the causes and incidents leading to the issuance of the short assessment bill which is not tallying with the available voltage then and there in the locality and the date of acquiring the electrical equipments or the date of starting the resort. But the appellant had not produced any sufficient evidence regarding the date of acquiring the electrical equipments or the date of starting the resort etc.

Further it is admitted that the appellant did not file any appeal before the appellate authority under Section 127 of the Electricity Act. Since the bill raised under Section 126 based on allegation of unauthorized connected load of electricity falls under the exception clause 2 (f) (vii) of the Regulations, the CGRF / this Authority does not have any authority to entertain this complaint. The appellant's remedy was only to file an appeal before the Statutory Authority under Section 127 of the Act. Section 127 (I) of the Electricity Act, 2003 reads as follows:-

***“127. Appeal to appellate authority:- (1) Any person aggrieved by a final order made under Section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.”***

Instead of filing appeal before the aforesaid statutory authority as ordered by the Hon. High Court of Kerala, the appellant herein approached first the CGRF and thereafter this Authority. The appellant was given an opportunity by the Hon. High Court to settle the issue as detailed above. Moreover, the appellant has not availed the facility of the one time settlement offered to him by the Licensee. The CGRF / Electricity Ombudsman has no jurisdiction to entertain complaints relating to unauthorized use of electricity as provided under Section 126 of the Act, in view of the bar under Sub Clause (vii) (I) of Clause 2 (f) of the Regulations. It is therefore held that the remedy available to the appellant is only an appeal before the Statutory Authority under Section 127 and that this appeal petition is not maintainable before this Authority.

**Decision**

From the analysis done and conclusions arrived at, I take the following decision.

Since a final decision was taken by the Hon. High Court of Kerala in the subject matter and directed the appellant to prefer an appeal before the Appellate Authority by remitting 50% of the short assessment bill, under Section 127 of the Electricity Act, 2003 and this Authority lacks jurisdiction to entertain the cases under Section 126 of the Act, the petition is dismissed. The appellant can approach the Appellate Authority for the redressal of his grievances. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/024/2018/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Syriac Kurian, Malayil House, Thattekkadu P.O., Kothamangalam, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kothamangalam, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.