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

APPEAL PETITION No. P/028/2018
(Present: A.S. Dasappan)
Dated: 25th July 2018

Appellant	:	Sri. Tomy Njarakulam Director, Balanagar Technical Institute, Industrial Training Centre, Mookkannur, Angamaly, Ernakulam
Respondent	:	The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Angamaly, Ernakulam

ORDER

Background of the case:

The appellant represents, Balanagar Technical Institute, Mookkannoor, Angamaly which was having two numbers of Low Tension electric connections for separate buildings with consumer No.65 under LT-IV and Consumer No. 473 under LT-VI-B with sanctioned load of 52 KW and 45 KW respectively under Electrical Section, Mookkannoor. The appellant is running an educational institution. APTS inspected the premises on 8.2.1999 and alleged that there is additional load of 28 kW in regard to consumer No.65 and alleged that there is unauthorized load of 143 kW to consumer No.473 and thereafter penalty was demanded. The matter was taken up before the Appellate Authority by the appellant and the Authority dismissed the petition. Being aggrieved, the appellant challenged the demands before the Hon. High Court of Kerala vide WP (C) No. 18844 of 2007 and the Court allowed the writ petition fixing the liability only on fixed charges as per judgment dated 22-03-2012. Since the Writ petition was decreed in favor of the appellant, the respondent filed appeal against the judgment and the Hon'ble High Court vide judgment dated 29-10-2014 in W.A No.294/2014, filed by the KSEB held that, the regulations issued by the KSEB cannot be applied retrospectively and allowed the writ appeal whereby the liability was fixed both on energy charges and fixed charges. Consequent to the demand notices issued, the appellant again approached the Hon'ble High Court challenging the demand dated 22-06-2015 and the Hon'ble High Court as per judgment dated 09-07-2015 in W.P. (C) No. 20511/2015 held that, the appellant can be saddled with liability only from 29-10-2014 to pay the interest and further directed the appellant to pay the amount in 4

equal monthly installments. The judgment dated 09-07-2015 in W.P.(C)No.20511/ 2015 was challenged before the Division Bench of the Hon'ble High Court by the KSEB as W.A.No.1330/2014 and the Division Bench allowed the writ appeal filed by the KSEB and directed to reconsider the entire matter. Again the appellant filed RP.No.55/2017 against the judgment dated 07-10-2016 in W.A. No.1330/2014 and the Division Bench allowed the review and directed to grant the benefit of the Board Order dated 17-02-2012 to settle the entire liability. Accordingly the respondent issued a demand notice to the appellant, demanding a sum of Rs. 21,13,492/-. The appellant filed an objection against this demand and considering the objection the demand was reduced to Rs. 17,12,123/- by the respondent. There upon the appellant filed a complaint before the CGRF, Ernakulam, which was disposed of, by directing the respondent to collect the arrear amount excluding the compounding interest and to allow one time settlement as ordered by the Hon. High Court, vide order No. OP73/2017-18 dated 31-03-2018. Aggrieved by the order of the CGRF, the appellant has submitted this appeal petition before this Forum.

Arguments of the appellant:

The appellant has submitted the following arguments in his appeal petition.

The appellant have two consumer numbers for separate building with consumer No.65 under LT-IV and Con.No.473 under LT-VI-B with sanctioned load of 52 KW and 45 KW respectively. APTS inspected the premises on 8.2.1999 and alleged that there is additional load of 28 KW in regard to consumer No.65 and alleged that there is unauthorized load of 143 KW to consumer No.473 and thereafter penalty was demanded. The matter was taken before the appellate authority who declined to interfere with the penalty. Thereafter unconscionable amount was demanded both on fixed charges as well as on energy changes, which was stayed by the Hon'ble High Court. Thereafter the Hon'ble High Court allowed the writ petition fixing the liability only on fixed charges as per judgment dated 22-03-2012 in W.P.(C)No. 18844/2007. The relevant portion of the judgment is quoted hereunder:-

"2. The question raised is whether the Board is entitled to recover penal charges for energy consumption for unauthorized load. This court has taken the consistent view that under the Conditions of Supply of Electrical Energy penalty for unauthorized load can be levied only on fixed charges and not on energy charges. Therefore, I have no hesitation to remit the matter to the assessing authority/ 4th respondent to recalculate the penalty on fixed charges and while recalculating the penalty this shall be taken into consideration. Entire assessment can be made so that the petitioner can pay the amount before 31st March, 2012. The interest on penalty can be charged based on Circular dated 17-02-2012 B.O. No. 387/12. In order to avoid delay, let the petitioner appear before the assessing authority/4th respondent on 26th March, 2012". Though the appellant appeared before the 2nd respondent on 26-03-2012, then officer in charge stated that they have no instruction and they have filed appeal against the judgment in W.P. (C)No. 18844/2007.

3. Thereafter the Hon'ble High Court vide judgment dated 29-10-2014 in W.A. No. 294/2014, filed by the KSEB held that, the regulations issued by the KSEB cannot

be applied retrospectively and allowed the writ appeal whereby the liability was fixed both on energy charges and fixed charges.

4. Consequent to the passing of judgment in Writ Appeal No.294/2014, the respondent demanded unconscionable amount on the appellant on 22.6.2015 to the tune of Rs. 7,40,504/- and Rs. 29,54,384/- to Con. Nos. 65 & 473 respectively. Since the demand is without following the Board Order dated 17-02-2012 and also on other grounds appellant approached the Hon'ble High Court challenging the demand dated 22-06-2015 and the Hon'ble High Court as per judgment dated 09-07-2015 in W.P. (C) No. 20511/2015 held that, the petitioner can be saddled with liability only from 29.10.2014 to pay the interest and further directed the petitioner to pay the amount in 4 equal monthly installments. As directed by the Hon'ble High Court, the appellant remitted the principal amount and interest from 29-10-2014 in 4 equal monthly installments.

5. However the judgment dated 09-07-2015 in W.P. (C)No.20511/2015 was challenged before the Division Bench of the Hon'ble High Court by the KSEB as W.A. No. 1330/2014 and the Division Bench allowed the writ appeal filed by the KSEB and directed to reconsider the entire matter. In this judgment, the Hon'ble High Court held that, "The appellants are directed to issue a notice to the respondent consumer indicating its liability and giving an opportunity to file its objections and also giving an opportunity of hearing and then pass fresh orders".

6. Appellant herein filed RP.No.55/2017 against the judgment dated 07-10-2016 in W.A.No.1330/2014 and the Division Bench allowed the review and directed to grant the benefit of the Board Order dated 17-02-2012 to settle the entire liability. It is pertinent to note that as per the order dated 07-10-2016 in RP No. 55/2017, the Hon'ble Division Bench extended the benefit of Board order dated 17-02-2012 to the appellant.

7. Though the Division Bench issued certain directions and also further directed to the grant the benefit of the Board Order dated 17-02-2012, the 2nd respondent did not comply with the judgment and issued a letter 10-07-2017 demanding unconscionable amount. As per the letter, the liability as per OTS according to the 2nd respondent comes to Rs. 21,13,492/-. Appellant filed a detailed objection dated 30-08-2017 against this demand.

8. However without properly appreciating the objection, the 2nd respondent again issued a demand partially reducing the interest and demanding a sum of Rs.17,12,123/- as per order dated 18-09-2017.

9. Challenging the demand dated 18-09-2017, the appellant approached the CGRF, Ernakulum by filing OP.No.73/2017-18, taking various contentions.

The sanctioned load of Con. No. 65, at the time of APTS inspection dated 08-02-1999 is 52 kW under LT-IV industrial tariff. The fixed charges during 1999 is Rs.35/- per kW. Therefore the fixed charges for monthly bill will be only Rs. 1,820/-, (52 x 35 = 1820). A perusal of the bill during the relevant period will show that the fixed charges demanded is Rs. 3,640/- i .e. double the amount on fixed charges.

Thereafter the tariff revision took place with effect from 10.8.2001 and fixed charges was enhanced to Rs.45/- per KW, that means the fixed charges for 52 x 45 = Rs. 2,340/- where as from 9/2001 KSE Board demanded Rs. 4,680/- by way of fixed charges i.e. double the rate and there is over charged amount of Rs. 2,340/- on every month which is liable to be refunded. Though thereafter tariff revision took place on 1/10/2002, there was no enhancement on fixed charges of LT-IV commercial tariff consumers are concerned. Subsequently as per bills it is seen that fixed charges have been enhanced to Rs. 6,084/- pursuant to enhancement of tariff revision (appellant is unaware of the date of revision of the tariff). The same method was adopted for demanding fixed charges till 6/2008. The overcharged amount is calculated below:

1820 x 30 (3/1999 to 8/2001 for 30 months)	=	Rs. 54,600/-
2340 x 38(9/2001 to 10/2004 for 38 months)	=	Rs. 88,920/-
3042 x 43 (11/2004 to 5/2008 for 43 months)	=	Rs. 1,30,806/-

Total (for 111 months)	=	Rs. 2,74,326/-
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Con. No.473 is given under LT-VIB tariff with sanctioned load of 45 kW at the time of inspection that is 08-02-1999. Normal bill up to the date of inspection ought to have been as per the existing rate is only Rs. 35/- that is 45 x 35= Rs. 1,575/-. However the fixed charge is demanded @ 7,645/- from 3/1999 to 5/2008. Thus the respondent over charged to the tune of Rs. 6,070/- every month on fixed charges alone. The total amount over charged is calculated as follows:-

6070 x 111 (from 3/1999 to 5/2008 for 111 months) - Rs. 6,73,770/-

Thus the over charged amount for consumer Nos.65 and 473 comes to Rs. 9,48,096/- (Rs. Rs. 2,74,326/- + Rs.6,73,770/-). Hence appellant also demanded refund of the above amount along with interest as per Regulation 158(16) of the Kerala Electricity Supply Code, 2014.

However without considering the above aspects, the 2nd respondent issued another calculation stating that an amount of Rs. 2,02,693/- is due from Con. No.65 and Rs. 8,15,164/- is due from Con. No. 473. While calculating the arrear statement, the 2nd respondent did not consider the objection and also the request for the refund of the overcharged amount.

Thereafter the CGRF without looking into the objections raised by the appellant and even without applying the mind with regard to the allegation of overcharging passed an order by stating that the arrear amount shall be collected excluding compounding interest and also stated that the appellant should be given the benefit of One Time Settlement. However with regard to the question of refund of Rs. 50,000/- remitted as well as overcharged amount is not at all considered by the Forum.

A. The order passed by the CGRF, Ernakulam is without looking into the contentions raised by the appellant in its true perspective and hence liable to be set aside.

B. The demand was reduced from Rs. 17,12,123/- to Rs. 5,73,749/-. Thereafter the demand was raised to Rs. 10,17,857/-, since appellant filed objection demanding refund of overcharged amount. To wreck vengeance to that argument, the 2nd respondent unconscionably enhanced the demand from Rs. 5,73,749/- to Rs. 10,17,857/- that too without giving credit of the amount deposited by the appellant as directed by the Hon'ble High Court. The attempt on the part of the 2nd respondent is illegal and tainted with malafide. The CGRF also failed to take note of the same while passing its order.

C. During the pendency of the complaint before the CGRF, the appellant got certain bills regarding the remittance and hence submitted a detailed objection as directed by the CGRF contenting that there is overcharging by the licensee and the said amount is liable to be refunded with statutory interest. However the respondent was not amenable to the same and CGRF also did not look into those aspects. The stand of the CGRF is contrary to the provisions of law and hence liable to be set aside.

D. As per Board order dated 17.2.2012, the principal amount in full has to be remitted in One time for getting the benefit of the scheme and after remittance of the principal amount, the penal interest is reduced to be 5% for settlement. Settlement of outstanding arrears of interest at 3% will be allowed for reopening/for final settlement of closed industrial unit. In the case on hand, it can be seen that the principal liability as per the calculation dated 22.6.2015 is Rs. 2,56,601/- and Rs. 10,31,289/- as far as Con.nos.65 & 473 respectively. However in the light of the subsequent documents, even the principal liability fixed as stated above is contrary to the fact since there is overcharging. The entire principal liability (alleged) along with interest is remitted pursuant to the court direction and remitted an amount of Rs. 2,56,601/- and Rs.10,31,289/- along with Rs. 34,642/- and Rs. 1,39,225/- as interest. Thus in the light of the Board Order, the appellant remitted the principal amount and interest and what is remaining is only regarding the interest to be calculated as per the Board order dated 17.2.2012 basing on which the appellant need to pay the interest @3. Hence the calculation of the arrears by the respondents is illogical and without properly understanding the Board order and the directions issued by the Hon'ble High Court. Appellant had remitted a sum of Rs. 50,000/- pursuant to the judgment dated 26.3.1999 in OP No.8150/1999 which is also not given credit. The CGRF also failed to take note of the relevant aspects.

E. Being a statutory authority, CGRF is duty bound to consider the issue regarding overcharging and the appellant is entitled to get refund of the overcharged amount as per Regulation 158 (16) of the Kerala Electricity Supply Code 2014.

The appellant requests the following reliefs.

i. Set aside demands issued on 10-07-2017, 18-09-2017, 08-03-2018 and order dated 31-03-2018 of CGRF, by issuing appropriate orders.

ii. Direct the 2nd respondent to refund an amount of Rs.9,48,096/- which is overcharged from the appellant during the period from 3/1999 to 5/2008 along

with interest as per Regulation 158(16) of the Kerala Electricity Supply Code, 2014.

iii. Direct the 2nd respondent to furnish how the enhanced amount was demanded on the consumer on fixed charges from 3/1999 to 5/2008 on Con.Nos.65 & 473 respectively.

iv. Direct the 2nd respondent to furnish a detailed calculation as to how the 2nd respondent has reached the amount calculated in demand notice dated 08-03-2018 year wise and month wise.

v. To award cost of these proceedings

vi. To grant such other reliefs that may be deemed just and proper.

Arguments of the respondent:

In an inspection conducted the premises of consumer numbers 65 and 473 by APTS on 08-02-1999, it was revealed to have been using unauthorized additional load of 28kw and 143 kW respectively. Holding that it was a case of misuse of energy and practice not in compliance with the pertinent rule of supply act, APTS directed this office to issue the penal bills to these consumer numbers. On 20-02-1999 the respondent issued penal assessment bills (for 6 months) to consumer numbers 65 and 473 amounting to Rs. 19,378/- and Rs. 1,07,672/- respectively.

Considering the petition of consumer against these bills, the Honourable High Court of Kerala in its judgment on 26.03.1999 directed the Board authority to consider the objections raised by the consumer. Examining the assessed bills and the objections raised by the consumer at the personal hearing held on 28-12-1999 by the Chief Engineer (HRM) and found no fault with the bill assessment but a slight discrepancy in calculating connected load of consumer number 473 and directed the respondent to revise this bills accordingly. Revised bills to consumer Nos. 65 and 473 amounting to Rs. 11,492/- and Rs. 26,139/- respectively were issued to these consumers on 16-06-2000.

Challenging these bills the consumer again approached the Hon'ble High Court. In a judgment on 02.03.2006 in O.P. No. 17786/2000, the above bills and the order of Chief Engineer, HRM which directed the respondent to issue revised bills were quashed and directed the Board to consider the matter in the light of the judgment in WA No. 1231/03.

As per the judgment of the Hon'ble High Court, revised bills from 02/1999 to 04/2007 were issued to the consumers on 13-06-2007. The bill amount to consumer number 65 was Rs. 2,47,423/- and to consumer number 473 was Rs. 10,26,345/- . The detailed calculation is as follows:

Revised Penal bill and current charge from 2/1999 to 2/2003	551659
FC from 3/2003 to 4/2007	315900

Total	867559

Less Current charge remitted from 2/1999 to 2/2003	339804	
Less FC remitted from 3/2003 to 4/2007	280332	
Total		620136

Balance amount		247423

Revised Penal bill and current charge from 2/1999 to 2/2003	1447111
FC from 3/2003 to 4/2007	640750

Total	2087861
Less Current charge remitted from 2/1999 to 2/2003	1061516

Balance amount	1026345
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Consumer has remitted Rs. 100000/- on 17.07.2007 to consumer number 473.

From the calculation cited above, it is clear the penal assessment was done after deducting all the amount remitted by the consumer.

Penal assessment bills from 05/2007 to 01/2008 were issued to the consumer in 03/2008. These bill amounts were Rs. 9178 and Rs.164944 to the consumer numbers 65 and 473 respectively. Consumer has remitted Rs. 60,000/- on 28-05-2008 to consumer number 473. Penalization remained to continue till the regularization of connected load. Consumer regularized the connected load of consumer number 65 by reducing to 40 kW from 80 kW on 10-06-2008 and connected load of consumer no. 473 to 45 kW from 139 kW on 03/2010 as per rules.

In consumer number 65 the total penal amount pending is Rs. 2,56,601/- and in consumer number 473 is Rs. 10,31,289/-.

The consumer again filed a petition WP(C) 20211/2015 before the Hon'ble High Court of Kerala. The Hon'ble Court vide judgment dated 09.07.15 has disposed the petition, declaring that the petitioner was liable to pay principal amount and interest, but interest only with effect from 29-10-2014. The appellant was also accorded sanction by the Court to pay the principal amount and interest in four equal monthly installments. Since the consumer is liable for payment of interest for the entire period, the Board filed an appeal before the Hon'ble High Court against the judgment in WP (C) No. 20511/2015. In the judgment, it is declared that the consumers are entitled to levy penal charges on energy charges as well. Meanwhile, the consumer remitted Rs. 2,91,240/- in four installments against consumer number 65 and Rs. 11,70,512/- against consumer number 473. In the judgment in WA 1330 of 2014 in WP(C) 18844/2007, the Hon'ble High Court of Kerala directed the K S E Board to issue notice to the respondent consumer indicating its liability after hearing the petitioner. A liability notice was issued to the consumer and in reply to the notice informed this office that a review petition has been filed for modification in the judgment in WA 1330/2014. The review petition was disposed vide judgment dated 28-02=2017 extending OTS benefit to the consumer. The K S E Board accorded sanction for the compliance of judgment.

As per direction OTS interim bill was issued to the Consumer numbers 65 and 473. The interest rate for OTS arrears will be reduced only after the settlement of principal amount. A notice was issued to the consumer on 30-10-2017, based on a letter received from the consumer dated 30-08-2017, from the respondent's office indicating all these about OTS along with a bill to remit the principal amount to avail the OTS.

1. As per Board Order dated 17-02-2012, the consumer has to remit principal amount in full for getting the benefit of OTS Scheme and the penal interest for settlement is 5% and 3% interest is allowed only for the re-opening /final settlement of closed industrial units. The consumer is not a closed industrial unit. Hence 3% cannot be allowed to the consumer. The Court direction as indicated by the consumer was later quashed by the Hon'ble High court allowing KSE Board to levy penal charges for the entire period. The actual amount to be remitted by the consumer against consumer number 65 during 6/2015 was 740504/-(256601 + 483903 surcharge). The consumer remitted only Rs. 2,91,240/- and that was adjusted against the outstanding surcharge amount as per the prevailing rules in KSE Board. The amount to be remitted against consumer number 473 during 6/2015 was Rs. 29,54,384/- (10,31,289+19,23,085). In the same way, the amount remitted Rs. 11,70,512/- was adjusted against the outstanding surcharge. So the claim of the consumer that he had remitted all liabilities is not existing. The consumer has to remit the balance amount outstanding against the consumers.

2. As per judgment in W.A. No. 1330 of 2014 of the Hon'ble High Court of Kerala clearly stated (para 4) levy of penal charges at the relevant time, was governed by the provisions of clause 42 of the Conditions of Supply of Electrical Energy. Till Clause 42 (d) was amended with effect from 18.09.2012, it was permissible for the Board to levy penal charges both on fixed charges and on energy charges. In this case, the inspection by the APTS was on 08.02.1999. This means that the period in question was governed by the unamended provisions of Clause 42(d) of the conditions of Supply of Electrical Energy. If that be so, Board was entitled to levy penalty on energy charges also. After the judgment in 1231/2003, the penalty for energy charge was not levied i.e. from 4/2003. Hence it is prayed that the consumers may be directed to remit the liability outstanding against the consumers.

The recalculation of the arrear claim was carried out as per the order of CGRF with the specific direction that the arrear amount shall be collected excluding the compounding interest. The same has been submitted to the Division for compliance sanction from the Board.

Analysis and Findings

The hearing of the case was conducted on 05-06-2018, in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri. Julian Xavier, Advocate, represented the appellant's side and Smt. Elizabath Mini, Assistant Executive Engineer, Electrical Sub Division, Angamaly, represented the respondent's side. On perusing the Appeal Petition, the counter of the respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The pertinent facts of the case are as follows:

The appellant is an educational institution having two consumer numbers bearing Numbers 65 under LT IV and 473 under LT VI B. The appellant was penalized under Sec. 126 of Electricity Act, 2003, for connecting extra load than the sanctioned load. That is to say, consumer had availed 28 KW of unauthorized additional loads (UAL) in the premises of consumer no. 65 and 143 KW in the premises of consumer number 473, which was detected during the APTS inspection done on 08-02-1999. Penal bills for six months amounting to Rs.19378/- and Rs.107672/- respectively were served on the appellant, on 20-02-1999. The appellant approached the Appellate Authority against these demands, but the Authority declined to interfere with the penalty imposed. Challenging the demands, the appellant have approached the Hon. High Court of Kerala by filing a number of writ petitions in OP No. 8150/99, OP No. 17786/2000, W.P. No. 18844/2007, W.P. No. 13731/2008, W.P. No. 20511/2015 and RP. No. 55/2017 in W.A. No. 1330/2014. The respondent had filed a writ appeal in W.A. 294/2014 against judgment dated 22-03-2012 in W.P. No. 13731/2008. The Hon'ble High Court vide judgment dated 29-10-2014 in W.A No. 294/2014, it was held that, the regulations issued by the KSEB cannot be applied retrospectively and allowed the writ appeal whereby the liability was fixed both on energy charges and fixed charges. On the basis of this judgment, the appellant was issued demand notices to the tune of Rs. 7,40,504/- and Rs. 29,54,384/- to consumer numbers 65 and 473 respectively. The appellant again approached the Hon. High Court by filing W.P. No. 20511, in which vide judgment dated 09-07-2015, it was held that the appellant can be saddled with liability only from 29-10-2014 and to pay the interest in 4 equal monthly installments. The respondent challenged the judgments in W.P. No. 18844/2007 and W.P. No. 20511/2015 by filing writ appeals Nos. 1330/2014 and 577/2016 respectively. In a common judgment in these writ appeals, it was observed that "levy of penal charges at the relevant time, was governed by the provisions of clause 42 of the Conditions of Supply of Electrical Energy. Till Clause 42 (d) was amended with effect from 18-09-2012, it was permissible for the Board to levy penal charges both on fixed charges and on energy charges. In this case, the inspection by the APTS was on 08-02-1999. This means that the period in question was governed by the unamended provisions of Clause 42(d) of the conditions of Supply of Electrical Energy. If that be so, Board was entitled to levy penalty on energy charges also." Appellant had filed RP. No. 55/2017 against the judgment dated 7.10.2016 in W.A.No.1330/2014 and the Hon. Court directed to grant the benefit of the Board Order dated 17.2.2012 to settle the entire liability. The liability as per OTS according to the respondent comes to Rs. 21,13,492/-. Appellant filed a detailed objection dated 30.8.2017 against this demand and the respondent again issued a demand reducing the interest and demanding a sum of Rs. 17,12,123/- as per order dated 18.9.2017.

This appeal petition has been filed with the main prayers of;

i. To set aside demands issued on 10-07-2017, 18-09-2017,08-03-2018 and order dated 31-03-2018 of CGRF.
ii. To direct the respondent to refund an amount of Rs.9,48,096/- which is overcharged from the appellant during the period from 3/1999 to 5/2008 along with interest as per Regulation 158(16) of the Kerala Electricity Supply Code, 2014.

iii. To direct the respondent to furnish how the enhanced amount was demanded on the consumer on fixed charges from 3/1999 to 5/2008 on Con.Nos.65 & 473 respectively.
iv. To direct the respondent to furnish a detailed calculation as to how the respondent has reached the amount calculated in demand notice dated 08-03-2018 year wise and month wise.
v. To award cost of these proceedings.

vi. To grant such other reliefs that may be deemed just and proper.

After hearing both parties, the Petition decreed by the CGRF in brief, was as follows;

1. "The respondent shall collect the arrear amount excluding the compounding interest.
2. One time Settlement benefit shall also be given to the petitioner as ordered by the Hon'ble Court"

The main dispute of connecting unauthorized additional load in the premises is tantamount to "unauthorized use of electricity" under Section 126 of Electricity Act, 2003. The APTS inspected the premises of the appellant on 08-02-1999 and detected additional load in the premises. Where a consumer has used excess load than sanctioned, it is violation of the T & C of supply prevailed at that time, and it would fall under Section 126 of the 2003 Act. The Assessing officer has to pass provisional assessment and to hear objections if any and has to pass final order of assessment, in cases of unauthorized use of electricity. Any dispute or complaints pertaining to such matters are not maintainable before the CGRF and the Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. The Hon High Court has also made it clear that, when there is specific provisions in the Act itself, to hear such Cases by designated Appellate Authority, the same are excluded from the purview of Ombudsman. As such, I have not gone deep into the merits of other points raised by the appellants in the Petition.

The Hon'ble Supreme Court of India in the Executive Engineer & Another Vs M/s Seetharam Rice Mill [(2011) STPL (web) 942] has held unambiguously that the provisions of Section 126 read with 127 of the 2003 Act, in fact, becomes a code in itself. Section 126 of the Act would be applicable in cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorized use of electricity". If a person unauthorisedly consumes electricity, then he can certainly be dealt with in accordance with law and penalty may be imposed upon him as contemplated under the contractual, regulatory and statutory regime (Para 43). The reference of category in section 126 (6) fully substantiate the view that we have taken that change of category by consumption of excess load will automatically bring the defaulter within the mischief of Explanation to Section 126 (6) (Para 51). From the position of Law and the consistent stand taken by the apex court, it is clear that the appellant is only entitled for statutory remedies under section 126 and 127 of the Electricity Act 2003 and have no other alternate remedy.

This appeal is not maintainable in law for the reason that the subject matter is beyond the jurisdiction of this Authority. Law has vested the exclusive right to examine the bill on the Assessing Officer U/s.126 and the Appellate Authority U/s 127 that has ample powers to examine whether the calculation in the bill is appropriate or not. No other authority can transgress into their exclusive domain as held by the Apex Court.

I feel that since the petitions and appeal petitions were filed by the appellant and the respondent before the Hon High Court and the Court has pronounced its verdict and as such, the Order is primarily binding on both parties and the petitioner to make the electricity charge payment owed by him. The disputed bill falls under the provisions of the previous Electricity Supply Code 2005, Terms & Conditions of Supply and Electricity Act, 2003. The Regulations of Kerala Electricity Supply Code 2014 is not applicable in this case. The dispute pertains to the calculation of the penalized amount under Section 126 and the interest thereon.

In case of violation under Section 126 of the Act, for imposing penalty on the energy charges, the practice is that the total energy consumed is apportioned in proportion to the additional load availed and penalty is imposed for that part of energy which is assumed to be consumed on the portion of UAL connected. But the Hon. Kerala Electricity Regulatory Commission while disposing the Petition No. DP/75/2009 has held that; *"the difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty".* Hence I feel that the appellant need be assessed for the proportionate energy charges using this method only.

The contention of the appellant is that the calculation applied for raising the penal bill is wrong, for which the Hon High Court of Kerala has taken a position that – *'when the regulations specifically exclude the jurisdiction of the CGRF on all disputes pertaining to bills raised under Sec.126 of the Act on allegation of unauthorized use the only remedy available to the appellant against such bill is to file an appeal under Section 127 before the statutory authority'.* The said ruling make it clear that CGRF and Ombudsman are barred from entertaining the related part of the bill raised under section 126 and accept the same. But I feel that the Assessing officer needs to review the case to do natural justice.

Decision:

Since in this case, the grievance has arisen out of the detection of unauthorized load and the penal assessment made under Section 126 of the Electricity Act, 2003, it is clear that the petition itself is not maintainable before the CGRF or the Electricity Ombudsman as per the KSERC Regulations. That is any dispute or complaints pertaining to such matters are not maintainable before the CGRF and Electricity Ombudsman, as per Clause 2(1)(f)(vii)(1) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. The Hon High Court of Kerala has also made it clear in the Catholic Reformation Literature Society Vs. KSEB [2011 (1) KHC 457] that, when there is specific provisions in the Act itself, to hear such cases, the same are excluded from the purview of CGRF and hence before the Electricity Ombudsman. Hence I decide

that the Appeal Petition filed before this Authority by the appellant is not maintainable.

The appellant is free to approach the licensee for a one time settlement or to file an appeal against the final assessment of the Assessing Officer, under Section 127 of Electricity Act, 2003.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants' stands disposed of with the said decisions. No order on costs.

ELECTRICITY OMBUDSMAN

P/028/2018/ /Dated:

Delivered to:

1. Sri. Tomy Njarakulam, Director, Balanagar Technical Institute, Industrial Training Centre, Mookkannur, Angamaly, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Angamaly, 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.