

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/064/2024 (Present A. Chandrakumaran Nair) Dated: 20-12-2024

Appellant : Sri. Joe.I. Mangaly, Managing Partner,
M/s Mangaly Timber & Furniture
BOC College, By pass Road,
Palakkad - 678014

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSE Board
Ltd., Kalpathy, Palakkad (Dist.)

ORDER

Background of the case

The appellant Shri. Joe Mangaly is the Managing Partner of Mangaly Timber and Furniture engaged in manufacture of PET bottles. The Service Connection was given on 13/08/1987 and the name of the firm was M/s Lal Kamal Canning Industry. The ownership has been changed to Mangaly Timbers on 12/12/1996 based on the partnership formation on 11/11/1996. The sanctioned load was 42HP. APTS had conducted an inspection on 02/11/1997 and found that an unauthorized load of 38KW was connected to the system. The bill has been issued for Rs.11.09 lakhs as short assessment As the load was exceeded 100KW the billing was done as a deemed HT Consumer. The pre-92 tariff has been extended to the appellant for a period from 08/12/1996 to 07/12/2001 and the connected load declared was 92 HP. An OP was filed to the Hon'ble High Court of Kerala as OP/5887/1997 that 3500units was insufficient against the requirement of 16,800 units. The Hon'ble High Court of Kerala has disposed this OP on 01/04/1997 directing the License to pass an appropriate order after hearing the petitioner. The

appellant has requested for the segregation of partial load to DG set on 02/03/1990 and the same has been approved by the Licensee. The appellant has raised complaint about the revising of bill as Deemed HT Consumer on 19/03/1999. Then the load has been reduced to 56.02KW on 01/08/1999 and the remaining load is connected to DG sets.

APTS has conducted another inspection on 16/09/2002 and noticed the unauthorized additional load of 31KW and the Licensee has issued the penal bills. This has been challenged in OP/31685/2002 in the Hon'ble High Court of Kerala. Next surprise inspection was conducted by APTS Trivandrum team on 24/11/2005 and found that one of the CT (Y-Phase) was not functioning and the insulation was burnt and damaged. A site mahazer was prepared and a short assessment bill for Rs. 3,56,598/- was issued. This assessment was done for 6 months on retrospective effect: This Short assessment bill was challenged by the appellant vide WP©/34317/2005 in the Hon'ble High Court of Kerala. The Court has directed Assessing officer to issued the Order after Conducting a Hearing. The Assessing Officer Conducted the hearing and issued order dated 04/01/2006. The order of the Assessing Officer was also challenged vide WP©/1759/2006 in the Hon'ble High Court of Kerala which has been disposed directing the Deputy Chief Engineer to revise the bill considering the average consumption for 01/2004 to 03/2006 and refund an amount of Rs. 18,909/- for double metering applicable from 26/06/2005 to 29/12/2005. The writ appeal filed by the Licensee vide WA/223/2006 in WP©/1759/2006 has been disposed directing the appellant to pay Rs.50,000/- and appeal before Deputy Chief Engineer, Kozhikkode. The Hon'ble High Court of Kerala has also directed the appellant to file petition to statutory authority which Electricity Appellate Authority after depositing 1/3 of the assessed amount as per Section 127 of the Electricity Act 2003. Appellate authority had taken a decision for upholding the bill. The appellant filed petition to CGRF numbered as 05/2006 as per Section 42(5) of the Electricity Act 2003 during the pendency of case in Appellate Authority. CGRF issued order upholding parts of petitioners claims. Then appeal petition was filed before Kerala State Electricity Ombudsman which numbered as P/08/2007. The Ombudsman issued order on 1/06/2007 limiting the short assessment bill to two months and extending the double metering claim period from six months to two years. The Licensee and the Consumer challenged the order of Ombudsman vide WP©26868/2009 and WP©/5466/2012. The order issued on 09/10/2018 by setting aside the Ombudsman order and directing to reconsider.

The appellant filed a suite vide 05/286/2006 to the Sub Court seeking prohibitory injunction against disconnection and refund of excess charges. OP/31685/2002 has been disposed and then again challenged in WA/1614/2007. In WA/1614/2007, the Hon'ble High Court issued order on

29/10/2014 and held that the amendment to Regulation 42(d)(1990) was found to be prospective and have applicable from the date of order. Penalty on both Fixed charge and Energy charges was upheld. The power was disconnected on 01/12/2015 and dismantled on 27/03/2017.

The Licensee has issued fresh bills as per the ruling in WA/1614/2007 on 09/07/2015. Again this bill was challenged in the Hon'ble High Court of Kerala in WP©/25292/2015. The Ombudsman had reviewed the order as per the direction of the Court and issued order on 16/06/2020, where is the short assessment bill was revised and reduced to Rs. 70,499/- and directed to refund the amount with interest. The revised bill has been issued on 09/10/2020 by the Licensee. Then again this revised bill was challenged as per WP©/1450/2021. Parellely approached CGRF on 30/09/2021 and petition was filed as OP/127/2021 and the bills were upheld. Then the appeal petition was filed to the Kerala State Electricity Ombudsman hiding the fact that the case was pending in the Court which is filed on P/063/2022. The Electricity Ombudsman dismissed and issued order dated 08/11/2022 as the case was not maintainable as the same petition was pending to the Court: The petition WP©/1450/2021 was disposed directing to avail the statutory remedy as the appellant stated that the case is pending with the Electricity Ombudsman. The Electricity Ombudsman had issued order on 08/11/2022. But the appellant has not stated the correct status to the Court, while issuing the order. If the appellant would have properly briefed the status of the case with the Ombudsman the Court would have considered the matter the order would have issued accordingly.

On examining the case in detail, it is understood that prayers of the appellant has been addressed /settled at various orders of Court and of the Fora. The present petition filed is to set aside the bills issued by the Licensee dtd 09/10/2020. This demand notice have been issued based on the orders of Courts, Fora & Ombudsman referred above.

Maintainability of this Appeal Petition

The maintainability of the petition is described in the regulation 38 of the KSERC (CGRF & Ombudsman) Regulation 2023.

38. Maintainability of the representation. - (1) No representation to the Electricity Ombudsman shall be sustainable:

(i) unless the complainant has made a written representation in the specified form, to the Electricity Ombudsman;

(ii) unless the complainant is aggrieved on account of his complaint being not redressed by the Forum within the period and manner specified in these Regulations;

(iii) unless the representation against an order of the Forum was made within the period specified in these Regulations and is not in respect of the same subject matter that has been settled by the Electricity Ombudsman in any previous proceedings;

(iv) in cases where a representation for the same grievance by the complainant is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

The declaration in the Form (B) submitted as appeal petition also states as below

“I/ We, the complainant/s herein declare that:

(a) the information furnished herein above is true and correct and

(b) I/ We have not concealed or misrepresented any fact stated in aforesaid columns and the documents submitted herewith

The undersigned or any of us or any of the parties concerned has not brought the subject matter of the present complaint before the Ombudsman to the best of my/our knowledge and belief

The subject matter of the present complaint is not in respect of the same, which was settled by the Ombudsman in any previous proceedings

The subject matter of the present complaint has not been pending/decided by any Forum/ Court/ Arbitrator/ any other authority”

Some of the Grievances of the appellant is about the non compliance of various order of the Court, CGRF, Ombudsman. If the Court Orders not complied by the Licensee again the appellant has to approach the Court. The orders of CGRF or the Ombudsman are not complied by the Licensee, then the appellant has to approach KSERC.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. In view of the above, this appeal petition is not maintainable and have dismissed and disposed.
2. No other costs sanctioned.

ELECTRICITY OMBUDSMAN

No. P/064/2024/ dated: 20/12/2024.

Delivered to:

1. Sri. Joe.I.Mangaly, Managing Partner, M/s Mangaly Timber & Furniture, BOC College, By Pass Road, Palakkad Dist.- 678014.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd,Kalpathy, Palakkad (Dist.)

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydyuthi Bhavanam KSE Board, Gandhi Rd, Kozhikode - 673032

