

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/07/2025
(Present A. Chandrakumaran Nair)
Dated: 28-03-2025**

Appellant : Sri. P.R.Gireesan
Director, M/s. Woodys' Hotels Pvt. Ltd.,
M.G Road, Ernakulam - 682011

Respondents : 1. The Special Officer (Revenue)
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram
2. The Deputy Chief Engineer
Electrical Circle, KSE Board Ltd.
Ernakulam, Ernakulam(DT)

ORDER

Background of the case

The appellant Shri. P.R.Gireeshan is the Director of M/s. Woodys Hotels Pvt. Ltd., who is an HT consumer of Licensee (KSEBL) under their Electrical Section, College which is coming under the Electrical Circle, Ernakulam. Due to the non payment of current charges, the power connection was dismantled on 21/10/2020. The amount of arrear was worked out to Rs. 48,88,047/- and the same has been remitted by the appellant. There is a petition pending in the Hon'ble High Court of Kerala filed by the appellant to reduce the Electricity Duty @ 10 paise per unit instead of 10% of the energy charges. The Government of India has directed the State Government to consider the tourism as Industry and extend some of the benefits enjoyed by the Industry. The Electricity Duty applicable to the industrial consumer was 10 paise per unit and that of other consumer was @ 10 % of the energy charges. The KSEB was billing with 10% as the Electricity Duty and this has been challenged by the appellant in the High Court. The Hon'ble Court has issued an interim order directing the KSEBL to accept the bill with 10 paise

per unit as the duty till the final order. The difference in this duty was worked out Rs.26,10,839/- and this is the disputed amount. The Licensee had dismantled the service connection and not refunded the security deposit. The 50 % of SD was in the form of Bank Guarantee. The Bank Guarantee has already been expired. The Licensee has not released the Bank Guarantee. The appellant filed petition to CGRF and CGRF issued order dated 29/12/2024. Aggrieved with the order of CGRF, this appeal petition is filed to this Authority.

Arguments of the Appellant

We humbly request your intervention and support to have KSEB return the expired Bank Guarantee which was provided to KSEB, and which has expired on 24 Nov 2018 itself and hence no longer valid. Our bank has also communicated to KSEB seeking the return of the same, and unfortunately there has been no positive action from KSEB. This is impacting our ability to get released the security we had provided to City Union Bank for the issuance of the BG on our behalf to KSEB as well as incurring additional expenses and charges.

The Honourable CGRF as well as KSEB officials fully acknowledge that retaining and holding back an Expired Bank Guarantee will not benefit KSEB in any manner what so ever financially from the Guarantee document itself. The sole reason provided, is there is a High Court case pending related to Electrical Duty charges, and hence they will not return the expired Bank Guarantee, even if it has no financial value to KSEB. They appear to wanting to leverage this as a mode to push us from withdrawing from the case and thus be liable to pay the Disputed Electrical Duty, even before the High court case is completed and judgement order are out.

In light of our continuing to incur expenses as well as loss financially as well as the non-release of the security provided by us to City Union Bank for the issuance of the Bank Guarantee, we insist that we be provided by KSEB a deemed credit of Rs 5,33,270/- towards a security deposit amount which carries interest as per KSEB rules w.e.f 24 Nov 2018, till such time KSEB returns the expired Bank Guarantee, as a relief and as well as a compensation for the hardship faced.

Arguments of the Respondent

The petitioner's firm, M/s. Woodys Hotels (P) Ltd., Ernakulam (LCN 32/3539) was a High Tension consumer in the Electrical Section College, under the jurisdiction of the Deputy Chief Engineer, Electrical Circle, Ernakulam. The service to the consumer was dismantled on 21.10.2020 due to the non-payment of current charge dues. As per system Energize details, the petitioner consumer possesses current charge arrear amounting to

Rs.26,10,841/- without interest as on 23.01.2025 which is under dispute before the Honorable High Court Of Kerala involved in W.P.(C) No.30977/2010.As there were pending arrears in petitioner's account, KSEB Ltd. Initiated the legal procedures for Revenue Recovery action for realizing the undisputed amount. Eventually, the consumer remitted the undisputed amount for Rs.48,88,047/- (Principal with interest) on 02.11.2022, which excluded the disputed amount of Rs.26,10,839/-.

The disputed arrear Rs.26,10,839/- (without interest) is involved in a case, W.P.(C) No.30977/2010. The petitioner is one of the many consumers who is part of the duty case, W.P.(C) No.30977/2010, who started to remit duty @ 10 paise per unit instead of 10% of Energy Charge. The W.P.(C) No.30977/2010 is still pending before the Hon'ble High Court of Kerala. The service connection of the petitioner has already been dismantled. Hence the returning of the Bank Guarantee document can be considered only after the finalization of the pending Court Cases. The request for returning the expired Bank Guarantee from the petitioner was received in this office on 03.10.2024.The Bank Guarantee documents can only be returned as per the outcome of W.P.(C) No.30977/2010 pending before the Hon'ble High Court of Kerala. A reply in this regard has been communicated to the consumer.

As per Regulation 67 of the Kerala Electricity Supply Code, 2014, the licensee may insist to provide security from any person who applies for supply of electricity, except from the consumer who opts to take supply through pre-payment meter and from the domestic consumer belonging to below poverty line category (BPL) so long as his monthly consumption does not exceed thirty units. The conditions for furnishing bank guarantee as security deposit are also given in the Regulation 70 of the Kerala Electricity Supply Code, 2014. It allows the HT and EHT consumers to furnish 50% of the security deposit for the connection in the form of bank guarantee issued by any Scheduled Bank. The provision of refunding security furnished for the service connection is stipulated in the Regulation 71 of the Kerala Electricity Supply Code, 2014, which states that the security deposit shall be refunded to the consumer on termination of the agreement within thirty days after the settlement of all dues payable to the licensee.

As per this regulation, the licensee is bound to refund the security to the consumer on the termination of agreement only after the consumer settles all dues payable to the licensee. In this case, the settlement of dues to the KSEBL has not taken place. As the litigation on the dispute of charging electricity duty is still pending before the Hon'ble High Court of Kerala, the payment of arrear amount continues to remain unsettled. In this context as per the Regulations 71, it is clear that the security deposit shall be refunded to this consumer on termination of the agreement within 30 days after the settlement of all dues payable to the licensee. As the litigation on the dispute of charging electricity duty is still pending before the Hon'ble High Court, the payment of arrear amount remain unsettled.

Considering the above facts, I may request this Honourable forum to accept the contentions raised by the respondent through this statement of facts and dismiss the above complaint with cost to the respondents.

Counter arguments of the appellant

At the outset it is denied that there are any current charge arrears. The only amount is the disputed amounts towards Electrical Duty which is covered in the court case of No.30977/2010 before the Honourable High Court of Kerala. Further the principal amount claimed i.e.: Rs26,10,841/- towards such disputed arrears is not correct, and we have communicated the working as well as sought from the SOR a revised computation of the arrears, based on evidences that we had provided.

It is clearly acknowledged that the Bank Guarantee is expired, and hence there is absolutely no way KSEB can directly gain financially from our Bankers based on an acknowledged expired Bank Guarantee. We have settled all dues that we were liable to pay KSEB including Interest. There are no legally claimable dues by KSEB from us as of date and since 02 Nov 2022. Thus, holding back an expired, financially non usable Bank Guarantee, is absolutely untenable, irrational, and totally against all principle of justice, and against all rules and regulations. This appears to be a clear arm-twisting tactic being adopted to force us to withdraw from the case and thereby expose us to a liability claim that is not determined by the Court as of date to be our liability till date.

In the interest of justice, we once again seek your intervention to have the Bank Guarantee returned to us as well as compensate us for the great inconvenience caused due to irrational justifications cited by the SOR.

Analysis and findings

The hearing of the appeal petition was conducted on 12/03/2025 at 11:00 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant Sri. P.R Gireesan and the respondents Sri. Bijin.J.C, Senior Superintendent, Office of the Special Officer (Revenue) and Sri. Tito.V.William Nodal Officer, Electrical Circle, Ernakulam, Ernakulam(Dist.)

The appellant Shri. P.R.Gireesan has filed this petition as an appeal to the order of CGRF dated 24/12/2024 regarding the service connection of his Hotel namely M/s. Woody's Hotel Pvt. Ltd. The appellant availed an HT service connection (LCN 32/3539) for the functioning of the Hotel. The Hotel was closed down, which would have been caused by poor business. Due to the non payment of regular current charges, the service connection was

dismantled on 21/10/2020. There was a huge arrears on current charges to the Licensee works out to Rs. 48,88,047/-. When the Licensee has initiated Revenue Recovery procedures, the appellant has remitted the full amount on 02/11/2022.

The appellant has filed a petition to the Hon'ble High Court of Kerala WP©/30977/2010 regarding Electricity Duty charged by the Licensee. The Government of India has suggested the Government of Kerala to include the tourism sector in the industrial category and extend all the benefits to promote tourism within the country. This has been agreed by statement and an order was issued in this regard. The concession of electricity duty @ 10 paise per unit as applicable to industrial consumer instead of 10% of the energy charges as applicable to other consumer is one of the benefit. The classified Hotels are eligible to get the concessional duty benefit. The Licensee was billing the Hotels' with Electricity Duty @ 10%. The appellant has challenged this in the Hon'ble High Court of Kerala and accordingly Court has issued an interim order directing the Licensee to accept the payment with 10 paise per unit as Electricity Duty. This has to be continued till the final order of the Court in the petition. The difference in duty payable by the appellant has been calculated by the Licensee and the amount works out to Rs. 26,10,839/-. The amount has been categorized as the disputed amount.

The present case is regarding the non settlement of security deposit after the dismantling of service connections. The appellant has made security deposit in two forms, 50 % as Cash deposit and 50% as the Bank Guarantee. The cash deposit made as Security Deposit and pending with the Licensee is Rs. 5,33,270/-. The Bank guarantee is already expired and it's claim period was also expired over long back. The Bank guarantee would have issued to the appellant by the Bank by keeping some amount as retention money from the appellant. The demand of appellant is to releases the expired Bank Guarantee that this could be submitted to Bank for canceling the same. The Licensee is empowered to collect the security deposit as per the **Section 47** of the Electricity Act 2003.

Section 47. Power to require security.

(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him--

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line

or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

This is also described in the regulation 70 of the Electricity Supply Code 2014.

70. Remittance of security deposit– *The consumer shall remit the security in cash or by cheque or by demand draft or by any other form of remittance as approved by the licensee: Provided that fifty percent of the amount of security deposit in the case of HT and EHT consumers may be furnished in the form of bank guarantee issued by any Scheduled Bank to the satisfaction of the licensee: Provided further that the consumer shall keep such bank guarantee alive throughout the period during which he avails supply of electricity.*

Then the **regulation 71** of the Supply Code 2014 is clearly explained about the refund of security deposit.

71. Refund of security deposit.

(1) The security deposit shall be refunded to the consumer on termination of the agreement within thirty days after the settlement of all dues payable to the licensee.

(2) In the case of delay, interest at bank rate on the first of April of that year shall be payable to the consumer.

(3) The consumer is entitled to get an account closing statement relating to the security deposit.

The regulation states that if the power is dismantled the security deposit is to be refunded within 30 days after the settlement of all dues payable to the Licensee by the Consumer. Here all the undisputed amount has been settled by the appellant. The Court has not taken any decision regarding the disputed amount and as such this amount cannot be treated as outstanding. However the appellant is not demanding the release of the cash portion of the SD which is Rs.5,33,270/-. The request is to release the Bank guarantee which was expired long back. No claim could be made on the expired Bank Guarantee and no bank will entertain any claim made based on the expired Bank Guarantee. The Licensee also agreed in the hearing that there is no value for this Bank Guarantee and Licensee cannot raise any claim based this Bank Guarantee. The expired Bank Guarantee which will be returned to the bank and the bank will cancel the Bank Guarantee and settle the retention money if any held by the Bank. In view of the above as there is no merit in keeping an expired Bank Guarantee, it is to be returned to the appellant.

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. The Licensee shall return the expired Bank guarantee to the appellant.
2. This decision is to be implemented within one month of receipt of this order.
3. No other costs ordered.

ELECTRICITY OMBUDSMAN

No. P/07/2025/_____ dated: 28/03/2025.

Delivered to:

1. Sri. P.R.Gireesan, Director, M/s. Woodys Hotels Pvt. Ltd., M.G.Road, Ernakulam(DT)
2. The Special Officer (Revenue), Vydyuthi Bhavanam, Pattom, Thiruvananthapuram (dt).
3. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd., Ernakulam, Ernakulam(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, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503.