

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/031/2025 (Present A. Chandrakumaran Nair) Dated: 18-06-2025

Appellant : Sri.Asokakumar .K
Kavunkal, T.K.S Puram
Kodungallur, Thrissur(dt)- 680664

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd., Kodungallur,
Thrissur (DT)

ORDER

Background of the case

The appellant Shri. Asokakumar is a consumer of Licensee KSEBL with consumer no. 1156634010755 under the Electrical Section, Kodungallur under LT 1 A tariff. The appellant had installed On Grid Solar Plant on 22/04/2024 and then he had become a Prosumer. The appellant had questioned the method of calculation of Fixed charges by the Licensee. The Licensee is charging fixed charges for the total consumption including the self used energy from the self generated by the solar panel. This way of charging fixed charges is not as per the KSEB (RE & Net metering) Regulation 2020 which states that the energy charges are to be collected only for the net consumption. The appellant had filed the petition to the CGRF and CGRF issued order on completing the procedure on 04/04/2025. Aggrieved by the order of CGRF, this appeal petition is filed to the Kerala State Electricity Ombudsman.

Arguments of the Appellant

I am a solar prosumer availing net-metering facility with 'Grid Interactive Renewable Energy Systems'. In addition to the Fixed Charge payable as a consumer for the electricity supplied by KSEBL, I am also being charged Fixed Charge for the renewable energy produced and consumed by me as a prosumer. This is discriminatory and illegal, and violative of all the relevant laws and regulations pertaining to electricity. I had submitted my complaint in the matter to the A.E. concerned on 17.11.2024, and not satisfied with the reply received from the A.E., I had submitted my grievance in Form A to the Consumer Grievance Redressal Forum of KSEB on 2.1.2025. I had also submitted my contentions orally and in writing to CGRF at the time of hearing on 4.3.2025. However, none of the contentions raised by me orally or in writing at the time of hearing were considered by the Forum or recorded in its Order dt. 25.3.2025. I submit my appeal against this order of the Consumer Grievance Redressal Forum as follows:

Electricity has been affirmed to be "Goods" by a Constitution Bench of the Honorable Supreme Court in its judgment dt. 22.4.2002, Appeal (Civil)-3112/1990, State of A.P. Vs. NTPC Ltd. Section 2(70) of the Electricity Act, 2003 defines "supply" as "sale" in relation to electricity. The Fixed Charge is built on the foundation of Section 45(3) of the Electricity Act, 2003 which says: "The charges for electricity supplied by a distribution licensee may include (a) a fixed charge in addition to the charge for the actual electricity supplied." The Schedule of Tariff contained in Order 427/D(T)2023/KSERC dt. 5.12.2024 states that the Tariff mentioned in the Schedule shall apply to consumers to whom KSEBL has undertaken or undertakes to supply electricity. Both the Electricity Act and the Tariff Order make it clear that supply of electricity is the criterion or prerequisite for charging Fixed Charge by a distribution licensee. It is clear from the above that the Fixed Charge of the domestic consumer is intrinsically and As the inextricably linked to the supply (sale) of electricity by the distribution licensee. structure of Fixed Charge of domestic consumer in Kerala is linked to monthly consumption of electricity, it naturally and inevitably follows that the consumption refers to the electricity supplied (sold) by KSEBL. The definition of "Consumer" in Sec. 2(15) as "any person supplied with electricity" underscores this fact. Fixed Charge has no existence apart from and independent of the Electricity Act, 2003. The structure has no existence independent and apart from the foundation. The Fixed Charge has to be charged according to the provisions of the Electricity Act, 2003, for electricity supplied (sold) by KSEBL. The Fixed Charge cannot be arbitrarily levied for the consumption of electricity NOT supplied (sold) by KSEBL. Besides, the schedule in the tariff order for Fixed Charge refers to "Monthly Consumption" in the case of domestic consumers, and no provision

is made to levy Fixed Charge for the consumption of self-generated solar electricity of the prosumers in the Tariff Orders issued by KSERC dt. 31.10.2023 and 5.12.2024.

The Tariff of Renewable Energy, Net Metering, etc. are governed by the KSERC (RE&NM) Regulations 2020 and its subsequent amendments. Reg. 2(ab) of this Regulation specifically excludes consumers availing net metering facility having 'Grid Interactive Renewable Energy Systems' from paying Grid Support Charges. Reg. 21(3)(ii) of the KSERC (RE&NM) Regulations, 2020 says: In case the electricity supplied by the distribution licensee during any billing period exceeds the electricity injected in to the grid by the prosumer from his renewable energy system, the distribution licensee shall raise a bill for the net electricity consumption at the prevailing tariff, after adjusting any excess electricity banked from the previous billing period. Reg. 3.198 of the KSERC Order on OP No. 18/2023 dt. 5.12.2024 clarifies thus: "Further, Metering, billing, banking of surplus energy etc. of the prosumers in the State is being done as per the provisions of the KSERC (Renewable Energy and Net Metering) Regulations, 2020 and its subsequent amendments in 2022 and 2024. Hence any change or modifications of the ToD metering and billing can be done only with the amendments/modifications of the relevant Regulations of the KSERC (Renewable Energy and Net Metering) Regulations, 2020 and its amendments." Apart from this, it is unjustifiable for KSEBL to charge Fixed Charge for the consumption of solar electricity based on Renewable Energy Meter which is meant solely for recording the renewable energy generation, as per Reg. 2(bf) of KSERC (RE&NM) Regulations 2020.

The CGRF has vide Order No. CGRF-CR/OP No. 105/2024-25 dt. 25.3.2025 dismissed my petition with the following observations: "The Forum observes that in the tariff revision issued by the Hon'ble KSERC on 31/10/2023 and the Circular issued by KSEBL dtd. 16/11/2023, the fixed charge for net metered solar consumers is to be levied on the basis of their total consumption." This observation as regards the tariff order is factually wrong. It is worth noting that there is NO provision in the tariff revision issued by the Hon'ble KSERC on 31.10.2023 or on 5.12.2024 to levy Fixed Charge for net metered solar consumers on the basis of their total consumption. The tariff applicable to supply of electrical energy for domestic purpose (both single phase and three phase) in the Tariff Order Table for LOW TENSION-1-DOMESTIC (LT-1) is shown in terms of MONTHLY CONSUMPTION SLAB. The second authority relied upon by CGRF for its order is the impugned executive circular issued by the Secretary, Administration, KSEBL which is in the form of a direction for implementation of the Tariff Order, wherein it is directed inter-alia that "Fixed charge for net metered solar consumers shall be levied for their total consumption." An executive circular can never override or overreach the provisions of the enacted laws such as the Electricity Act, 2003

and various Regulations of KSERC, which do not provide for levying Fixed Charge from the solar prosumers for the consumption of their self-generated solar energy. It is submitted that it is improper for CGRF to base its order on such an executive circular which has no backing of law and which runs counter to the provisions of the Electricity Act 2003. The CGRF is holding the circular authoritative on the authority of the circular itself. This is circular reasoning, and not proper for a quasi-judicial body like the CGRF. In the decision of the CGRF it is further stated that "The petitioner has to remit the fixed charge as per prevailing tariff order issued by the licensee". And the licensee maintains that it is following the tariff order issued by the KSERC.

The following enactments further demonstrate how the interpretation of KSEBL with regard to the Fixed Charge in the Tariff Order is out of place and untenable: Sec. 45 (5) of the Electricity Act says: The charges fixed by the distribution licensee shall be in accordance with the provisions of this act and the regulations made in this behalf by the concerned State Commission. Regulation 3(1) of Kerala Electricity Supply Code 2014 says: This Code shall be interpreted and implemented in accordance with and not at variance from the provisions of the act and the rules and regulations made thereunder. Regulation 30 of Supply Code 2014 says: Classification of consumers and tariff- (1) The Commission may classify and re classify consumers into various tariff categories from time to time and determine tariff for different categories of consumers. (2) No additional category other than those approved by the Commission shall be created by the licensee. (3) No additional charges other than those approved by the Commission shall be levied on the consumer. Reg. 2(2)(a) of KSERC (RE&NM) Regulations 2020 says: These Regulations shall be interpreted and implemented in accordance with, and not at variance from, the provisions of the Act and the rules and regulations made thereunder. All these authorities uphold the paramountcy of the Electricity Act 2003 and how the electricity regulations have to be consistent with the Act and also how it has to be the basis for the interpretation of the regulations.

These enactments prove beyond doubt that the executive order of KSEBL referred to above contravenes the provisions of the law, is ultra vires, and needs to be set aside. The said executive order is also discriminatory in its application to me in so far as it overcharges me as a prosumer in the matter of Fixed Charge. Section 45(4) of the Electricity Act, 2003 says: Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

Section 62(6) of the Electricity Act, 2003 says: If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid

such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee. I claim refund of the excess Fixed Charge collected from me by KSEBL for the consumption of self-generated solar electricity NOT supplied (sold) by KSEBL over and above the Fixed Charge collected for the consumption of electricity supplied (sold) by KSEBL since 22.4.2024, the date of my solar installation.

I am already paying Fixed Charge as a consumer for the electricity supplied by KSEBL. The question whether the 'Monthly Consumption' referred to in the Tariff Order with regard to Fixed Charge includes consumption of self-generated electricity can be answered by a reading of Section 45(3) of the Electricity Act, 2003 which permits the distribution licensee to collect Fixed Charge only for the electricity supplied (sold) by it. Supply (sale) of electricity is the pre- condition for levying Fixed Charge. It follows that consumption with regard to Fixed Charge is consumption of electricity supplied (sold) by the distribution licensee. Further, solar prosumers are governed by KSERC (RE&NM) Regulations 2020 and its subsequent amendments, and are to be billed for their net energy consumption [Reg. 21(3)(ii) of the KSERC (RE&NM) Regulations, 2020]. Any change or modifications in the billing can be done only with appropriate amendments/modifications of these regulations [Reg. 3.198 of the KSERC Order on OP No. 18/2023 dt. 5.12.2024].

I am already paying Fixed Charge as a consumer for the electricity supplied by KSEBL. Appropriate orders may be issued to refund, with applicable interest, the excess Fixed Charge collected from me since 22.4.2024, the date of my solar installation, for the consumption of electricity NOT supplied by KSEBL and which is self-generated. Orders may be issued to stop collecting excess Fixed Charge for the consumption of electricity NOT supplied by KSEBL in future. Costs at the discretion of the Hon'ble Ombudsman may be awarded.

Arguments of the Respondent

It is submitted that Section 86 of the EA 2003 empowers the State Electricity Regulatory Commissions with the determination of Tariff. The clause 3.33 and 3.44 from the previous and present Tariff Orders respectively states that “ the fixed charge of the domestic consumers is not linked to connected load or contract demand, but linked to the monthly consumption levels.” The commission has thus provided a tariff schedule to be followed in the state including levying of fixed charges. It is pertinent to note that the Regulatory Commission has not made any differentiation regarding the source of consumption in the Tariff Order.As per the Kerala State Kerala Supply Code, “ fixed charge” means the fixed charge levied as per the provisions of the tariff order issued for the licensee by the Commission.

It is submitted that Section 45(5) of Electricity Act specifies that a licensee has to act in accordance with the regulations made by the Kerala State Electricity Regulatory Commission. Therefore, the respondent is duty bound to obey the orders of State Electricity Regulatory Commission. In the case of complaint, this respondent has acted only as per the prevailing tariff order issued by the Kerala State Electricity Regulatory Commission. Hence there is no fault on the part of this respondent in levying the fixed charge from the complainant. In the facts and circumstances explained above, it is submitted that there are no merits in the averments raised by the complainant. This Hon'ble forum may be pleased to accept the above contentions by the respondent and dismiss the complaint.

Counter Arguments Filed by the Appellant

None of these are contentious or disputed issues. What is contentious and disputed is this: The Respondent in Para 2 says: "The Commission has thus provided a tariff schedule to be followed in the state including levying of fixed charges. It is pertinent to note that the Regulatory Commission has not made any differentiation regarding the source of consumption in the Tariff Order." This statement by the Respondent is NOT TRUE. There IS such a differentiation. The Regulatory Commission in the Schedule of Tariff contained in Order 427/D(T)2023/KSERC dt. 5.12.2024 clearly and unambiguously states: "The tariff mentioned in the Schedule shall apply to consumers to whom the Kerala State Electricity Board Limited or other distribution licensee has undertaken or undertakes to supply electricity..."* This clearly differentiates the consumption of electricity supplied by the distribution licensee from the consumption of electricity which is self-generated. consumption with regard to the Tariff is the electricity supplied by the KSEBL. The The source of Tariff applies only to the consumption of electricity supplied by KSEBL. The Commission has not empowered KSEBL to apply the Tariff for electricity consumed which is NOT supplied by it. Doing so will go counter to the Electricity Act 2003, Sec. 45(3) which says: "The charges for electricity supplied by a distribution licensee may include (a) a fixed charge in addition to the charge for the actual electricity supplied.". Acting contrary to the Regulatory Commission's orders is unlawful on the part of KSEBL. It is common knowledge, common sense and common reasoning that a distribution licensee cannot charge Fixed Charge for electricity NOT supplied by it and not authorised by the Regulatory Commission. It reflects poorly on the image of KSEBL to treat the solar prosumers as milch cows. It is worthy to note here that Regulation 30 of the Supply Code 2014 in Classification of consumers and tariff enjoins: (2) No additional category other than those approved by the Commission shall be created by the licensee. (3) No additional charges other than those approved by the Commission shall be levied on the consumer.

It is submitted that none of the contentions and averments raised by me in my complaint dated 20.4.2025 to the Ombudsman has been addressed or refuted by the Respondent. My complaint remains very much alive, relevant and pertinent for the Hon'ble Ombudsman to look into. I request the Hon'ble Ombudsman to consider my complaint on its merits and pass appropriate orders as it deems fit.

My request is especially relevant as I have observed that an RTI reply from the Secretary, KSERC, addressed to me recently on the subject of Fixed Charge seems to find a reference in the recent orders of the Hon'ble Ombudsman on the subject of Fixed Charge. I request the Hon'ble Ombudsman to consider the following facts apropos the RTI Reply:

- 1) The Appellate Authority has not furnished me any material information as defined in the RTI Act and as requested by me, vide his letter.
- 2) The AA has stated that the matter does not come under the purview of the RTI Act, and needs 'harmonious interpretation'.
- 3) The AA has acknowledged that he is sharing the knowledge gathered from his technical team. Such knowledge cannot replace the relevant enactments on the subject, and has no force of law. Moreover, it is not related to my specific query, and is evasive and misleading.
- 4) The AE has stated that the licensees are authorized to levy Fixed Charge for the total consumption of the grid connected solar prosumers. There is no such material authorization either in the Tariffs or elsewhere. If there was such an authorization the AA ought to have furnished me a copy of the same since this was what I had asked in my RTI application.
- 5) The matter is under appeal with the State Information Commission in the matter of providing wrong and misleading information.
- 6) Knowledge gathered from the technical members and shared through RTI platform cannot replace enacted Acts, Rules, Regulations and Orders.

I have submitted my appeal to the Hon'ble Ombudsman based wholly on the strength of the Electricity Act 2003 and various regulations of the Regulatory Commission, quoting the relevant Acts and Regulations. It will be a great injustice if my appeal is not decided strictly within the framework of prevalent enactments. I once again request the Hon'ble Ombudsman to pass an independent and impartial speaking order in my case. In this connection I request the Hon'ble Ombudsman to permit me to submit a copy of the Government of India order No. F.No. 09/01/2023-RCM dt. 25.10.2023 where it is expressly stated that no additional charges can be levied on electricity generation from any source Renewable.

Analysis and findings

The hearing of this appeal petition was conducted on 10/06/2025 at 11:00 a.m. in the O/o State Electricity Ombudsman, D.H Road, Near Gandhi Square, Ernakulam (dt). The hearing was attended by the respondent, Sri.Sajith.K, Assistant Executive Engineer, Electrical Sub Division, Kodungallur, Thrissur (Dist.) and the appellant Sri. Asoka Kumar.K was not attended the hearing.

The appellant is a consumer under the Electrical Section, Kodungallur of the Licensee. The appellant had installed a 5Kwp Grid Interactive Solar Power Plant on 22/04/2024 and thus he was a prosumer since 04/2024. The appellant's argument is that the fixed charge billed by the Licensee is not as per the regulation. The electricity bills raised by the Licensee is having two parts namely (1) Fixed charge (2) The charges for the electricity actually supplied and consumed. The Electricity act 2003, Section 45 states about the Power of Licensee to recover the charges.

Section 45. (Power to recover charges):

(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

The charges thus to be recovered by the Licensee is decided by the Electricity Regulatory Commission as per the Section 62 of the The Electricity Act 2003. The Kerala State Electricity Regulatory Commission is exercising this authority through the regular tariff orders. The tariff order issued by the Commission states that the Fixed charges are to be recovered based on the

monthly consumption slabs. The respondent states that the Monthly consumption means the total consumption which includes self generated and self used energy also.

The Orumanet of the Licensee is designed to calculate the Fixed charges as per the following formula

Consumption = Import energy + Self generation - Export energy

Which means

Total Consumption = Import energy + Self used energy from the self generated

The Hon'ble KSERC has not taken any corrective action on the Licensee in the method of calculation of fixed charges. The Electricity Act 2003, Section 45 states also that the Licensee can charge for the electricity supplied only.

The regulation 21 of The KSERC (RE & Net metering) Regulation 2020, explains about the net metering, Energy accounting, Banking and Settlement.

21. Net metering, Energy Accounting, Banking and Settlement.-

(1) The distribution licensee shall take the meter reading of the renewable energy system' regularly for each billing period' and record the readings of both the renewable energy meter and the net meter.

(2) For each billing period, the distribution licensee shall make the following information available in its bill to the prosumer:

(i) Time period wise (normal hours, peak hours and off-peak hours) Renewable energy generation recorded in the energy meter for the prosumer with connected load above 20 kW, and total generation from the RE system for the prosumers with connected load 'of and below 20kW'.

(ii) Time period wise electricity consumption of the prosumer with connected load above 20 kW, and total consumption in the case of the prosumer with connected less than 20 kW.

(iii) Net billed electricity, if any, for which payment is to be made by the prosumer;

(iv) Excess energy brought forward from the last billing period;

(v) Excess energy carried forward to the next billing period.

(3) The energy accounting, banking and settlement of energy generated, drawn and injected by a prosumer with connected load of and below 20 kW shall be done as below;

(i) The distribution licensee, during a billing period shall extend the facility to the prosumer having connected load of and below 20 kW under net metering

arrangements, to draw back from the grid, the electricity injected during a time block at a different time period without any restriction.

(ii) In case the electricity supplied by the distribution licensee during any billing period exceeds the electricity injected in to the grid by the prosumer from his renewable energy system, the distribution licensee shall raise a bill for the net electricity consumption at the prevailing tariff, after adjusting any excess electricity banked from the previous billing period;

(iii) In case the electricity injected by the prosumer's renewable energy system exceeds the electricity consumed from the 26 distribution licensee during the billing period, such excess energy shall be allowed to be banked and be carried forward to the next billing period as specified under Regulation 20(1) above.

The regulation 21 (3) (ii) states that the Licensee shall raise bills for the net electricity consumption at the prevailing tariff. The respondent argue that the net electricity consumption is meant for the energy charges and not for the fixed charges. However the tariff orders which are released after the regulation 2020 has not considered any provision for the prosumers.

Further the Hon'ble KSERC has not taken any corrective action to the Licensee, if the method of charging the Fixed charges is not as per the regulation. Then the Hon'ble KSERC has to bring more clarity on this issue. The Fixed charges are to be payable by the consumer to the Licensee for reserving the power infrastructure up to the connected load from generation through transmission, substation , distribution network, distribution transformer, service line up to the connection point. Eventhough the consumer installed solar plants, if this is an On - Grid System , the power Infrastructure of the Licensee is always to be reserved. As such the basis of charging of fixed charges is to be decided by the Hon'ble Commission. In addition to the above, the Hon'ble KSERC has cleared its stand on the letter issued to Shri.Asok Kumar as the answer to a question as RTI Act. The relevant paragraphs as follows:-

- 4)** *In the case of a prosumer, even though part/full energy requirement of the prosumer is met from the solar plant, the 'power requirement' during nonsolar hours is fully met by the licensee. Thus, the grid connected solar prosumers is also bound to pay based on retail supply tariff which includes the 'fixed charge'/ 'demand charge' based on their 'connected load/ contract demand' with the licensee, even if their net consumption (net drawal from the grid) is zero or even when the prosumer injects surplus energy to the grid, at the rate of 'fixed charge'/ 'demand charge' approved in the Tariff Order notified by the Commission from time to time.*

None of the orders of this Commission has exempted the prosumers from the payment of fixed charge based on their 'connected load/ contract demand' with the licensee.

- (5)** *In the case of domestic consumers, the Commission is yet to approve the payment of fixed charge based on connected load, since majority of the domestic consumers (out of the more than 104 lakhs domestic consumers) is yet to disclose their changes in connected load, with the licensee, after availing the connection. Hence, the Commission has decided to levy fixed charge from domestic consumers based on their monthly consumption, since the total energy consumption normally reflect the 'power requirement' of the consumer (connected load) to some extent.*

Hence, as per the prevailing Tariff Orders in force, like other Solar prosumers, the grid connected domestic prosumers are also mandated to pay fixed the grid is zero or even when prosumers inject surplus power to the grid. Till the Commission approves the fixed charge based on connected load for domestic consumers, the licensees are authorised to levy fixed charges from grid connected solar prosumers based on their total consumption.

This clear the position of Hon'ble KSERC that the existing arrangement is to be continued till a clear decision is taken by the Commission in the charging of fixed charges from prosumers. As such the billing of fixed charges based on the total consumption is to be continued.

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 existing method of calculation of Fixed charges by the Licensee is to be continued till a decision is taken by the Hon'ble KSERC.
2. No other costs sanctioned.

ELECTRICITY OMBUDSMAN

No. P/031/2025/_____ dated: 18/06/2025.

Delivered to:

1. Sri. Asokakumar, Kavunkal, T.K.S Puram, Kodungallur, Thriussur - 680664 (Dist.)
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kodungallur, Thrissur (dt)

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 kb substation compound, HMT Colony P.O, Kalamassery - 683503

