

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/021/2020
(Present: A.S. Dasappan)
Dated: 11th August 2020

Appellant : Sri. Kishore Kumar E.V.
Managing Director,
Megatech Polymers Ltd., Pancode,
Ernakulam

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSEBL,
Puthencruz, Ernakulam

ORDER

Background of the Case:

The appellant is a consumer of electricity under LTIV A industrial tariff with consumer No 11555560023771 in Electrical Section, Puthencruz. The service connection was registered in the name of the appellant with a connected load of 77.33 kW. Date of connection is 12.01.2010. The said service connection is effected in three phase meter with CT 100/5A. The Assistant Engineer, Electrical Section, Puthencruz had reviewed the consumption pattern of the consumer from the date of connection till 5/2018 and found that 1/3rd portion of consumption is only recorded in meter for a long period. The Assistant Engineer, Electrical Section, Puthencruz issued a short assessment bill for 24 months amounting to Rs. 778430 on 25/05/2018.

Aggrieved by this, the appellant approached the Consumer Grievance Redressal Forum, Central Region on 20/07/2019 vide Complaint No. 44/2019-20. The Forum disposed the petition vide Order No. CGRF-CR/OP No. 44/2019-20/443 dated 17/01/2020, as follows:

The bill is to be revised by adding two times the recorded monthly consumption during the period of short assessment. Accordingly, the Short Assessment Bill was revised and the revised bill amounting to Rs. 16,393/- (Rs. 470509 less Rs. 454116 already remitted) was issued to the consumer on 17.03.2020. Against the decision, the appellant has submitted this appeal petition before this Authority on 07-05-2020.

Arguments of the appellant:

An inspection was conducted by the Assistant Engineer in the consumer premises on 21/5/2018 in the presence of APTS officers and prepared a mahazar. That Mahazar was followed by a letter dated 24/5/2018 from the Assistant Engineer clearly stating that as per the inspection dated 21/5/2018 mentioned above, the electric meter and the connected equipments recorded correct consumption of electricity in the premises. Therefore, it is an admitted fact that absolutely no anomalies were detected in the consumer premises as per the inspection dated 21/5/2018.

Thereafter the Assistant Engineer issued another letter No DB/inspection PTZ/18-19/25/2018 dated 25/5/2018, stating that as per the inspection and site Mahazar prepared on 21/5/2018, it is clear that only 1/3rd consumption is recorded in the meter for long period and hence a provisional assessment bill based on Kerala Electricity Supply Code 2014 Regulation 152 for the effect of unrecorded portion of 2/3rd consumption for a period of two year for Rs. 778430/- is issued. So the Assistant Engineer who stated on 24/5/2018 that there is no anomaly in the meter recordings as per the inspection dated 21/5/2018 himself says otherwise on the very next date namely 25/5/2018, that as per the very same inspection, it is clear that only 1/3rd consumption is recorded in the meter for a very long period. This strange attitude of the Engineer and the consequent short assessment demand for Rs. 778430/- is challenged by the appellant by filing a complaint before the CGRF.

In the statement of facts submitted by the Assistant Executive Engineer, Electrical Sub Division, Puthencruz before the CGRF, a totally different story was put forward. An inspection was conducted on 2/4/2018 by the Sub Engineer in charge of the Section office in the premises of the appellant and detected that CT was wrongly connected in the appellant premises meter since the day of connection. The above said anomaly was corrected by the Sub Engineer on the same day of inspection and the matter was informed to the responsible staff of the appellant present at the time of inspection. No site Mahazar relating to that inspection was produced. Actually, no such inspection was conducted by the Sub Engineer on 2/4/2018. There is no Mahazar or at least any material with the KSEBL to prove the above alleged inspection dated 2/4/2018. The Assistant Executive Engineer may be directed to produce Mahazar or such materials to prove the above contention.

The reliance placed by the Engineer on the consumption chart finds no place in the impugned demand or order. According to him the inspection dated 21/5/2018 was conducted pursuant to the request dated 11/5/2018 made by the appellant. He further says that the short assessment is issued as per the advice of the APTS by the Assistant Engineer as per Regulation 134 (l) of the Electricity Supply Code 2014 upkeeping the limitation prescribed in Regulation 152 (3) of the Electricity Supply Code 2014. These are all conclusions arrived by the Engineer on the basis of surmises and conjectures which are not binding on the consumer.

Regulation 152 of the Supply Code has some basic ingredients. The above provision says that anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or Section 135 of the Act and in such cases the amount of electricity charges short collected by the licensee if any shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

But in the inspection and Mahazar dated 21/5/2018 relied on by the Assistant Engineer in this case, there is no such detection and hence the entire proceedings are without legal basis or evidence and is liable to be set aside by this Authority.

The short assessment for twenty-four months has to be supported by a finding that the period during which such anomaly persisted is found to be more than twenty four months. There is no such finding in this case and hence the short assessment for twenty four months is not sustainable. The short assessment for any period is not sustainable in this case because the ingredients of Regulation 152 are not satisfied anywhere in this case.

The Assistant Executive Engineer cannot legally add anything to the order DB/inspection PTZ/18-19/25/2018 dated 25/5/2018 issued by the Assistant Engineer which is under challenge in this case. In that letter there is no mention regarding Regulation 134 of the Electricity Supply Code. That order was issued totally under Regulation 152(2) of the Supply Code.

When an order is challenged, the Assistant Executive Engineer is bound to explain that order sticking to the contents of that order. He cannot import anything new to that order. Apart from that undercharging can be established under Regulation 134 of the Supply Code only after giving notice to the consumer. No previous notice regarding such establishment was issued to the consumer under Regulation 134 of the Supply Code.

The consumer who was under threat of disconnection was constrained to avail some instalment facility and the Engineer cannot take advantage of that conduct of the consumer.

An order No CGRF-CR/OP No 44/2019-20 /443 was issued by the CGRF and that order was not communicated to the appellant. But he received copy of the revised calculation on the basis of the CGRF order from the Assistant Executive Engineer as per the proceedings No DB-51/2019- 20/AEE/ ESD/PTCZ/PTCZ/120/17-03-2020. Then the appellant enquired about the order of the CGRF and obtained a copy from the office of the CGRF on 20/3/2020. By that time the lock down period started and hence there occurred some delay in filing this representation before this Authority.

The CGR Forum considered the downloaded data from the meter and Orumanet version. The copies of the above documents were never

communicated to the appellant denying all the basic principles of natural justice.

The only Mahazar available in this case is the Mahazar dated 21/5/2019. In that Mahazar there is no finding that there was any defect in the consumer meter or connections. However, based on the downloaded data and Orumanet, the Forum has arrived at the conclusion that the CT connection to the meter may be reversed. In other words, the CGR Forum is not confident that there was reversal in CT connection. Based on that feeble "may", it was further found by the Forum that the meter showed only minimum reading viz 2/3 of the actual consumption went unrecorded in the meter due to meter consumption error up to 2/4/2018. There was absolutely no evidence before the Forum to reach such conclusion. The hike in consumption in April may be due to some other reason and the Forum went wrong in arriving such wrong conclusion for helping the Board. The Forum says that the absence of Mahazar is a lapse on the part of the Board. The Forum ought to have found that a Mahazar can be drawn only in a situation where there was an inspection. It was the Board which raised the contention regarding inspection dated 2/4/2018 and it was their duty to prove it. In the absence of any proof on their part the CGRF ought to have allowed the contentions of the appellant and set aside the demand.

Reliefs requested for:

1. To set aside the Order dated 17/1/2020 in File No CGRF-CR/OP No 44/2019-20/443 dated 17/1/2020 issued by the CGRF, Ernakulam.
2. To cancel the short assessment order DB/inspection/PTZ/18-19 dated 25/5/2018 and also disconnection notice No DB-51/2019-20/AEE/Electrical Sub Division /PTCZ/PTCZ/120/17-03-2020 issued by the Assistant Executive Engineer, Electrical sub Division, Puthencruz demanding payment of balance Rs. 16373/- issued by the Assistant Executive Engineer, Electrical Sub Division office, KSEBL Puthencruz and to allow this petition.

Arguments of the respondent:

The above appeal has been preferred by the appellant/consumer challenging the order of the Consumer Grievance Redressal Forum Central Region dated 17/01/2020 in OP No. 44/2019-20. Regulation 21 (2) of "Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005" says that "Any complainant, who is aggrieved by the non-redressal of his grievances by the Forum may himself or through his representative make a representation to the Ombudsman within Thirty (30) days from the date of the receipt of the order of the Forum. In this case appellant not filed the appeal within the stipulated period, So the above OP is not maintainable either in law or on facts.

In OP No. 44/2019-20 wherein the CGRF on analysis of the grievance raised by the consumer against the short assessment bill issued by the

KSEBL amounting to Rs. 778430/- on 25/05/2018, found that due to the interchanged connection of CT secondary wires, it is scientifically correct that 2/3 of the actual consumption goes unrecorded due to the phase shifting of the angle between voltage (V) and current (I).

The demand raised is pertaining to the actual energy charges liable to be paid against the actual consumption of the consumer in the premises. The said bill is legally valid and liable to be remunerated in terms of law. From the analysis of the recorded consumptions of the appellant from 01/08/2015 to 01/07/2019, it is learned that the consumption considerably increased from 01/05/2018 to 01/07/2019. The Sub Engineer, Electrical Section, Puthencruz conducted an inspection on 02/04/2018 in the premises of the appellant and detected that the CT was wrongly connected in the appellant premises meter. The above said anomaly was corrected by the Sub Engineer on the same day of inspection and matter was disclosed to the responsible staff of the appellant present at the time of inspection. After the above said anomaly was corrected, the appellant consumption increased to 6908 units on 01/05/2018 compared to previous month consumption of 1382 units on 02/04/2018, 884 units on 02/05/2017 and 1080 units on 01/05/2016 reading dates. The appellant submitted a request dated 11/05/2018 alleging that the current bill of the appellant doubled compared to previous month and hence requested to check the meter of the appellant. As per the request, the APTS, Ernakulam unit along with the Assistant Engineer, Electrical Section, Puthencruz conducted inspection on 21/05/2018 in the appellant premises and prepared a site mahazar, where the inspection team found that the appellant premises meter was working properly. The inspection report of APTS pointed out that there was a short assessment of energy consumed on account of previous bills and the same to be checked. The Assistant Engineer, Electrical Section, Puthencruz reviewed as per Regulation 134(1) of the Supply Code 2014 the consumption pattern of the consumer from the date of connection till 5/2018 and found that 1/3rd portion of consumption is only recorded in meter for a long period. Regulation 134(1) of the Electricity Supply Code 2014 reads as below;

If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill".

The Board vide Office Order. (DD, IT & HRM) No. 452/2020 (LB.11/1023/2020) dated Thiruvananthapuram, 02.03.2020 accorded sanction for the compliance of CGRF order. Based on this, the Short Assessment Bill was revised and the revised bill amounting to Rs. 16393/- (Rs. 470509 less Rs. 454116 already remitted) was issued to the consumer on 17.03.2020 with proper acknowledgement.

In the inspection dated 21/5/2018, it was found that the meter was working properly and hence the bill issued on 01/05/2018 was correct. The consumer had not mentioned any change in connected load or working pattern of his unit, indicating that the consumer was being undercharged till the CT connections were corrected by the Sub Engineer. A consumer with a

connected load of 77.33 kW will consume about 7700 units in a month considering a diversity/ load factor of 0.5 and a minimum of 8 hrs working per day for 25 days ($77.33\text{kW} \times 0.5 \times 8\text{hrs/day} \times 25 \text{ days} = 7733 \text{ units per month}$).

On perusal of the consumption pattern of the consumer till 05/2018, the maximum recorded monthly consumption is only 2256 units (below 1/3rd as calculated above). This also suggests that the consumer was undercharged till the rectification of CT connection. After analysing the downloaded data from meter and Orumanet readings, the CGRF in its order mentions that 'The error is of a technical issue caused by the wrong connection of CT as evident from the Orumanet reading of the meter which showed a drastic change w.e.f. 2/4/18- the date which the respondent claimed to have corrected the CT connection" and that the Orumanet readings of the meter furnished before the Forum shows that the meter displayed lower readings continuously from 01/08/2015 onwards up to 01/03/2018 and from 02/04/2018 onwards, an upward shoot is noticed." The unrecorded portions of energy due to the defects in CT connections for period of 24 months was only demanded by the Assistant Engineer; The Act and law do not permit' the consumer to make unlawful gain without paying for the energy consumed. The consumer is liable to pay the respective charges applicable under the tariff against the energy that is consumed.

The APTS inspection was conducted on 21/05/2018 after the rectification of CT connection on 02/04/2018 by the Sub Engineer during the inspection. It is admitted that documentary evidence for the same is not available with the respondent. The CGRF order mentions that "the fact that the omission occurred from the Sub Engineer of the respondent who inspected the premises on 2/4/2018 and made corrections to the CT connection without preparing a site mahazar should not be a reason which prevents the licensee from claiming its dues from the consumers."

The appellant admitted the short assessment bill and requested instalment facility for remittance vide the letter dated 26/05/2018 and 24 instalments was granted vide order no. RB/INST/18-19/534 dated 30/05/2018 of the Executive Engineer, Electrical Division, Thripunithura. The consumer remitted 14 instalments of the bill amounting to Rs 454116 till 21/06/2019. While submitting complaint before the CGRF, the consumer represented his letter dated 26/05/2018 as Grievance submitted to Licensee, and the order no. RB/INST/18-19/534 dated 30.05.2018 of the Executive Engineer, Electrical Division, Thripunithura as the reply for the Grievance. Actually, it was a request for instalment facility and not a grievance and the request was granted by Executive Engineer. Also, the consumer approached CGRF only on 20/07/2019, after remitting 14 instalments (out of 24) without any objection.

The details of downloaded data from the meter and Orumanet readings were submitted to the CGRF on 30.11.2019 vide letter no. DB45/19-20/AEE/ESD-PTZ/PTZ/88 dated 30.11.2019 with a copy to the appellant.

Section 45 of the Electricity Act deals with the power of the licensee to recover charges for the energy supplied. Section 45 (2) of the Act deals with charges for electricity supplied by the Distribution license. Section 50 speaks about electricity supply. As per the said section the State Commission shall specify an Electricity Supply Code to provide for recovery of Electricity charges, intervals for billing of the electrical charges, disconnection for supply of electricity for non- period of supply is also not in dispute

It is settled law that regulations cannot limit the meaning of the statute because, regulation is a subordinate legislation. If there is conflict between the statute and the subordinate legislation the statute prevails over the legislation. As per sec.181 of the Electricity Act 2003, the state commissions make regulations consistent with the Electricity Act and the rules generally to carry out the provisions of the Act. The Hon'ble Supreme Court in Babaji Kondaji Jerad & another Vs. Baba Sahib Rajaramji AIR 1984 SC 192 held that the statutory provisions have precedence and must be complied. The Hon'ble Supreme Court in the matter of Central Bank of India Vs. The work men AIR 1960 SC 12 held that a statutory rule cannot enlarge the meaning of the section. If a rule goes beyond what section contemplates the rule must yield the statute. There is no rule/regulation making power conferred on the government/state commission to limit or enlarge the meaning of the words contained in the statute.

Limitation is a substantive provision where no power is given to the regulatory commission to frame regulation and on such an aspect regulatory commission is not competent to issue the 3rd proviso to regulation 152(3). Section 56 of the Electricity Act 2003 is the only provision dealing with Limitation. Section 56 (1) gives power to the licensee to disconnect the supply in case any person neglects to pay charge for the electricity or any sum other than the charge for electricity due from him. There is no period of limitation in that sub section from recovering electricity charges or any other amount due. The only limitation contained is under Sub Section (2) of Section 56, that sub section says that no recovery shall be made after 2 years from the date of amount becoming first due unless it is shown continuously as recoverable arrear of charges for electricity supply. But the amount of charges would become due and payable only from the date when such demand is made by the Board, raising the bills against consumption of electrical energy. As such the 3rd proviso to Regulation 152 (3) of the Supply Code is therefore ultra vires of section 56 of the Electricity Act 2003 and the licensee is not bound by the same. It is to be noted that under Section 126 of the Electricity Act, recovery in respect of misuse of energy there is no limitation.

Going by regulation 18 of the Central Electricity Authority (installation and operation of meters) regulations 2006 the time stipulated for calibration and periodical testing of meters is fixed as at least once in 5 years. If 3rd proviso to regulation 152 (3) is adopted as a standard, against an anomaly detected under an inspection before the end of 5 years, the licensee will not be entitled to recover the payment thereof, the restoration of supply of electricity, measures for preventing tampering, distress or damage to electric plant or electric line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry

for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters. Here also no power is given to limit the period for under-recovery. Section 61 authorizes the Regulatory Commission to specify the terms and conditions for determination of tariff within the parameters. Section 62 deals with the procedure for fixing tariff. Section 64 deals with the actual procedure of determination of tariff under Section 62. A conjoint reading of all the above said sections would show that once tariff regulation is issued, any consumer consuming electricity is bound to pay for the electricity in accordance with the tariff regulation. Even though undercharging is not specifically mentioned, the same is recoverable as no period of limitation is contemplated anywhere in the Act. It is to be noted under Section 126 of the Act dealing with misuse of energy recovery can be made for the entire period during which such unauthorized use of electricity has taken place. Even when the period of unauthorized use of electricity cannot be asserted, recovery can be made for a period of 12 months immediately preceding the date of inspection. So also, Section 56 dealing with disconnection of supply in default of payment says that when any person neglects to pay any charge for electricity or any sum other than charge for electricity due from him to a licensee or generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or generating company may after giving not less than 15 clear days' notice in writing to such person and without prejudice to his rights to recover such charges or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee together with any expenses incurred by him in cutting of and reconnecting the supply. The only restriction contained in Sub Section (2) of Section 56 which says that notwithstanding anything contained in any other law for the time being in force no sum due from any consumer under this section shall be recoverable after the period of 2 years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supply. Thus, it can be seen that going by the relevant provision in the Electricity Act 2003 there is no restriction in recovering the actual charges of electricity as determined by the tariff order and the amount becomes due upon issuance of a bill.

Regulation 136 of the Supply Code in clear terms gives power to the licensee to recover arrears of charged or any other amount due from the consumer along with interest at the rates applicable for the belated payments from the date of which such payments became due. The appellant has consumed electricity supplied by the respondent is not in dispute. The quantity of supply as well as the entire amounts covering the whole period. In the instant case the licensee has conducted the inspection in tune with regulation 18 of the Central Electricity Authority (installation and operation of meters) regulations 2006 within the period of 5 years. The licensee is therefore entitled to short collect the amount that has escaped assessment as the inspection has been conducted within the statutory frame. The Forum was therefore perfectly justified in upholding the contentions of the Board and permitting the Board to realize the amount of electricity charges for the entire period during which the anomaly persisted.

Thus, the bill has been issued to the consumer as directed by the Forum adding two times the recorded consumption. On account of the material facts established the consumer cannot wriggle out from the liability to pay for the actual energy charges consumed in the premises that escaped consumption. None of the grounds raised in the appeal are tenable and the appellant is not entitled for any reliefs.

Analysis and Findings: -

The hearing of the case was conducted on 24-06-2020 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri Jose J Matheikal, Advocate has represented for the appellant and Sri. Krishnakumar O.N., Assistant Executive Engineer, Electrical Sub Division, Puthencruz, Ernakulam, has appeared for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof. The delay to submit the appeal petition is condoned due to the 'Covid 19' restrictions.

It is reported that the Sub Engineer, Electrical Section Puthencruz conducted an inspection in the premises of the appellant on 02-04-2018 and detected that the CT was wrongly connected in the meter and this anomaly was corrected by him on the same day and the matter was informed to the staff of the appellant who present at the time of inspection. A site mahazar is not prepared. As per the provisions in the Kerala Electricity Supply Code, 2014, the following procedures shall be adhered while conducting an inspection in the premises of a consumer.

173. (5) Every inspection shall be complete in all respects and the officer authorised to conduct inspection shall inspect thoroughly, all relevant aspects of the installation including the load connected, purpose for which electricity is being used, condition of the metering installation etc., without limiting the scope of inspection to one or two aspects.

(6) The officer who prepares the mahazar or the inspection report shall obtain the signature of inspecting officers, officers of the licensee at site and of independent witnesses.

(7) The consumer or his employee or his representative or the occupier or his representative present at the premises shall be allowed to read the mahazar and to affix his signature in it.

(8) In case the consumer or the occupier or his representative refuses to affix his signature in the mahazar, the fact shall also be recorded in the mahazar.

(9) As far as possible, the officer authorised to inspect the premises of the consumer shall take two independent witnesses for the inspection of the premises and shall make such independent witnesses fully aware of the facts recorded in the mahazar and shall obtain their signature in the mahazar.

(10) The name and official addresses of all inspecting officers as well as full permanent address of witnesses shall be recorded in the mahazar.

(11) A copy of the mahazar shall be handed over to the consumer/occupier/representative present at the premises, under proper acknowledgement at the spot itself on completing the inspection.

The above procedures are not complied with by the Sub Engineer.

Further, on request of the appellant, the Assistant Engineer with the APTS team had conducted an inspection in the appellant's premises on 21-05-2018 and prepared a site mahazar which revealed the meter was working properly. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to make a payment.

The appellant's main arguments in the appeal petition are on the following lines.

No inspection was conducted by the Sub Engineer on 2/4/2018 and a site Mahazar relating to that inspection was not prepared and not informed to the staff of the appellant present at the time of inspection regarding any anomaly and its correction.

The appellant also argued that the short assessment for any period is not sustainable in this case because the ingredients of Regulation 152 are not satisfied anywhere in this case and no previous notice regarding the undercharging established was issued to the consumer under Regulation 134 of the Supply Code.

The appellant has further argued that the finding rendered by the Forum has neither any basis nor any rationality for the reason that the meter showed only minimum reading viz 2/3 of the actual consumption went unrecorded in the meter due to meter consumption error up to 2/4/2018, but there was absolutely no evidence before the Forum to reach such conclusion.

The issues of wrong connection of the CT terminals are necessarily to be brought under the terminology "inaccuracies in metering" under regulation 152 (1) of the Supply Code. In the instant case the admitted aspect is that the anomaly is wrong connection of CT terminals which is a mistake not attributable to the consumer but to the licensee.

The respondent has furnished a counter statement and according to him there is wrong connection of CT terminals to the meter and due to the interchanged connection 2/3rd of the actual consumption went unrecorded due to the wrong phase association and the licensee is entitled to recover the undercharged amount under regulation 134 of the Electricity Supply Code 2014 and section 45 of the Electricity Act 2003 for the entire period in which such anomaly persisted. In support of the versions raised by the respondent the right to recover the short-assessed amount, he has quoted the regulations 134 and 136 of Electricity Supply Code 2014, Sections 45, 56, 61, 62 and 181

of the Electricity Act 2003 and Regulation 18 of the Central Electricity Authority (Installation and Operation of Meters) Regulations 2006.

The respondent has also challenged the competency of the State Regulatory Commission to issue the 3rd proviso to regulation 152 (3) of Supply Code 2014 stating that no power is given to the Commission on such an aspect. The respondent has stated that the provisions of the Electricity Supply Code is against the central legislation such as Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 and Electricity Act.

The issue to be decided in this appeal is whether the period assessed and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs.7,78,430 /- as per Regulation 134 of Supply Code, 2014, as claimed by the respondent.

The respondent is trying to fox the issue by quoting Section 56 of the Electricity Act which deals “Disconnection of Supply in default of payment” and by interconnecting the Regulation 152 in the Supply Code 2014 which deals with “Anomalies attributable to the licensee which are detected at the premises of the consumer”. These two subjects are different spheres of aspects to be dealt separately and these two are distinct and different matters. In elaboration of Section 56 of the Electricity Act, there is specific regulation in the Code under regulation 136. Section 56 (2) deals with the limitation of claiming the arrears i.e., no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear od charges for electricity supplied. Regulation 152 (3) in the Supply Code deals with the period of assessment of arrears to be collected. The proviso 3rd in regulation 152 is introduced with an aim to keep the efficiency of the licensee and to safeguard the consumer against issuing huge amounts after long years as arrears for the anomalies attributable to the licensee. The respondent has no power to question the competency of the Regulatory Commission who is competent to make regulations under section 181 of the Act. It is noted that the appellant has not raised an argument based on Section 56 (2) of the Act and regulation 136 of the Code. The respondent purposefully misinterpreted the limitation of two years specified in the Act with period of assessment. There is no conflict between the statute and the subordinate legislation as stated by the respondent.

Similarly the argument of the respondent that if 3rd proviso to regulation 152 is adopted as a standard, against an anomaly detected under an inspection before the end of 5 years, the licensee will not be entitled to recover the payment thereof, the restoration of supply of electricity, measures for preventing tampering, distress or damage to electric plant or electric line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters, has also no validity since the regulation deals with the period of assessment and not the limitation of the period of recovery of arrears.

The Licensee was bound to periodically maintain correct meter as per Section 55 of the Electricity Act 2003 read with Regulation 113 of the Electricity Supply Code. The lethargy on the part of the Board in periodically checking and finding faults in the meter are matters for the Board to deal with their erring staff. This Authority is of the opinion that whenever a three-phase connection is given with or without external CTs, the appropriate authority has to inspect the premises and check the metering system and certify its correctness so as to avoid loss or undue gain of revenue to either parties. In this case the appellant is not responsible for the defect in the metering system and the appellant is not aware of his consumption, whether the recorded units is correct or not. No inspection is seen conducted by the Assistant Executive Engineer, the agreement authority, to ascertain the correctness of the metering system and hence grave lapses and dereliction of duty occurred on his part.

As per Regulations 34, 113 and 116 of the Kerala Electricity Supply Code, 2014 the Board shall provide the meter to the consumer and also conduct the periodical inspection or testing and calibration of the meter, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations 2006. Section 55 (1) of the Electricity Act, 2003 mandates that no licensee shall supply electricity after the expiry of 2 years from the appointed date, except through installation of a correct meter in accordance with the Regulations to be made in this behalf by the authority. Regulation No 104 (1) of the Kerala Electricity Supply Code, 2014 also in categorical terms stipulates that the licensee shall not supply electricity except through a correct meter installed in accordance with the provisions of the Central Electricity Authority (installation and operation of meters) Regulations, 2006. Regulation 109 (20) of the Supply Code, 2014 declares that it shall be the responsibility of the licensee to maintain the meter and keep it in good working condition at all times. A consumer cannot be saddled with the liability for breach of statutory duty.

The meter is not a recording or display unit only but as defined above all the components above including lead wires include a meter. Moreover, this is not a whole current meter but a CT operated meter, where external CT is connected with metering unit using lead wires and phase voltage from all the three phases are tapped from the source of supply and then connected with the same metering unit. Thereby wiring is also there for this metering system. This coordinates for computing energy is lead to the processing unit of the meter unit from different components of the meter then various electrical quantities are processed then recorded cumulative or otherwise and displayed in the display unit. Any defect in any part or component of meter is defect in meter. Under the regulation 113, sub clause (7) of Supply Code 2014 requires the licensee to test the CT, PT and the wiring connections, where ever applicable while testing the meter.

It is specifically mentioned in regulation 116 as follows: *Replacement of defective meters: - (1) The licensee shall periodically inspect and check the meter and associated apparatus. (2) If the meter is found defective, the licensee may test it at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an*

accredited laboratory or in an approved laboratory. (3) The consumer shall provide the licensee necessary assistance for conducting the inspection and the test. (4) A consumer may request the licensee to inspect and test the meter installed in his premises if he doubts its accuracy, by applying to the licensee in the format given in Annexure - 15 to the Code, along with the requisite testing fee.

(5) On receipt of such request, the licensee shall inspect and check the correctness of the meter within five working days of receiving the complaint.

(6) If the meter is found defective, the licensee and the consumer shall follow the procedure as detailed in regulation 115 above.

As per respondent, the Sub Engineer, Puthencruz Section had inspected the premises on 02-04-2018, but disagreed by the appellant. Normally 02-04-2018 is the monthly reading date. The Sub Engineer found that two numbers 100/5 CTs wrongly connected so as to unrecord 2/3rd of actual energy consumption the defect of the metering system was rectified but there is no proof to convince the appellant or any person present in the premises.

The appellant was originally given a short assessment bill for Rs. 7,78,430/- for two years as the 2/3 of unrecorded portion of energy. The appellant approached Executive Engineer for instalment facility and allowed instalments and remitted Rs. 4,54,116/- (14 instalments out of 24 Nos.) Later, the bill was revised to Rs. 4,70,509 /- by adding two times the recorded monthly consumption during the period of assessment of two years as directed by CGRF, Ernakulam. As per the statement of remittance, the balance amount to be remitted by the appellant is Rs.16,398/-.

The respondent has produced downloaded data for one year and consumption details of the appellant from 01-08-2015 to 01-07-2019 as evidence to show that the meter started under recording of consumption from 01-08-2015 onwards.

The premise was with a connected load of 77.33 kW and contract demand 60 kVA. As per the meter reading details produced by the respondent from 08/2015 to 07/2019 the consumption was low till 02-04-2018. The downloaded data available from 05/2017 to 04/2018 shows 2/3rd of the consumption unrecorded.

The appellant availed the three-phase electric connection on 12.01.2010 and the respondent furnished the consumption details from July 2015 to June 2019. The meter was replaced with another one with TOD facility on 03.11.2015. As per respondent, the metering system was set right, by the Sub Engineer of KSEBL, on 02.04.2018 by interchanging the wrong external CT connection. The Consumer Grievance Redressal Forum has examined the data downloaded from the meter and observed that the readings furnished by both methods tally with each other and there are no valid reasons found for not accepting the downloaded data as well as the Orumanet readings furnished by the respondent.

From the downloaded data of the meter, details of consumption recorded for one year prior to 02.04.2018 is only received. In the data there is no information regarding the date from which the metering system became defective, as stated by the respondent.

The recorded consumption for one year from April 2017 to March 2018:-

Peak Zone	-	3202 kWh
OFF Peak Zone	-	5886 kWh
Normal Zone	-	<u>9404 kWh</u>
Total	-	<u>18492 kWh</u>

Monthly average recorded consumption = $\frac{18492 \text{ kWh}}{12} = \underline{1541 \text{ kWh}}$

The recorded consumption for three months from April 2018 to June 2018,

Peak Zone	-	3522 kWh
OFF Peak Zone	-	6962 kWh
Normal Zone	-	<u>10512 kWh</u>
Total	-	<u>20996 kWh</u>

Monthly average recorded consumption = $\frac{20996}{3} = \underline{6999 \text{ kWh}}$

From the above, it can be seen that the average consumption for three months is more than four to five times the average consumption for twelve months prior to 02.04.2018. Besides, even after 01.07.2018, for one year, the recorded consumption varies between 7056 kWh and 9932 kWh. In general, it is a fact that if CTs are connected to a three phase meter with single phase load, there is possibility of recording energy different from the theoretical percentage.

Here in this case, the respondent confirmed the non recording of consumption on the basis of the inspection conducted in the premises, load survey/tamper report down loaded and, but not established that the defect occurred from 08/2015 onwards. Since this is a case of anomaly attributed to the licensee and decrease of consumption confirmed in the downloaded data for the period available from 05/2017 to 04/2018, the realisation of the electricity short collected shall be limited for a maximum period of twelve months, as per regulation 152 (3) of Supply Code, 2014.

In this case an inordinate delay was occurred in identifying and rectifying the defects and hence the appellant has to get justice.

Decision

From the conclusions arrived at as detailed above, I decide to quash the revised short assessment bill amounting to Rs. 4,70,509/-/-issued to the appellant. It is directed to the respondent to revise the bill by limiting the period of short assessment for one year prior to 02-04-2018 taking the average of the consumption recorded for 04/2018, 05/2018 and 06/2018 and to issue

the revised bill to the appellant within fifteen days. Excess amount if any, collected shall be refunded/adjusted in the future bills.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant stands disposed of as such. The order of CGRF, Ernakulam in OP No. 44/2019-20 dated 17-01-2020 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/021/2020/ _____ /Dated: _____

Delivered to:

1. Sri. Kishore Kumar E.V., Managing Director, Megatech Polymers Ltd.,
Pancode, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL,
Puthencruz, Ernakulam

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, CGRF-CR, 220 kV Substation Compound, KSE Board
Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.