

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/068/2019
(Present: A.S. Dasappan)
Dated: 8th November 2019

Appellant : Sri S. Subbiah
Managing Partner,
M/s Hotel Anand, Central Junction,
Kottayam

Respondent : The Deputy Chief Engineer
Electrical Circle, KSEBL,
Kottayam

The Special Officer (Revenue)
Vydhyuthi Bhavanam, KSEBL,
Pattom, Thiruvananthapuram

The Assistant Executive Engineer,
Electrical Sub Division, KSEBL,
Kottayam

ORDER

Background of the case:

The appellant Sri. S. Subbiah, Managing Partner, M/s Hotel Anand (LCN 11/S142) is a HT consumer under Electrical Circle, Kottayam. The appellant is aggrieved by an arrear bill of Rs.82,692/- along with the regular bill of 3/2019. The arrear bill pertains the regular bill for the month of 04/2011. Aggrieved by the arrear amount, the appellant filed petition before CGRF, Kottarakkara requesting to quash the bill. The Consumer Grievance Redressal Forum disposed the OP No.60/2019 filed by the appellant and ordered on 03-08-2019 that the amount demanded as arrear is legally sustainable and the appellant is liable to pay it. Still aggrieved by the said order, the appellant has filed the Appeal Petition before this Authority on 02-09-2019.

Arguments of the appellant:

The arguments of the appellant in the appeal petition is as follows.

M/s Hotel Anand had received a Demand Notice for March 2019 dated 07/03/2019 from the office of Special Officer (Revenue), K.S.E.B Ltd stating undisputed arrears for an amount of Rs. 82,692/- (Rupees Eighty-Two Thousand Six Hundred and Ninety-Two Only). The amount is mentioned in the bill as 'arrear as on 31/01/2019'. Only the amount is mentioned vaguely but not the exact date of default is mentioned in the bill. The case of arrear wasn't mentioned in any of the previous bills issued to M/s Hotel Anand by the K.S.E.B Ltd.

Prom the enquiry conducted by the consumer, he got the information that the default is from the year of 2011. It is clearly mentioned in the Regulation 136 (3) of Kerala Electricity Supply Code, 2014 that "no sum due", from the consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied."

Since no intimation of arrear was given from the lime of due and the same was not shown continuously as recoverable arrear of charges, the limitation under Regulation 136 of the Act applies in this case.

Nature of relief sought:

Quash the order passed by the C.G.R.F, Kottarakkara since the amount claimed by the K.S.E.B Ltd is of the month of April, 2011 and the same is barred from being collected by the Regulation 136 (3) of Kerala Electricity Supply Code, 2014.

Arguments of the respondent:

An amount of Rs. 82,692/- (Rupees Eighty-Two Thousand Six Hundred and Ninety-Two only) was shown as undisputed arrear amount in the bill dated 07.03.2019 issued to the consumer. On reviewing the case from this office, it was found that the current charge for the month 04/2011 was not demanded from the appellant firm. As per the consumption of the said period, current charge for the month 04/2011 was arrived and included in the bill dated 07.03.2019.

Later vide letter dated 19.07.2019, for realizing the current charge for 04/2011, a thirty days' notice was issued to the consumer as per Regulation 134, Kerala Electricity Supply Code 2014. Subsequently vide letter dated 16.08.2019, a detailed calculation sheet describing how the said amount was arrived was also issued to the consumer.

As per Regulation 134(1) Kerala Electricity Supply Code 2014, 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 thirty days shall be given to the consumer for making payment of the bill.

In view of the said regulation the respondent issued a notice to the consumer demanding the said amount. The amount of Rs. 82,692/- has never been demanded from the consumer before the bill dated 07.03.2019.

From 15.03.2011 onwards, the appellant transfers current charges through electronic fund transfer. Before, the consumer used to remit current charges by D.Ds. The respondent afforded the appellant enough time to present a proof of remittance against the said demand, which the consumer failed to produce till date.

The appellant himself has admitted that no demand was received in 05/2011 (Consumption month 04/2011). Hence, as per Regulation 134(1), Kerala Electricity Supply Code 2014, the appellant is liable to pay the current charge for the month of 04/2011.

Analysis and Findings: -

The Hearing of the case was conducted on 17-10-2019, in my chamber at Edappally. Sri. Felix Francis represented the appellant's side and Sri. Pradeep P. Superintendent, O/o Special Officer (Revenue) and Sri. Kurian Sebastian, Assistant Executive Engineer, Electrical Sub Division, Kottayam, represented the respondent's side. On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The appellant's argument is mainly based on Regulation 136 (3) of Kerala Electricity Supply Code, 2014 which says that "no sum due", from the consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied." Since no intimation of arrear was given from the time of due and the same was not shown continuously as recoverable arrear of charges, the limitation under Regulation 136 of the Act applies in this case.

The account statement of the appellant in the Corporation Bank furnished by the appellant shows that though he remitted the bill amount of Rs. 82,747/- through NEFT to the Special Officer (Revenue) on 17/5/2011, the amount was credited back in the account of the appellant on the same day stating that the A/C does not exist. The appellant's contention is that the respondent has never raised the bill for 04/2011 and the respondent also stated that the current charge for the month of 04/2011 was not demanded from the appellant. The appellant is not aware of the receipt and remittance of the monthly bill for 04/2011 since the issue occurred after a period of 8 years. According to the respondent, the current charge for the month of 04/2011 was arrived and included in the bill dated 07-03-2019 as 'undisputed arrears'. These statements of the appellant and the respondent are not reliable and conflicting considering the transfer of the bill amount to the Special Officer (Revenue) on 17/5/2011. It is pertinent to note that the KSEBL has not

taken any action to realise the bill amount for 04/2011 during the period from 5/2011 to 03/2019 from the appellant. After a period of 8 years, the respondent raised an arrear bill for the regular current charge bill for 04/2011. The Licensee is empowered to raise the bills of electricity consumed by the party. If the bills are not paid in time, they can issue notice of disconnection and can pursue legal action against the consumer to recover the arrears. But in this case, it appears that the Licensee has resorted to the practice of issuing undisputed arrear bill to the appellant in 03/2019, alleging arrear of monthly bill for 04/2011.

In this case the appellant and the respondent have averred that the disputed arrear bill was not issued earlier. The appellant states that entire claim is already time barred as per the Regulation 136(3) of the Kerala Electricity Supply Code, 2014 since it is older than two years. Reg 136(3) of Kerala Electricity Supply Code 2014 stipulates as follows:-

"no such sum due from any consumer on account of default in payment shall be recoverable after a period of two years from the date when such sum has been shown continuously as recoverable arrears of charges for electricity supplied " The dictum laid down in Rototex Polyester Vs Administrator, Administration of Dadra & Nagar Haveli (UT), Electricity Department, 2009(5) All.MR 579 that the phrase "sum due" means due and payable after a valid bill has been sent to the consumer is very much applicable in this case as well.

In short, the word "due" in Section 56(2) of Electricity Act 2003 means the amount due and payable after a valid bill has been served on the consumer. In an identical case, reported as, 2009(1) KHC 945 of Hon High Court of Kerala in W P (C) No. 90 of 2009 (1), Sunderdas P Vs KSEB, it was decided as follows; "...The scheme of Section 56(2) is that the amount becomes due when the bill is issued".

However the argument of the respondent that the current charge for the month 04/2011 was not demanded from the appellant firm in time and they demanded it only in 03/2019 is not convincing. It is revealed from the bank account statement of the appellant that the regular energy bill for 04/2011 was demanded in 05/2011 and the appellant remitted the amount through NEFT to the account of Special Officer (Revenue) on 17/5/2011, but the amount was credited back in the account of the appellant due to some technical reasons. Hence actually the amount was first due in 05/2011 when the respondent demanded the current charge for 04/2011 in 05/2011 and this is evident from the statement of bank accounts. In the case of default of payment the respondent had to take action to disconnect the connection of the appellant. This was not done. Instead he showed the amount as arrear in the bill issued on 07/03/2019. The amount has not been shown continuously as recoverable arrears of charges for electricity supplied, during the period up to 03/2019. The Licensee has collected the succeeding month's bills, without collecting the alleged arrear amount. This state of affairs demands a detailed investigation by Licensee and exercise of suitable remedial measures, since in such a situation any consumer is free to remit or not remit his bills and there is nobody to check it. The failure to produce the receipt of old bill and its remittance, after a period of 8 years, cannot be considered as a fault of the

consumer. In such cases, the failure of the party to produce receipt is not a proof of having defaulted the paying of monthly bills. Normally, there is less possibility to keep the old bills and its receipts by the consumers for such a long periods under safe custody, anticipating a notice from the licensee to produce the same, on a later date.

DECISION:

From the analysis done and the findings and conclusions arrived at, which are detailed above, this Authority take the following decision.

The arrear amount for Rs.82,692/-, issued by the respondent as not maintainable before law and as such quash the same.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is allowed as it is found having merits and the petition stands disposed of accordingly. The order of CGRF, Kottarakkara vide OP No.60/2019 dated 03-08-2019, is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/068/2019/_____ /Dated:_____

Delivered to:

1. Sri S. Subbiah, Managing Partner, M/s Hotel Anand, Central Junction, Kottayam
2. The Deputy Chief Engineer, Electrical Circle, KSEBL, Kottayam
3. The Special Officer (Revenue) Vydhyuthi Bhavanam, KSEBL, Pattom, Thiruvananthapuram
4. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kottayam

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, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.