

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/101/2019
(Present: A.S. Dasappan)
Dated: 27th February 2020

Appellant : Sri. Nishad M.A.
Blooms Berry Restaurant,
Shop Nos. 74,75,76 and 83,
Lulu International Shopping Mall Pvt. Ltd.,
Edappally, Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Palarivattom,
Ernakulam

ORDER

Background of the case:

The Appellant Sri. Nishad M.A is the owner of a restaurant in the name and style as Blooms Berry Restaurant with shop No. 74,75,76 & 83 in the Lulu International Shopping Mall Edappally, Kochi having consumer number 1155448026730 under LT VII A commercial tariff of Electrical Section Edappally. The service connection was effected on 18-06-2014 with connected load of 119390 watts. On 16.04.2019, the Anti Power Theft Squad, Ernakulam unit of KSEBL along with the officials of the Electrical Section Edappally had conducted an inspection at the premises of the appellant. During the inspection it was detected that the secondary wires from the CT provided in the Y phase power cable were wrongly connected to the B phase current terminals of the meter and the secondary wires from the CT provided on the B phase power cable were wrongly connected to the Y phase current terminals of the meter causing wrong phase association. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Edappally issued a provisional short assessment bill. Then the appellant had challenged before the CGRF, the demand notice dated 7-6-2019 issued by the respondent to pay an amount of Rs. 91,29,231/- as short assessment charges for the period from 18-06-2014 to 16-04-2019. The Forum disposed of the petition vide order No. 50/2019-20 dated 25-11-2019 by ordering that the bill is to be revised by adding one half of the recorded consumption. Aggrieved against this, the appellant has submitted this appeal petition before this Authority on 23-12-2019.

Arguments of the appellant:

The appellant herein is the Director of a well-established and a reputed Company which owns the Mall and is the Licensor of a restaurant viz., Blooms berry functioning at Room/Door Nos74,75,76 and 83 in the Lulu International

Shopping Mall at Edappally in Ernakulam District. In the said restaurant, there is consumer number for electrical supply, with No, 26730. The peculiarity of the electrical supply to the Lulu Mall is that in the basement there is a metering panel system which is in the exclusive and sole occupation of the KSEB where nobody other than the Board or its officials have got any access or entry to the same as the same is kept under the lock and key of the Board which is in the exclusive control of the Board and this fact has been very much admitted by the KSEB without any dispute. It is seen that Anti Power Theft squad on 16-4-2019 conducted an inspection in the premises bearing consumer No. 26730 and according to them this inspection is carried out in the metering panel room and the voltage/current phase association is wrongly connected because of which consumption registered in the meter was less and that when there is a consumption of 2222.1 unit being used, only 1200 units were being registered. Thus, on the basis of this inspection an intimation is given to the appellant by the respondent. There is a site mahazar prepared based on the inspection carried out by the APTS. The said report categorically states that the meter and all connected materials are situated in the basement of the building and it is stated that the meter and the security seals everything are perfectly in order and the meter was functioning normal and there was no tampering of any kind in any manner or any theft committed by anyone. According to the respondent itself, there is a mistake committed in the connection which is obviously by the electricity department. This appellant is not subscribing to such version of mistake on the part of Electricity Department. Hence the demand cum disconnection notice is served on the appellant. The appellant immediately submitted its objection with promptitude to the respondent justifying its stand in a convincing and comprehensive manner supported by valid and sustainable contentions to the effect that the appellant is not at all legally bound to make any further payment to KSEB other than what had been already paid by it which itself is very huge and substantial. It was contended by the appellant that the scheme of the Code and the Act envisages that if an assessment is made and an objection is raised as regards the assessment, obviously such objection shall be quite tenable, valid, maintainable and sustainable. More importantly the assessment from a period commencing from 16-6-2014 till today is a gross and very serious illegality perpetrated and is absolutely impermissible under law in terms of the provisions of the Electricity Supply Code. This is strictly in terms of Regulations of the Code. But contrary to the same, the impugned illegal order before CGRF was passed which is capricious and irrational. Apart from the above averments it was argued before the CGRF about the blatant and grave violations of the Electricity Supply Code as to the regulations 113(6), 152, 104(6) and (7) etc. It is very much pertinent to note that no periodical inspection was done by KSEB as enumerated in Regulation 113 (6). This is obviously a flagrant violation, latches and omission on the part of KSEB. Since there is no tampering or theft on the part of the appellant within the meaning of Section 152, the question of any further payment by the appellant for the anomalies narrated at Section 152 does not arise at all. Further as per Section 104(6) there should be a proper register to be maintained by KSEB, but in the instant case no register of any kind in pursuance to Section 104 (6) has been maintained by KSEB and KSEB itself has not claimed that they had maintained any such register. Also, Section 104(7) stipulates for providing a sealing certificate to the appellant. This is another vital omission on the part of KSEB. The aforesaid violations and breaches of the provisions of the Code and the Act have been indisputably accepted by KSEB itself.

The respondent contended 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 CGRF on evaluation of the contentions of the either side came to a conclusion which very much ambiguous and arbitrary. This is because the respondent has very cleverly and tactfully chosen and relied partly on certain provisions of the Act which are favourable to them and regarding certain other provisions in the Act which are not very much favourable to them the respondent took a stand that they are not accepting those provisions in the Act without any reasoning. Such stand of KSEB is absurd, regressive, frivolous and irrational. KSEB people should not have taken such unfair argument since they are violations of justice and there is travesty of justice. The appellant is of the staunch view that the provisions of the Act are very much akin to the regulations in the Code.

The CGRF after relying on the section 45 of Electricity Act 2003 and Regulation 134 of the Electricity Supply Code came to a conclusion that the bill issued is for the period from 16/06/2014 to 16/04/2019 and undercharged amount is to liable to be remitted. This finding rendered by the Forum has neither any basis nor any rationality for the reason that the provisions cited as provided under section 45 of Electricity Act 2003 and Regulation 134 of the Electricity Supply Code are all irrelevant as far the case in hand is concerned. Section 45 of the Electricity Act 2003 deals with the power of the recovery for charges. The fact as to the power of the recovery is not the dispute herein and the appellant also did not challenge it but the charge amount and the manner of arriving at the charge amount is the matter of dispute. This fact has been misconstrued by CGRF. The CGRF failed to appreciate the very basis of the dispute. Even according to Section 45 of the Electricity Act 2003 sub section 2(a) states that "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. This provision makes it clear that the method and the principles that governs the recovery of charges are as specified by the State Commission and in this case, it is Electricity Supply Code 2014. On the other hand, regulation 134(1) of the Supply Code deals with the right to recover the amount undercharged from the consumer but not the manner and principles regarding the recovery of the said undercharged amount or more specifically the period for which such charges could be collected.

Relying of regulation 21 and the 109 of the Supply Code the Forum would state that it is in the responsibility of the consumer that the meter and the other equipments of the licensee are kept in safe custody. Whereas on perusal of the nature of the anomaly it is clearly inferable that the same is not at all attributable to the appellant and has occurred only due to the misdeed and mistake of the respondent. It is quietly and obviously discernible that for all the lapses, laches, violations, breaches, mistakes, omissions and acts of KSEB, the respondents are mischievously and illegitimately trying to make the appellant a scapegoat with liability which contention is totally unsustainable. This is a grave injustice perpetrated against the appellant by the respondent illegally. An attempt has been made to exonerate the respondent for the mistake which is now attempted to be put on the heads of the appellant. For a sheer mistake of the respondent the burden is now thrown on the appellant which is gravely unsustainable and vexatious.

On perusal of the regulations 21 and 109 of the Supply Code, it can be seen that it cast a liability upon the respondent too as to the maintaining of the meters etc. This aspect has never been considered by the Forum and conveniently ignored by the Forum. It is clear that none of the provision of the Code or any other regulations stipulates that the licensee requires the permission or the concurrence of the consumer in inspecting the meters and equipments. Regulation 109(5) specifically states that the consumer shall provide suitable an adequate space for installation of the meter in such a manner that it is always accessible to the licensee or his representative. It is also to be noted that the respondent does not have a case that the appellant has in any manner tampered or committed theft with the meter, as enumerated in the Act or the Code. On the other hand the regulation 104(6) specifically states that the licensee shall maintain a sealing certificate which shall reflect the sealing, the removing of the seals and which shall be signed by the consumer or his representatives. This is required for the reason that any interference in the meter by the licensee shall be brought to the notice of the consumer or his, representatives. In this regard, by not maintaining any such sealing certificate the opportunity to the consumer to know any such interference at the instance of the licensee is lost forever. Hence in the light of the 109(5) and 104(6) the conclusion of the Forum that the after installation of the meter in 2014 the same was inspected only on 2019 lacks any legal basis and is something which the appellant could never know under any circumstances.

The Forum further proceeds to discuss that as far as the inspection is concerned as per regulation 18(2) Central Electricity Authority (Installation and operation of meters) regulations 2006, the testing of the consumer meters shall be done at the site at least once in five years. The Forum though frames a question "whether belated inspection by the respondent is against the 113(6) of the Electricity Supply Code it does not attempt to answer the same. The Forum instead have attempted to sanctify the contention of the respondent that since regulation 18(2) of Central Electricity Authority (Installation and operation of meters) regulations 2006 stipulates at least once in 5 years only inspection is required the regulations 113(6) of Electricity Supply Code is against the central legislation. This contention itself is not acceptable since what is stipulated in regulation 18(2) Central Electricity Authority (installation and operation of meters) regulations 2006, is that inspection shall be conducted at least once in 5 years and not only once in five years. Hence the Supply Code regulation 113(6) mandating inspection for LT-3 phase connection in every three years is not against the central legislation but within its legislative sphere. In fact, such inspections are stipulated for better monitoring of anomalies in the meter and hence stipulating 3 years period cannot be against the any principle of law or central legislation. Any other contentions in this regard are erroneous to that extent.

The Forum has on the other hand has stated in page 20 of the order that "this Forum has no authority to make amendments to the regulations of the Electricity Supply Code 2014". If this is the basic conclusion of the Forum it is quite unknown as to why and under what pretext the Forum has endeavoured to discuss as to the legislative competence and the legislative sanctity of the Electricity Supply Code in relation to the central legislation. It could only be presumed that such an endeavour is made only to sanctify the contention of the respondent and exonerate them from any liability.

Brushing aside the discussions that were made by the Forum in preceding paragraphs of the order, in page 20 onwards the Forum confines to the

interpretation of regulation 152 of the Electricity Supply Code. Regulation 152 of the Supply Code deals with Anomalies attributable to the licensee which are detected at the premises of the consumer. The Forum in many words has undisputably accepted that there is no default or that there is no mistake or misdeed on the part of the appellant. Hence the Forum has reached under the shelter of regulations 152 to decipher a case actually not projected by the respondent. The Forum states that as per regulation 152(1) of the Electricity Supply Code 2014, what is stated is only wrong application of multiplication factor and incorrect application of tariff. The CGRF failed to note a vital aspect in the in 152(1) that is inaccuracies in metering. The issues of wrong connection of the CT terminals are necessarily to be brought under the terminology "inaccuracies in metering". Metering denotes everything that is related to meter's, installation of meter', review, maintenance, reading of meters, testing of meters, replacement of defective meters etc. In the instant case the admitted aspect which is categorically accepted by the CGRF is that the anomaly is wrong connection of CT terminals which is a mistake not attributable to the consumer but the licensee. Hence the finding of the Forum that regulation 152 of the Electricity Supply Code is not applicable in the instant case is absolutely illegal and arbitrary.

Apart from the above the CGRF has directed the respondent to revise the bill by adding the one half of the recorded consumption. There is no clarity as to what the Forum intended by the one half of the recorded consumption and what is the actual recorded consumption. This will in effect only burden the appellant for no wrong committed by them. Subsequently the respondent herein issued a revised bill for an amount of Rs.57,21,918/- (Rupees Fifty-Seven lakhs Twenty-One thousand Nine Hundred Eighteen only). The assessment done at the instance of the respondent is not at all legally maintainable and is to be set aside since the assessment is frivolous and vexatious. The order of the Consumer Grievance redressal Forum is required to be interfered with.

There is a mistake committed in the connection which obviously is done only by the electricity department, for which the appellant cannot be liable, answerable, accountable or responsible at all. This aspect should have been considered to see that the appellants should not be mulcted with any liability.

The essential provision of in the regulation 21 and the 109 of the Supply Code it can be seen that it cast a liability upon the respondent too as to the maintaining of the meters etc. This aspect has never been considered by the Forum. It is clear that none of the provision of the code or any other regulations stipulates that the licensee requires the permission or the concurrence of the consumer in inspecting the meters and equipments.

The CGRF never considered the relevant provisions of regulation 152 in its correct perspective and nature. The manner in which charges are to be collected especially as envisaged under 152(3) has never fallen to the conscience of the CGRF. The logic and clarity as to the adding of the one half of the recorded consumption and the recorded consumption and revising the bill cannot be deciphered from the order.

It is prayed to allow the Appeal, setting aside the order of the Consumer Grievance Redressal Forum dated 25/11/2019 and to allow the complaint filed by the appellant, in the interest of Justice.

Arguments of the respondent:

1. The above appeal has been preferred by the appellant/consumer challenging the order of the Consumer Grievance Redressal Forum Central Region dated 25-11-2019 in OP No. 50/2019-20 wherein the Forum on analysis of the grievance raised by the consumer against the short assessment bill issued by the Board amounting to Rs. 91,29,231/- for the period from 18-6-2014 to 16-4-2019 found that due to the interchanged connection of CT secondary wires, it is scientifically correct that 1/3 of the actual consumption goes unrecorded due to the phase shifting of the angle between voltage (V) and current (I). In the downloaded data of the meter namely "Sequential storage for the events OFF" for the period from 28-5-2014; 9.38 to 16/04/2019: 11.39.00 (83 reading total) shows that the power factor of Y and B phase (YPF and BPF- Columns 13 & 14) are always either Zero or negative. Moreover, the B phase current (B1 (A) column 11) becomes negative daily. Therefore, the actual consumed unit of the consumer will be the sum of recorded consumption and one half of the recorded consumption. The fact that the percentage error varies from 46% at the time of inspection to 35.11 at the time of comparing with check meter on 07/11/2019 also support this method of calculation. Accordingly, the Forum directed the Board to revise the bill adding one half of the recorded consumption. As directed by the Forum the Respondent had issued revised bill on 16-12-2019 for an amount of Rs. 57,21,918/- adding one half of the recorded consumption.

The CGRF have after meticulously examining the matter in detail have found that there is wrong connection of CT terminals to the meter and due to the interchanged connection 1/3rd 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. Taking into account the fact that the percentage error varies from 46% at the time of inspection to 35.11% at the time of comparing with parallel meter on 6-11-2019, incorporating the difference the Forum has found that the difference is -50% and accordingly directed the licensee to revise the bill by adding one half of the recorded consumption. Accordingly, the licensee has issued a revised bill.

The demand raised is pertaining to the actual energy charges liable to be paid against the actual consumption of the consumer in the premises that escaped assessment. The said bill is legally valid and liable to be remunerated in terms of law. The following are the facts that led to the issuance of the short assessment bill to the consumer.

The connection is provided with a CT operated static meter which was installed in the metal board exclusively provided for keeping metering equipments and was kept inside the power control room in the ground floor of the mall. During the inspection it was noted that the secondary wires from the CT provided on the Y phase cable were wrongly connected to the B phase current terminals of the meter and the secondary wires from the CT provided on the B phase cable were wrongly connected to the Y phase current terminals of the meter causing wrong phase association in the meter and hence caused under recording in the meter. The accuracy of the metering system was checked at site using the standard meter testing equipment which is a calibrated one. The said fact has been clearly stated

in the mahazar. The copy of the site mahazar prepared has been duly served on the consumer at the end of the inspection. The inspection was done in the presence of Sri. Unnikrishnan V., the Shift Engineer and the Deputy Chief Engineer Sri. Sudeep E.A, both are the staff of the appellant, who are the signatories of the mahazar.

The inspection of the consumer meters are being conducted by the licensee as per regulation 18 of the Central Electricity Authority Installation and Operation of Meters Regulations 2006. Regulation 18 provides for calibration and periodical testing of meters. Regulation 2 provides for testing the consumer meters at site at least once in 5 years. There are 4 HT connections and 220 LT 3 phase connections provided against Lulu Mall. In total there are 46 panel boards. This inspection pertains to the room containing 4 panels wherein 15 meters are installed. The accuracy of the meter has been tested in an accredited laboratory before installation and the meter installed is an accurate one.

The Assistant Engineer, Electrical Section Edappally thereafter prepared a short assessment bill as per Regulation 134 of the Kerala State Electricity Supply Code 2014 and the enabling provisions under the Electricity Act, taking the period of assessment from the date of connection, and was issued to the consumer. The demand notice was accompanied by the calculation details of the assessment by which the undercharged amount has been arrived. Aggrieved by this bill, treating the same as an assessment under Sec.126 of the Electricity Act, the consumer filed objection before the Assistant Engineer on 20.06.2019. Since assessment made is not under Sec. 126 of the Electricity Act and the remedy available to the consumer to challenge a short assessment bill is to approach the Consumer Grievance Redressal Forum formed exclusively for redressing these types of grievances, the Assistant Engineer vide letter dated 26-6-2019 informed the Consumer to approach the Forum for addressing his grievances. Without approaching this Forum, the consumer approached the Hon High Court of Kerala by filing WP 18613/19. The Hon'ble High Court of Kerala vide judgment dated 12-7-2019 refrained to entertain the writ petition and directed the consumer to approach the Forum and pursue his remedy. Consequently, this complaint has been filed.

From the date of connection, the consumer has been paying the energy bills for lesser units on account of undercharging since the phase association of voltage and current connections and this meter has got changed from the date of connection causing error in the meter. Being a highly loaded consumer, the consumer was provided with electric connection having a CT operated meter and for its purpose three CTs with ratio 150/5 Amp.

The meter would not record correct energy when there is wrong phase association between the current and voltage connections in the meter. Noting this anomaly, the inspection team had connected standard calibrating meter "Zera Make" which is a calibrated meter testing equipment exclusively provided for field testing. During the testing time, the consumers meter has recorded only 1200 Wh while the standard meter has recorded the actual consumption of the consumer as 2222.1 Wh and hence the metering system was suffering an error of 46%.

The connected load of the consumer was found within limits. The appellant did not raise any material grounds in the complaint preferred before the Consumer Grievance Redressal Forum. The respondent on the other hand substantiated their contentions relying on the various statutes and provisions governing the situation.

Though the Board had preferred detailed statement of facts before the Forum, the consumer did not file any reply to the same. Now in exercising the remedy of an appeal before this authority it may not be open for the consumer to raise new grounds for the first time. As such there is no bonafides in the contention of the appellant that the CGRF has not conceived and addressed the issue projected and argued by the appellant before the CGRF.

The licensee is entitled to recover the undercharged amounts for the entire period during which such anomaly persisted. The act and law do not permit the consumer to make an 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.

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 Licensee. 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-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.

In the case on hand the fact that the voltage/current phase association became wrong, because of which the consumption registered in the meter was less and that when there is a consumption of 2222.1 unit being had; 1200 unit alone was being registered is not disputed. The licensee after inspection had in the light of the judgment in *Nirmala Metal Industries Vs. KSEB 2006 (3) KLT 465* and in the light of the judgment of the Apex Court in *Bombay Electric Supply & Transport undertakings Vs. Laffans India Pvt. Ltd & Another*, kept the connection as such without making any changes keeping status quo leaving open the consumer to approach the appropriate authority to cross check the finding if they are having any dispute with the inspection and its findings. No such action was taken by the consumer. Thereafter the Board after seeking permission from the Forum on 2-11-2019, in the presence of the consumer installed a parallel meter without disturbing the existing connection status, for convincing the actual quantity of consumption that is getting escaped without metering. The reading data taken on 6-11-2019 shows significant difference between the two meters substantiating the findings of the inspection team and ratifying the same. However, there is a slight variation in the percentage of error which can be the result of the restricted usage by the consumer upon installation of the check meter for reducing the liability. Accordingly, the Forum has given the advantage of difference to the consumer and fixed the percentage of error as 35.11% as against the original finding of 46% and directed the Board to revise the bill accordingly. Accordingly, there is substantial reduction in the amount payable by the consumer. As such the consumer is bound to pay the differential amount thus arrived for the period during which they were undercharged. 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 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 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 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, As per the Regulation 134(1) "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". The above regulation enables the licensee to recover the undercharged portion of energy charges from the consumer. Going by Regulation 120 of the Supply Code 2014 (Responsibility of the consumer to report the defect of the meter).

- (1) If the consumer notices any defect in the meter installed in his premises, he shall immediately report the matter to the nearest office of the licensee. Also, as per Regulation 21. (The safe custody of the meter and other equipment of the licensee.) (1) It is the responsibility of the consumer to keep in safe custody, the meter and other equipment of the licensee and seals on the meter and associated equipment installed within the premises of the consumer.
 - a. The meter and the associated equipment installed by the licensee in the premises of the consumer shall on no account be handled or removed by any person other than an employee or a person authorised by the licensee for this purpose.
 - b. Seals fixed on the meters and equipment of the licensee shall on no account be tampered with, damaged or destroyed. As per Regulation 109(18) of the Supply Code, the consumer shall be responsible for safe custody of meter and accessories, if the same is installed within the premises of the consumer and Reg (19) provides that the consumer shall promptly intimate the licensee about any fault, accident or abnormality noticed with the meter. In the instant case all the meters are kept inside the control room which is under the strict watch of the mall electrical staff. As the entire control room is always under the supervision of the electrical staff of the mall, the licensee cannot do any work without the notice of these electrical staff. As the

security seals were intact it is clear that it had occurred on the date of connection. The consumer could not point out any other date of repairs or replacement or rewiring after the installation of the metering equipments and hence the Assistant Engineer prepared the short assessment bill from the date installation (date of connection). The same is in order and is not liable to be interfered.

All the inspection procedures were carried out in the presence of the senior electrical officers of the mall and they were made convinced about the fault and also the metering system is still kept undisturbed keeping the status quo of the connection. Any time during this period the consumer could have asked for checking again to become convinced if they had any doubt regarding the accuracy of testing. As permitted by the CGRF on 2-11-2019, in the presence of the consumer a parallel meter has been installed without disturbing the connection status for convincing the actual quantity of consumption that is getting escaped without metering. The status of the recording for the period of 7 days was recorded and produced before the Forum. The same ratified the outcome of the previous inspection.

The details of the parallel meter check is as follows.

Main and Check meter reading statement of Con No. 26730 as on 06-11-2019.

Date	02.11.2019	06.11.2019	Diff	CT 150/5 MF-30	Total Consumption
Consumer Meter Reading	38620.67	38677.9	57.23	30	1716.9
Parallel Meter Reading	0.1	88.3	88.2	30	2646
Difference between consumer meter and parallel meter readings				2646 1716.9	929.1
Main and check meter reading statement of Con No. 26730 as on 28-11-2019					
Date	06.11.2019	28.11.2019	Diff	CT- 150/5 MF-30	Total Consumption
Consumer Meter Reading	38677.9	38990.46	312.56	30	9376.8
Parallel Meter 'Reading	88,3	559.3	471	30	14130
Difference between consumer meter and Parallel meter readings				14130- 9376.8	4753.2

error = $4753.2/14130 = 0.3363907 \times 100 = 33.64$

Analysis and Findings:

The hearing of the case was conducted on 10-02-2020 and 18-02-2020 in my chamber at Edappally and Sri. Aravind S.S., Advocate, Sri Rober Melbon and Sri. Augustine Joseph represented the appellant's side and Sri. B. Pramod, Advocate, Sri Sunil N.V., Assistant Engineer, i/c Electrical Sub Division, Palarivattom, Sri Tito V. William, Nodal Officer, KSEBL and Sri. Antony Shaju, SA, Electrical Section Edappally represented the respondent's side. On examining the petition, the counter statement of the respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The APTS has inspected the consumer's premises on 16-04-2019 and detected that the CTs for metering was wrongly connected, thus resulting in the recording of a lower consumption than what is actually consumed. A site mahazar was prepared on 16-04-2019 and meter data was downloaded. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount.

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

The meter and all connected materials are situated in the basement of the building and the meter and the security seals everything are perfectly in order and the meter was functioning normal and there was no tampering of any kind in any manner or any theft committed by anyone. There is a mistake committed in the connection which is obviously by the respondent. According to the appellant, there is blatant and grave violations of the Electricity Supply Code as to the regulations 113(6), 152, 104(6) and (7) etc by the respondent by issuing the short assessment bill.

The appellant challenged the version of the respondent 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 respondent has very cleverly and tactfully chosen and relied partly on certain provisions of the Act which are favourable to them and regarding certain other provisions in the Act which are not very much favourable to them the respondent took a stand that they are not accepting those provisions in the Act without any reasoning.

The appellant has further argued that the finding rendered by the Forum has neither any basis nor any rationality for the reason that the provisions cited as provided under section 45 of Electricity Act 2003 and Regulation 134 of the Electricity Supply Code are all irrelevant as far the case in hand is concerned. Section 45 of the Electricity Act 2003 deals with the power of the recovery for charges and the appellant did not challenge the power of recovery but the charge amount and the manner of arriving at the charge amount is the matter of dispute.

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 1/3rd 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 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. 5721918/- 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. 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 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.

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 from the date of connection (as alleged by the respondent) 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. A wrong meter connection provided by the respondent cannot be treated as a defect occurred in the metering system which is in service.

A Division Bench of the Hon'ble High Court by its Judgment dated 13.02.2014 in Writ Appeal 114 of 2013 has held that Regulation 24(5) of the Kerala Electricity Supply Code, 2005 cannot be applied to cases like the present one since that provision pertains only to cases where the licensee has undercharged the consumer i.e. where the meter has recorded the actual consumption, but the licensee has not realized its charges accurately. Regulation 24(5) of the Code of 2005 is pari materia to Regulation 134 (1) of the Code of 2014, which has been invoked in the present case. The present case is not one where the consumer has been undercharged despite the meter recording the correct reading, but this is a case where the meter has not recorded correct reading on account of the defect. Hence going by the dictum of the said Judgment, the Respondent cannot rely upon Regulation 134(1) of the Code of 2014 for the purpose of assessment in the present case.

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.

Though the inspection was conducted on 16-04-2019, the defect was not rectified till 12/2019 in this regard, the respondent has contended that in the light of the judgment in Nirmala Metal Industries Vs. KSEB 2006 (3) KLT 465 and in the light of the judgment of the Apex Court in Bombay Electric Supply & Transport undertakings Vs. Laffans India Pvt. Ltd & Another, kept the connection as such without making any changes keeping status quo leaving open the consumer to approach the appropriate authority to cross check the finding if they are having any dispute with the inspection and its findings. But these judgements ordered before the enactment of the Kerala Electricity Supply Code 2014 have no relevance in this case, since 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.

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. The fact of the matter is, the metering system was defective since the secondary wires from the CT provided in the Y phase power cable were wrongly connected to the B phase current terminals of the meter and the secondary wires from the CT provided on the B phase power cable were wrongly connected to the Y phase current terminals of the meter causing wrong phase association. 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.

The appellant was originally given a bill for Rs. 91,29,231/- for the period from 18-06-2014 to 16-04-2019 following the inspection on 16-04-2019 taking 46% as the unrecorded portion of energy. Later, the bill was revised to Rs. 57,21,918/- for the period from 18-06-2014 to 28/11/2019 taking 33.33% as the unrecorded portion of energy as directed by CGRF, Ernakulam. An accuracy tested metering system was provided in parallel with the disputed system on 02-11-2019 and retained till 28-11-2019 for comparing the consumption in both meter and thereby found that there was error of minus 33.872%. On the strength of the above reference, CGRF directed to take 33.33% as the unrecorded portion of energy.

The respondent has not produced any evidence to show that the meter started underrecording of consumption from 18-06-2014 onwards. As per respondent they could not obtain the previous data from the meter.

The premise has both single phase load and three phase load. The premise was with a connected load of 100 kW and contract demand 90 kVA up to 7/2015 and afterwards 120 kW and 99 kVA respectively. As per the meter reading details produced by the respondent from 07/2015 to 01/2020 the consumption as well as demand came down from 01/2016 onwards. The monthly consumption for 12/2019 and 01/2020 is seen as 20220 kWh and 22140 kWh which is higher than previous monthly consumption from 01/2016 to 11/2019. Further, on verifying the consumption pattern, it is found that the monthly consumption from 07/2015 to 12/2015 is in between 23820 kWh and 26520 kWh but the monthly

consumption from 01/2016 to 11/2019 is in between 11040 kWh and 18000 kWh. The respondent could not explain the reason for the sudden decrease of consumption from 01/2016 onwards and could not prove scientifically that the defect occurred from the date of connection. If the respondent had to inspect the meter in 02/2016 and later within a reasonable time, the defect could have been detected and rectified.

Here in this case, the respondent confirmed the non recording of current on the basis of the inspection conducted in the premises, load survey/tamper report down loaded and by installing a parallel check meter, but not established that the defect occurred from the date of connection. Since this is a case of anomaly attributed to the licensee and decrease of consumption from 01/2016, the realisation of the electricity short collected shall be limited for a maximum period of twenty four 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

For the reasons detailed above, it is decided to issue a revised short assessment bill for a period of 2 years from 12/2017 to 11/2019 by taking 50% of the recorded consumption in that period. The short assessment bill for Rs. 57,21,918/- is quashed.

The order dated 25-11-2019 in OP No. 50/2019 -20 of CGRF, Ernakulam is set aside. The appellant is allowed instalments without interest, to remit the revised short assessment bill, if he desires so.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant stands disposed of as such. No order on costs.

ELECTRICITY OMBUDSMAN

P/101/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Nishad M.A., Blooms Berry Restaurant, Shop Nos. 74,75,76 and 83, Lulu International Shopping Mall Pvt. Ltd., Edappally, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Palarivattom, 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.