

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/030/2020

(Present: A.S. Dasappan)

Dated: 30th December 2020

Appellant : Sri. Sajeesh. M.,
SS Poly Care,
Nallalam Mini Industrial Estate
Modern
Kozhikode – 673 027

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBL,
Kallai, Kozhikode

ORDER**Background of the case:**

The appellant, Sri. Sajeesh. M is running an industry by name SS Poly Care in Mini Industrial Estate, Nallalam. The applicant is a three-phase consumer of Electrical Section, Areekad with Consumer No. 1167897003871 and the tariff assigned is LT IV-A. The connected load in the premises is 88652 watts. The Assistant Engineer of the Section Office had issued a demand notice for Rs.4,73,325/- on 23-03-2020 towards the short-assessed amount for remittance due to the wrong Multiplication Factor (MF) 15 instead of 30 used for initial billing. The date for remitting the amount shown in the bill was 22-04-2020 and the date for disconnection as 07-05-2020 if default in payment. The appellant filed a petition in the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode numbered as 10/2020-21, challenging the demand notice, but the Forum issued the order in favour of KSEBL. Aggrieved on this, the appellant filed this appeal petition before this Authority on 12-10-2020.

Arguments of the appellant:

The appellant is urging the following grounds to be considered by this Authority:-

The Multiplication Factor '15' instead of '30' was being used by the Board employees for generating the monthly bills. The CGRF found lapses on the employees of KSEBL, but silent about the losses of the appellant and redressal of his grievances in the order issued by the Forum. The CGRF ought to have found that the appellant was not responsible and liable for the application of wrong multiplication factor and the qualified Sub-Engineer, who was taking the monthly reading of the energy meter kept under the custody of the Board was responsible.

The CGRF had to observe that non-billing of actual energy consumption reflected the price of the product from the industry and further billing after years attributed heavy loss to the appellant. But the Forum fixed the liability on the appellant. The Forum found lapses of the Board employees, but could not observe that the appellant was not responsible for the lapses and the revenue loss to be realized from the concerned employees. The Forum could not detect the actual period of wrong billing on the strength of evidences and hence, realization of short-assessed bill amount can only be done for a period of one year. The finding of the Forum that wrong monthly billing was being done for the entire period is against law.

The order of CGRF is against Section 173 of Electricity Act and hence, there is no existence. The Forum issued order in accordance with Regulation 152 of Supply Code, which is also against law. The Forum had not considered the fact of the extra liability of the appellant, who paid monthly energy charge, due to the reassessment of the energy consumption. The Forum had not allowed instalment facility for the remittance on the background of COVID-19 pandemic. The Forum issued order without considering principles of natural justice. The respondent had not produced the "CT changing register" before the Forum. The Forum had to observe that the disputed subject matter will not come under Regulation 152 of Supply Code. The Superintendent of the Section Office is responsible for the wrong monthly bills issued.

The appellant requested suitable action for redressing his grievance as both the respondent and CGRF had not considered the subject matter properly.

Arguments of the respondent:

On 18.03.2020, APTS wing of KSEBL had conducted a surprise inspection at the premises of the appellant and found that the energy bills were issued to the appellant with a wrong Multiplication Factor (MF) 15 instead of 30. The connection was effected to the appellant on 21-02-2011 with a load of 35951 watts and later the appellant applied for load enhancement. Accordingly,

the load was enhanced to 88652 watts with effect from 10-08-2015. As part of the load enhancement, the CT with ratio 75/5 was replaced with ratio 150/5. Though the load was enhanced as per the request of the appellant, the respondents omitted to record the change of CT ratio in ORUMA NET BILLING SOFTWARE and as a result the bills were continued to be issued to the appellant with MF 15 instead of 30. The bills were issued to the appellant that way for the period from 10-08-2015 to 02-03-2020 when the omission was detected. Hence in order to recover the amount short collected, a short assessment bill amounting to Rs 473325/- was served on the appellant on 23.03.2020.

As per Regulation 152(1) of Kerala Electricity Supply code 2014 "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 sec 126 of the act or of Sec 135 of the Act."

However, Regulation 152(2) provides that "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"

Regulation 152(3) further provides that "the realization of energy charges short collected shall be limited" to a maximum period of twenty-four months."

Regulation 134(1) of Kerala Electricity Supply code 2014 states that "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 short assessment bill was prepared and issued as per the said provisions contained in Kerala Electricity Supply code 2014.

In the instant case the bill issued to the appellant is for the amount short assessed due to wrong application of multiplication factor from 01-03-2018 to 29-02-2020 and no interest or penalty is charged. Hence the bill issued to the appellant is just and fair and the appellant is legally liable to pay the amount within the stipulated period.

The short assessment bill served on the appellant cannot be considered to be a penalty inflicted on him. On the other hand, it was actually current

charge for the energy consumed by the appellant which the licensee happened to omit to collect from him in time. The short-assessed bill was served without any surcharge and the appellant has enhanced his load after the date of connection and used more energy. Ironically enough there was no corresponding increase in the payment that the appellant made. There was an omission on the part of the licensee that when the CTs were changed, a corresponding change was omitted to be effected in ORUMA NET billing software and that omission resulted in the short collection of current charge from the appellant. A consumer cannot be allowed to exploit an omission on the part of the licensee in collecting current charge from him in time.

An omission was there in recording the MF which was not purposefully made. However, the appellant is not made to suffer as he is only instructed to remit the short-assessed amount without any penalty or interest.

It is the duty of an honest consumer to pay for the energy used by him. It is an admitted fact that the appellant had enhanced the load to 88652 watts. The appellant should have noticed that even though there had been considerable load enhancement, no increase in current charges commensurate with the enhanced load was reflected in his bills issued after the enhancement of load. An omission on the part of the licensee is not a ground for the appellant to exploit it to reap undue advantage. By dismissing the petition what the Consumer Grievance Redressal Forum means is that the appellant as a genuine consumer is duty bound to remit the short-assessed amount which is nothing but the cost of the energy consumed by him.

The following representation shows a comparison of consumption pattern of the appellant before and after the application of MF as 30.

Table A MF applied as 15

<u>Sl. No</u>	<u>Date</u>	<u>Units consumed</u>	<u>Bills issued in Rs</u>
1	1.1.2020	2640	20376
2	1.2.2020	2160	26762
3	2.3.2020	2190	27307

Table B MF applied as 30

<u>Sl.No</u>	<u>Date</u>	<u>Units consumed</u>	<u>Bills issued in Rs.</u>
1	1.8.2020	4068	39601
2	1.9.2020	4257	40658
3	1.10.2020	4365	41596

On a comparison of Table A with Table B it is seen that the consumption recorded before the application of the actual MF was much less than what

should have been actually recorded. After changing of MF, the consumption was started to be recorded 50 to 100 % higher than what it used to be. Needless to say, the undercharged bills caused huge loss to the licensee which the appellant should not lose sight of. It also shows that even if there are restrictions brought about by COVID- 19 pandemic, the appellant runs his business in a smooth way using electricity without getting bothered about payment of current charges in the right manner.

The appellant is trying to mislead this Authority. Electricity is a very important infrastructure and it cannot be termed as a bi-product. The appellant wants a mechanical application of regulations to suit his interest and tries to interpret them in a prejudiced manner. The petitioner has very well been apprised of the matter already. However, he pretends to be ignorant of the circumstances where a short assessment bill had to be raised and issued.

The Consumer Grievance Redressal Forum has considered all aspects of the matter and dismissed the petition. After receiving the Orders of the CGRF, the appellant submitted vide petition dt. 29-09-2020 before the Assistant Executive Engineer, Electrical Sub Division, Kallai that he was willing to remit the short-assessed amount in instalments with a condition that the remittance in instalment should be permitted to be begun from a date six months after the date of petition. This reveals that the appellant had decided earlier to remit the short-assessed amount as it was a genuine demand. However, as his request for prospective payment which is not supported by the rules in vogue, has been declined by the licensee, the appellant filed this appeal on an experimental basis only.

For a period of 55 long months the appellant did not remit proper current charge on account of omission of MF. As a result, the amount that was actually due to KSEBL was kept by the appellant with him and he made benefit out of it. Conveniently forgetting the above fact, the appellant finds faults with KSEBL which was at the receiving end because of the non-remittance of the current charges in time. Even though there has been omission of MF \or 55 months, the short-assessed bill was issued to the appellant only for 24 months.

In the light of the above, the petition filed by the appellant may be dismissed and direct the petitioner to pay Rs. 4,73,325/- being the short assessment bill for the period from 01-03-2018 to 29-02-2020.

Analysis and findings:

An online hearing was conducted at 11 AM on 16-11-2020 with prior information and willingness of both the appellant and the respondent. Sri.

Rajesh. E., Advocate appeared for the appellant and Smt. Sreevijaya. P.V. for the respondent. 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 argument of the appellant is that the metering system was kept under the custody of the Licensee and a qualified Sub Engineer was taking the meter reading. The responsibility of applying wrong multiplication factor is to be fixed on the concerned employee of the Licensee and not on the appellant. There is no evidence to prove from which date onwards wrong multiplication factor applied. The appellant was not given monthly instalments for remitting the amount. The subject case will not come under Regulation 152 of Kerala Electricity Supply Code 2014. The appellant is penalized for the mistake of the KSEBL Authorities.

The argument of the respondent is that the short-assessment bill issued was only for the actual consumption of energy by the appellant and a rectification of clerical error. As per Regulation 134 & 152 of Electricity Supply Code 2014, the respondent can issue such a bill. Though the error of billing calculation occurred from 10-08-2015 onwards, the date on which Current Transfer (CT) having ratio 75/5 was replaced with 150/5, due to the enhancement of connected load from 35951 watts to 88652 watts and the revised billing was done only for 24 months.

Though it was a fault on the part of KSEBL, it cannot be ignored that the party had actually consumed the energy and he is liable to pay for it. He is required to pay the charge only and not any penal amount. But the consumer can be allowed to remit the amount in equal instalments eligible for him.

There occurs a mistake in the billing (calculation) due to wrong application of multiplication factor or due to some oversight. Amount of short payments became due only after realization of mistake. Amount of the short assessment bill was never demanded earlier and same cannot be said to be due at any earlier time. The appellant does not dispute the error in the application of multiplication factor occurred to KSEBL in raising his monthly bills. The appellant is bound to pay the charge for the electricity he had consumed. As per Regulation 134(1) of Electricity Supply Code 2014, if the Licensee establish that it has undercharged the consumption, by review or otherwise, it is open to the Licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case, the respondent had only done that and so it is found that the consumer is liable to honour the bill dated 23-03-2020 for

Rs.4,73,325/- issued to him. Sufficient installment can be granted to the appellant for the remittance. A site Mahazar was prepared by the respondent at the time of inspection, which was accepted by the appellant.

Decision: -

From the analysis done and the conclusion arrived at, which are detailed above, this Authority upheld the decision taken by the CGRF, Kozhikode in OP No. 10/2020-21 dated 14-09-2020. Sufficient instalments facility shall be granted as per rules.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/030/2020/ dated _____.

Delivered to:

1. Sri. Sajeesh. M., SS Poly Care, Nallalam Mini Industrial Estate, Modern, Kozhikode – 673 027
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kallai, Kozhikode

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, Gandhi Road, Kozhikode