

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION No. P/031/2020

(Present: A.S. Dasappan)

Dated: 03<sup>rd</sup> February 2021

Appellant : President,  
Skyline Amity Park Apartment  
Owners Association,  
Changampuzha Samadhi Road  
Edappally, Kochi,  
Ernakulam - 682024

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Palarivattom, Ernakulam

**ORDER**

The appellant is a three-phase consumer of Electrical Section, Edappally with consumer number 1155440020071. An inspection was conducted from Electrical Section, Edappally in the premises of the appellant on 20-03-2020 and found that the Multiplication Factor (MF) used by the respondent for arriving at the actual consumption in the premises was '20' in the previous bills instead of '30'. A site mahazar was prepared at the time of inspection of the premises after finding the Current Transformer (CT) used in the metering system was 150/5 A ratio and hence the 'MF 30'. The respondent issued, previous bills on the assumption that the CTs in the metering system was 100/5 A ratio with the 'MF 20'. Following the inspection, the appellant was given a short assessment bill for Rs.14,08,818/- on 29-04-2020 for the period from October 2008 to March 2020 by the respondent towards the balance amount applying correct Multiplication Factor (MF).

Further, the appellant approached the respondent with a complaint dated 11-05-2020 quoting 3<sup>rd</sup> proviso to Regulation 152 of Kerala Electricity Supply Code 2014 “realization of electricity charge short collected is limited to a maximum period of 24 months even if it is found that the anomaly has persisted for more than 24 months”. So, the demand for the amount for a period of 12 years is absolutely without legal basis. In reply to the complaint the respondent advised the appellant vide letter dated 15-05-2020 to remit the short-assessed amount in instalments or to approach Consumer Grievance Redressal Forum if the appellant desires. Accordingly, the appellant filed a petition before Consumer Grievance Redressal Forum, Central Region, Ernakulam vide OP No.1/2020-21 and the Forum directed the respondent in its order dated 25-09-2020 to issue a revised bill for the period from 2008 to 01-01-2013 after cancelling the bill under dispute. Aggrieved by the decision taken by the CGRF, the appellant filed this appeal petition before this Authority.

The arguments of the appellant in the appeal petition are the following :-

According to the Honourable Supreme Court, for amounts which fell due beyond the period of two years as contemplated in section 56(2) of the Electricity Act, 2003, disconnection cannot be permitted but the licensee can recover the amounts if they arose on account of a bona fide mistake and the recovery is within the period contemplated by section 17(1)(c) of the Limitation Act. Bona fide mistake is a mistake which arose despite the exercise of due care, caution and diligence. According to the Honourable Supreme Court, limitation starts running from the date of discovery of the mistake or from the date the mistake could have been discovered with ordinary diligence. The CGRF found that the mistake could have been discovered by ordinary exercise of diligence and prudence on 1.1.2013 when the meter was changed. If so, limitation for recovering the amounts that have fallen due prior to that starts running on 1.1.2013 and the demands are horribly barred by limitation.

Moreover, after change of the meter on 1.1.2013, the licensee was obliged to conduct inspection every 3 years as per rule 113(6) and as per section 113(7), the CT is also to be checked every 3 years. The licensee has not exercised even the minimum level of diligence in discharging its duties and it cannot even be said that there is any “bona fide mistake” which was discovered entitling it to even rely on the judgment of the Honourable Supreme Court.

The alleged wrong application of the multiplication factor is an irregularity attributable to the licensee. As per the 3<sup>rd</sup> proviso to regulation 152(3) of the Supply Code, 2014, the realization of electricity charges short collected is limited to a maximum period of 24 months even if it is found that the anomaly has persisted for more than 24 months. So, the decision of the Forum permitting to issue a bill with retrospective effect for the period from 2008 to 1/1/2013 is without any legal basis. The appellant was willing to remit the amounts which are due on account of the wrong application of the multiplication factor for a period of two years immediately prior to the date of inspection but it has been saddled with a burden of dues for more than four years by the order of the Forum and it is aggrieved to that extent.

It is the duty and responsibility of the licensee to conduct periodic inspection and detect any anomalies in billing in a time bound manner. The licensee has never ever made a demand stating the difference in the multiplication factor, till the alleged demand as made on 29.04.2020. Thus, the appellant cannot be saddled with a huge lump-sum amount of account of an alleged short-fall which has arisen on account of the negligence in conducting periodic inspections by the officers of the licensee.

A final order setting aside the decision of the Consumer Grievance Redressal Forum to the extent that “the bill may be issued with retrospective effect for the period from 2008 to 1/1/2013” and limit the demand to a period of two years immediately preceding 20.03.2020

A hearing was conducted on 12-01-2021 in the office of the Electricity Ombudsman at Kochi. Smt. P. Radhika Rajasekharan, Advocate appeared for the appellant in the hearing, but nobody attended from the respondent's side. In the hearing, the appellant wants to limit the period of short assessment for two years as stated in the appeal petition.

No counter argument was filed by the respondent on the ground that KSEB Ltd. had filed a writ petition before the Hon'ble High Court of Kerala against the order of CGRF, Central Region in OP No. 1/2020-21 dated 25-09-2020. Here in this case a writ petition was filed by the respondent before the Hon'ble High Court of Kerala vide WP(C) No.826/2021(C) against the order dated 25-09-2020 of CGRF in OP No. 1/2020-21 and the Hon'ble Court passed an interim order.

**Decision: -**

In view of the above discussion, it is decided as follows: -

A writ petition is filed by the respondent for KSEB Ltd. before the Hon'ble High Court of Kerala vide WP(C) No.826/2021(C) against the order dated 25-09-2020 issued by Consumer Grievance Redressal Forum, Central Region in OP No. 1/2020-21 and hence the request of the appellant limiting short assessment period is subject to the judgement of the Hon'ble High Court of Kerala in the said writ petition.

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

**ELECTRICITY OMBUDSMAN**

P/032/2020/ \_\_\_\_\_ dated \_\_\_\_\_.

**Delivered to:**

1. President, Skyline Amity Park Apartment Owners Association, Changampuzha Samadhi Road, Edappally, Kochi, Ernakulam – 682024.
2. Assistant Executive Engineer, Electrical Sub Division, KSEB 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.