

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P17/08

Appellant:

M/s Premier Marine Foods
VII/141 Chandiroor
Alappuzha Disrict

Respondent:

Kerala State Electricity Board
Represented by
The Assistant Engineer
Electrical Section KSE Board
Aroor 688534 Alappuzha District

ORDER

M/s Premier Marine Foods Chandiroor had submitted a representation on 29.7.2008 against the Order No CGRF-CR/Comp5/08-09 dated 23.6.2008 of CGRF KSEB Ernakulam pleading to :

1. set aside the Order dated 23.6.2008 of CGRF
2. set aside the short assessment bill dated 8.3.2008 of AE Aroor
3. and to set aside the order dated 08.04.2008 of AE Aroor

The counter statement of the Respondents was obtained which was forwarded to the Appellant and a sitting held on 19.9.2008 to hear both the parties. Both the parties were allowed to submit argument notes again which was received by the middle of October 2008.

I. The Appellant had submitted the following points in the Representation ,during the Hearing and in the Argument Note:

1. The Appellant is aggrieved by the Short Assessment bill dated 28.3.2008 issued by the Respondent demanding an amount of Rs 1031640/- as short assessment for the period from 17.11.2001 to 22.03.2008 .The bill is issued showing the reason that the multiplier adopted by the Board earlier for billing was erroneous.

2. The demand is unsustainable as it is hit by Section 56(2) of the Electricity Act 2003 and Regulation 18(8) of Supply Code. The demand is for the period from 2002 onwards which is barred by limitation as per the above provisions. The monthly charges for the said period deemed to have become due on the respective dates shown in the monthly bills already remitted by the Appellant.
3. The amount payable in respect of consumption during the said period becomes first due immediately after consumption. The bill is only intimation as to the quantification of the amount payable. The expression "first" is conveying the intention of the legislature that the period of limitation starts from the date at the very first instance where cause of action for the claim arises. The cause of action ie, the right of the Board to claim the charges, arises immediately on consumption.
4. Section 56(2) has been introduced very cautiously to avoid mis- application of unlimited powers by the Licensees to claim arrears at any time .Hence the interpretation that the amount becomes payable only on issuance of the Bill defeats the very purpose of the Provision.
5. The present demand is issued under section 24(5) of the supply code which is a subordinate legislation and is subject to Section 56(2) of the Act 2003. Hence the demand is liable to be withdrawn.
6. The officers and staff of the Respondents have inspected the premises on several occasions after 2002. They have not raised any allegation on multiplication factor any time. Hence the Appellant is not responsible for the irregularity.
7. The Appellant had purchased the unit on 13.11.2006 from M/s Anand Exports and hence are not liable to pay arrears pertaining to earlier periods.

II. The Respondent KSEB had submitted the following points in the Counter statement, during the Hearing and in the Argument Note:

1. The actual overall Multiplication factor of the Energy Meter in the premises of the Appellant was 40 from 17.11.2001 onwards. But due to an error the MF was taken as 20 and the Monthly Bills issued. The short assessment was detected on 22.3.2008 and the Invoice for the short assessed charges for the period from 17.11.2001 to 22.3.2008 was issued.
2. The regulation 24(5) of Supply Code empowers KSEB to recover short assessed amounts .Section 56(2) of the Act 2003 only provides that arrear of any kind due from a consumer shall be recoverable within the time period of 2 years.
3. The ownership of the Service connection is transferred to the Appellant with all its assets and liabilities based upon signed bonds between the seller and buyer with effect from 28.2.2007. Copy of the transfer deed signed by the previous owner and current owner is produced. Hence the argument of the consumer that he is not liable to pay arrears due for the previous periods is not acceptable and he is liable to pay the arrears.

III. Discussion and Findings :

On a detailed examination of the representation and arguments put forward by the Appellant it is seen that he has built up the case on two premises:

1. The demand made by the respondent is barred by limitation as per Section 56(2) of the Electricity Act 2003 and Regulation 18(8) of Supply Code
2. The appellant is not liable to pay the arrears pertaining to the period before 13.11.2006 , ie, The date on which he had acquired the Premises and the Electric connection in it.

These issues are examined below:

- 1) The argument of the Appellant that the Invoice issued by the Respondent is barred by limitation in view of the Section 56(2) of the Act deserves careful examination. Section 56 of the Electricity Act 2003 deals with non-payment of amounts due to the Licensees and disconnection. The relevant portions of Section 56(1) are extracted below:

Where any person neglects to pay any charge for electricity due from him to a licensee, the licensee may, after giving not less than fifteen clear days notice in writing, to such person, cut off the supply of electricity and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

The Section 56(2) is reproduced here:

56 (2) 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 two 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 supplied and the licensee shall not cut off the supply of the electricity .

As per the clause 56(2) the claim shall be barred by limitation 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 of charges.

Here the most pertinent question is *when does a sum from the consumer become first due?*

Does the sum become due as soon as the energy is consumed by a Consumer? If yes, how can the Licensee show that sum as '*continuously as recoverable as arrear of charges for electricity supplied*'? It is obvious that the sum could be shown continuously as recoverable as arrear of charges *only if* the amount is computed and demand is raised by the Licensee.

It is also seen that the Section 56(2) speaks about the sum due from any consumer "under this section". Section 56 as a whole deals with the sum which any person neglects to pay , with the course of action specified in Section 56(1) and certain limitations on the Licensee specified in 56(2).

The consumer would be able to pay any amount to Licensee only when a demand is raised by the Licensee and the question of negligence comes up only when a demand note or Invoice is issued to the consumer. The only conclusion one can reach under this situation is that the Section 56(2) is related to the Sum which a licensee has raised as demand and which a consumer neglects to pay . This sum *shall not 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 of charges.*

In other words the Clause 56(2) as well as Clause 56(1) become operative only if the Licensee raises a demand and issues an Invoice to the Consumer. And obviously the Limitation of time commences from the date of such Invoice or demand note, that too when the licensee fails to *continuously record the sum as recoverable as arrears.*

The contention of the Appellant that the amount payable in respect of consumption during the said period become *first due* immediately after consumption is also to be examined.

The Appellate Tribunal for Electricity of India in their order dated 14th November, 2006 on Appeal Nos. 202 & 203 of 2006 have dealt with the question in detail:

The basic question for determination is what is the meaning of the words 'first due' occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No. 49 of the Terms and Conditions for supply of Electricity, 2004. In case the words 'first due' is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.

In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto.

Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. (Ref: APTEL order dated 14th November, 2006 on Appeal Nos. 202 & 203 of 2006)

In a nut shell the Appellate Tribunal for Electricity has ascertained that the any sum became first due only after a demand is raised or an Invoice is issued to the Consumer.

The argument that the period of limitation starts from the dates mentioned in the original monthly bills issued is true for that particular bill only. The Section 56(2) do not bar the licensee from reviewing the demand already raised. In fact as explained earlier , the Section 56 as a whole deals with the sum which any person neglects to pay to the Licensees .

At the same time the section 24(5) of the supply code empowers the licensee to recover the arrears consequent to review of earlier demands if the undercharging could be established. The argument that action to recover arrears as per this section 24(5) is not sustainable in view of the limitations specified in Section 56(2) of the Electricity Act 2003 is not correct. Even the limitation in Section 56(2) is applicable only when the arrears recoverable are not shown continuously as recoverable in the connected documents.

Hence it is concluded that in the instant case , the demand raised by the Licensee KSEB is not subject to time bar imposed by Section 56(2) of the Electricity Act 2003 nor by Regulation 18(8) of Supply Code.

- 2) The appellant has argued that he is not liable to pay the arrears pertaining to the period before 13.11.2006 ,the date on which he had acquired the Premises and the Electric connection in it. The respondent has produced copy of "the transfer of Ownership of Service connection agreement" executed between the Appellant and Smt Sabitha .T.K the previous owner.The agreement executed in Stamp paper worth Rs 50/- in the presence of witnesses clearly shows that the previous owner has agreed to transfer and the new owner has agreed to take over the service connection with all *the rights and liabilities* . Hence the above contention of the Appellant that he is not liable to pay the old arrears can not be accepted. Whether the amount is recoverable by him from the old owner is not a question to be decided either by the Licensee or by the undersigned.

IV. Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The pleadings of the Appellant to set aside the Order dated 23.6.2008 of CGRF Ernakulam , the short assessment bill dated 8.3.2008 of AE Aroor and the order dated 08.04.2008 of AE Aroor stands dismissed .*
2. *The Licensee KSEB shall be free to recover the balance amounts due from the Consumer after observing all the procedures prescribed in the Rules and regulations.*
3. *No order on costs.*

Dated this the 15th day of October 2008,

P.Parameswaran
Electricity Ombudsman

No P17/08 / _____ / dated :

Forwarded to:

1. M/s Premier Marine Foods
VII/141 Chandiroor
Alappuzha Disrict
2. The Assistant Engineer
Electrical Section KSE Board
Aroor 688534 Alappuzha District

Copy to :

- i. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
- ii. The Chairman
Consumer Grievance Redressal Forum
KSE Board, VaidyuthiBhavanam
Gandhi Road Kozhikode
- iii. The Chairman
Consumer Grievance Redressal Forum
KSE Board, Vaidyuthi Bhavanam
KOTTARAKKARA
- iv. The Chairman
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