

**THE STATE ELECTRICITY OMBUDSMAN**

Charangattu Bhavan, Building No.38/2829,  
Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9539913269  
Email: ombudsman.electricity@gmail.com

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**APPEAL PETITION No. P/074/2021****(Present: A.S. Dasappan)****Dated: 15<sup>th</sup> February, 2022**

Appellant : Sri. Hydrose. T.P.,  
Ponjassery, Sherin Granites,  
Erumathala, Edathala,  
Ernakulam Dist. 683112

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

**ORDER****Background of the case:**

The appellant is running an industrial unit with consumer number 11557502012209 under Electrical Section, KSEB Ltd., Edathala. The three-phase electric connection effected on 17-10-1994 under LT IV tariff. The connected load in the premises is 113 kW and Contract Demand 100 kVA. On 30-05-2020, the Anti Power Theft Squad (APTS) of KSEB Ltd. inspected the premises and found that the Multiplication Factor (M.F.) used for arriving at the actual consumption of energy in the premises was '20' instead of '30' and thereby the Licensee sustained a revenue loss. Hence, the respondent issued a short assessment bill amounting to Rs.5,22,087/- for the period from 08/2018 to 05/2020 to compensate the revenue loss. The appellant did not remit the amount and filed a writ petition before the Hon'ble High Court of Kerala vide WP (C) No.1207/2021. The Hon'ble Court directed the appellant to approach the Consumer Grievance Redressal Forum (CGRF) within thirty days. Accordingly, the appellant filed a petition before CGRF, Central Region vide OP No. 20/2021-22 and the Forum vide its order dated 15-09-2021 dismissed the petition.

Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

**Arguments of the appellant:**

The appellant is remitting the regular payment of electricity bills without fail. For the last 21 years there was no room for any complaint.

While so on 30/5/2020, the Anti Power Theft Squad (APT'S) had inspected the premises of the appellant and found that there had been a wrong application of multiplication factor with effect from the meter change on 21/07/2018. The multiplication factor applied for calculation by mistake was 20 instead of 30. Following the same, on 01/6/2020 the KSEBL issued a demand notice directing him to clear the Short Assessment from 08/2018 -to 05/2020 and directed to pay an amount of Rs. 5,22,087/-. Even though the appellant filed a reply to the aforesaid demand, KSEBL again issued a notice dated 29/4/21 calling upon the appellant to remit a sum of Rs, 5,22,087/- within seven days.

As the aforesaid demand notice was illegal and arbitrary, the appellant was forced to approach the Hon'ble High Court of Kerala by filing WPC No. 12071/21 and on 17/6/21 the said writ petition was disposed of directing the appellant to approach the Consumer Grievance Redressal Forum, under the Electricity Act. Accordingly, the appellant approached the Forum to set aside the demand notice issued by KSEBL.

The Forum after analysis found that the appellant is liable to pay the short. assessment bill issued by the licensee against wrong multiplication factor. Even though the Forum passed the order on 15/09/21, the copy of the order is not served on the appellant. It is only when the officials of the KSEBL came to the industrial premises of the appellant in the first week of November 2021, to disconnect the electricity connection, the appellant came to know about the order passed by the Forum. Thereafter the appellant obtained the order of the Forum from the website and this representation/appeal is filed against the findings of the Consumer Grievance Redressal Forum, under the Electricity Act, among the following other.

The appellant could not be fastened with the liability for the mistakes committed by the KSEBL. Being a public authority, it is the duty of the KSEBL to carry out its functions without any mistake or fail.

The KSEBL has no case that the appellant had committed any theft of electricity. But even then, the demand notice is issued under Sec. 126 of the Electricity Act. The same is illegal and unsustainable.

Even according to the APTS, the electricity meter was found normal and perfect. Now due to the mistake committed by the officials of KSEBL, the appellant is fastened with the liability of Rs.5,22,087/-, which is unreasonable.

It is not clear from the demand notices issued by the KSEBL, under what circumstances they mistakenly fixed the OMF as 20 instead of 30. Moreover, the test conducted by the APTS was not in the presence of the appellant. The authenticity of the test is doubtful.

The electricity connection of the appellant is a three-phase connection. It is not possible to get uniform voltage in 3 phase connections since the flowing of electricity is not constant. The multiplication factor will be assessed correctly only when the voltage in 3 phases are uniform. Hence the finding of the APTS is totally wrong. It is purely on guess work, the KSEBL issued the demand notices.

The appellant could not be held liable for the violation of standard of performance on the part of the KSEBL.

In *Asst, Executive Engineer Vs. Naisy & Ors. (2017(5) KIIC 494)* the Hon'ble High Court held that for the lapse on the part of the Board in taking timely action, the consumer could not be made liable for any differential energy charges, and that too under a different tariff.

The KSEBL issued demand notice without considering the reply submitted by the appellant and without affording an opportunity of hearing to the appellant, the same is in violation of principles of natural justice.

The Grievance Redressal Forum also failed to analyze the facts in its correct perspective. Due to Covid 19 pandemic, the business of the appellant is

running in loss and hence, the appellant is not in a position to remit the amount demanded.

On 12/10/21 the KSEBL had issued another demand notice directing the appellant to pay the balance amount of the short assessment for wrong multiplication for a period 07/20 to 11/ 20 and directed to pay an amount of Rs. 1,17,454/-. The same is also illegal.

On these and other grounds urged at the time of hearing this Ombudsman may be pleased to allow this appeal and set aside the demand notices issued by the KSEBL, in the interest of justice.

**Arguments of the respondent:**

The service connection was given in the premises on 17-10-1994 and prior to the bifurcation, appellant was under the jurisdiction of Electrical Section, Aluva. With the bifurcation of Aluva Section, the unit came under Electrical Section, Edathala with effect from 13-8-2013 and there has been 4 Nos. of meter changes for the appellant on 13-8-2013, 13-12-2017, 21-7-2018, 02-11-2020 and 09-08-2021 since then.

The APTS Wing of licensee inspected the premises of the appellant on 30/05/2020 and found that wrong multiplication factor of current transformer had been applied for calculation of energy consumed from 21/7/2018. The multiplication factor of Current Transformer of ratio 150/5 was wrongly taken as '20'. Hence, a short assessment bill for Rs.5,22,087/- was served to the appellant by the Licensee on 01/06/2020. Also, the Current Transformer was not changed during the meter replacement on 02-11-2020 and present Current Transformer is the same as existed at the time of APTS inspection.

The appellant was given a short assessment bill amount for Rs.5,22,087/- for the period from 08/2018 to 05/2020. The same was prepared citing Section 126 of the Electricity Act 2003 as its subject and served on the appellant along with a calculation statement. Though by mistake, Section 126 of the Electricity Act 2003 as its subject, none of the provisions under Section 126 has been applied in the calculation of the amount. Also, the order does not say that the

assessment is for unauthorized use of electricity. It is only a short assessment bill for wrong application of Multiplication Factor for the period from 08/2018 to 05/2020 and the spirit of the order is very clear.

However, the appellant neither remitted the amount nor explained why he is not remitting the amount. The appellant approached the Hon'ble High Court of Kerala with a writ petition as WPC No. 1207/2021 and the Hon'ble High Court was pleased to pass an order dated 17/6/21, directing the appellant to approach the CGRF within thirty days. The appellant filed a complaint before the CGRF, Central Region vide OP No. 20/2021-22.

The CGRF vide order No. CGRF-CR/OP No. 20/2021 dated 15-09-2021 held as follows:

“Having examined the petition in detail, and the statement of facts of the respondent, considering all the facts and circumstances in detail, and perusing all the documents of both sides, the Forum comes to the following observations, conclusions and decisions thereof.

The APTS Wing of licensee inspected the premises of the petitioner on 30/05/2020 and found that wrong multiplication factor of current transformer had been applied for calculation of energy consumed from 21/7/2018 i.e., date of meter change. The multiplication factor of Current Transformer of ratio 150/5 was wrongly taken as '20'. Hence, a short assessment bill for Rs.5,22,087/- was served to the appellant by the Licensee on 01/06/2020. The respondent stated that even though in the subject of the notice, it was quoted as under Section 126 of Electricity Act 2003, the actual demand raised was not for unauthorized use of electricity but for the short-assessed amount due to wrong multiplication factor.

The respondent has reported that Current Transformer was not changed during the meter replacement on 2/11/2020 and present Current Transformer is the same that existed at the time of APTS inspection. The petitioner's argument that the authenticity and accuracy of the instruments used by APTS Squad was not tested is baseless as the petitioner himself can verify the multiplication factor of Current Transformer in his premises.

As the assessment done is not under section 126 of Electricity Act of 2003 personal hearing is not mandatory. Hence Forum reaches the conclusion that even though there is negligence on the part of the officials of licensee in quoting wrong Section of Electricity Act 2003, the short assessment bill is for the actual energy consumed by the petitioner. The petitioner has informed that the delivery report of the representation made by him to the notice issued by the licensee dated 1/6/2020 will be furnished by him from the postal department within 2 weeks which Forum finds irrelevant.”

Under Regulation 134 of Supply Code 2014, bill demanding differential amount can be issued if it is found that the consumer was under charged. No limitation is applicable in this case and the undercharged amount can be realized for the entire period. Application of wrong multiplication factor and its billing was brought under a special category of billing under Regulation 152 of Supply Code 2014 and under 3<sup>rd</sup> proviso to Sub Regulation (3) of Regulation 152, the maximum period for which demand on account of under-charging due to application of wrong multiplication factor was restricted to 24 months.

Because of the wrong application of multiplication factor in the appellant’s case, there has been a short-assessment and hence, the payment realized from the appellant was lesser from 08/2018 to 05/2020.

It is clear from the appellant’s own statement that he was well aware of the spirit of the proceedings served on the appellant. The appellant never approached the Assistant Engineer for settlement of the short assessment bill served on the appellant. The appellant has also enjoyed the benefit of short assessment for a further period of 5 months up to 02.11.2020 because even after the APTS inspection on 30.05.2020, the correct multiplication factor had not been brought to effect in the system until the meter change on 02.11.2020. Therefore, the Board is entitled to realize the short assessment for the entire period. It may be seen that the price of actual consumption of energy is only claimed from the appellant. The appellant cannot evade the payment for the reason that Section 126 was incorporated in the assessment by mistake.

The Hon'ble Supreme Court in 2020 (4) SCC 650 (Assistant Engineer, Ajmer Vidyuti Vitaran Nigam Ltd. Vs Rahmatullah Khan) has held that Section 56 (2) did not preclude the licensee from raising an additional or supplementary demand after the expiry of the limitation period under Section 56 (2) of Electricity Act in the case of a mistake or bona fide error. In view of the dictum declared by the Hon'ble Apex Court, no limitation is applicable in this case.

**Analysis and findings:**

An online hearing was conducted on 27-01-2022 with prior intimation to both the appellant and the respondent. Adv. C.Y. Vinodkumar attended the hearing for the appellant and Sri. Titus Daniel, Assistant Engineer-in-Charge, Electrical Subdivision, KSEB Ltd., Kizhakkambalam from the respondent's side. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The argument of the appellant is that KSEB Ltd. has no case that the appellant had committed any theft of electricity. Even then, the demand notice was issued under section 126 of the Electricity Act 2003 and hence, the demand notice is illegal and unsustainable. Even according to the APTS, the electricity meter was found normal and perfect and due to the mistake committed by the officials of KSEB Ltd., the appellant was penalized. The authenticity of testing of meter is doubtful. The electricity connection of the appellant is a three-phase connection, it is not possible to get uniform voltage in three-phase connections since the flowing of electricity is not constant. The Multiplication Factor (M.F) will be assumed correctly only when the voltage in these phases is uniform and hence, the finding of KSEB Ltd. is wrong.

The argument of the respondent is that the energy meter of the appellant was changed on 13-08-2013, 13-12-2017, 21-07-2018, 02-11-2020 and 09-08-2021. The CT ratio was 150/5 and hence, the Multiplication Factor will be '30' but took for calculation as '20' instead of '30'. As such, the appellant is liable to remit this amount as per Regulation 134 and 152 of Kerala Electricity Supply Code 2014.

Further, the respondent argued that the Licensee had no intention to reassess the energy consumption under Section 126 of The Electricity Act 2003 and which was happened by mistake. The appellant is liable to remit the short-assessed amount as per Regulation 134 and 152 of Kerala Electricity Supply Code 2014 and the period of short assessment is less than 24 months.

In this case, the period of short assessment is from 08/2018 to 05/2020. As per respondent, the energy meter was changed in different period, 13-08-2018, 13-12-2017, 21-07-2018, 02-11-2020 and 09-08-2021. The inspection in the premises was conducted on 30-05-2020 and short assessment was done from the last date of meter change to the month on which the inspection was conducted.

Though it was a fault on the part of KSEB Ltd., it cannot be ignored that the party had actually consumed the energy and the appellant is liable to pay for it. The appellant is requested to pay the charge only and not any penal amount. But the appellant can be allowed to remit the amount in instalments eligible to him.

There occurs a mistake in the billing (calculation) due to wrong application of multiplication factor or due to some oversight. The short payment amounts 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 01-06-2020 for Rs.5,22,087/- issued to him. Sufficient installment can be granted to the appellant for the remittance.

**Decision: -**

From the analysis done and the findings and conclusions arrived at, which are detailed above, this Authority upheld the decision taken by the CGRF, Central Region, Ernakulam in OP No.20/2021-'22 dated 15-09-2021. Instalment facility shall be granted as per rules.

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

**ELECTRICITY OMBUDSMAN**

P/074/2021/ \_\_\_\_\_ dated \_\_\_\_\_.

**Delivered to:**

1. Sri. Hydrose. T.P., Ponjassery, Sherin Granites, Erumathala, Edathala, Ernakulam Dist. 683112
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kizhakkambalam, Ernakulam Dist.

**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.