

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/008/2022

(Present: A.S. Dasappan)

Dated: 21st April, 2022

Appellant : Secretary
M/s. Royal Gardens Apartment Owners
Welfare Association,
S.N. Junction., Opp. Milma,
Thripunithura, Ernakulam Dist.682301

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

ORDER

Background of the case:

The appellant's three-phase electric connection is registered in the name of Secretary, Flat Owners Association, Royal Gardens, Tripunithura under Electrical Section, KSEB Ltd., Tripunithura with consumer number 1155488022953. The electric connection is given to the common facilities of the Apartment Complex on 14-04-2007 under domestic tariff having a connected load of 31440 watts. The common facility is being used by 116 residents of the apartment. The APTS of the Licensee conducted an inspection in the premises on 09-07-2021 and detected that, even though the Current Transformer (CTs) used in the metering system was 200/5 ratio, Multiplication Factor used for arriving at the actual consumption is only '20' instead of '40'. The inspecting officers of the Licensee prepared a site mahazar to that effect and issued a short assessment bill for Rs.23,79,177/- dated 29-07-2021 for the period from 14-04-2007 to 09-07-2021. The appellant filed a complaint before the Licensee, but rejected and hence, filed a petition before Consumer Grievance Redressal Forum (CGRF), Central Region, Ernakulam vide OP No. 26/2021-22 and the Forum in its order dated 23-12-2021 dismissed the petition.

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

Arguments of the appellant:

The order passed by the CGRF dated 23.12.2012 is untenable in law facts and circumstances involved in the case and it is liable to be set aside. The short assessment notice issued is illegal as the attempt on the part of the respondent was to enforce a debt which is time barred.

The CGRF has not considered the contentions of the appellant that there are 116 residents living in the apartment complex - Royal Gardens and that as per the short assessment bill the association was asked to pay an amount of Rs. 23,79,177/- which is the alleged due amount from 2007 to 2021. Most of the residents who used the service of common amenities and enjoyed the same have been moved out and the attempt on the part of the respondent is to recover the due amount from the existing occupants/residents which is illegal.

The notice issued is in violation of the period of limitation prescribed under Section 56 (2) of the Electricity Act 2003 r/w Regulation 152(3) of Kerala Electricity Supply Code 2014 as the minimum period of recoverable arrears is only 24 months.

The CGRF has totally ignored the settled legal position that "the period of two years as mentioned in 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against the consumption of electrical energy and amount of charges would become due and payable only with the submission of the bill and not earlier. The word 'due' in this contest was to mean due and payable after valid bill has been sent to the consumer."

Therefore, this Authority maybe pleased to set aside the order passed by the Consumer Grievance Redressal Forum.

Arguments of the respondent:

There is no bona fides in the appeal and the entire contentions raised by the appellant have been considered by the CGRF in detail and has conclusively found that the appellant is bound to pay the short assessment bill issued by the Licensee. The appeal is intended only to protract the matter and be-late the payment that is

legally due to the Licensee. No valid contentions have been raised in the appeal to be considered by this authority and as such the appeal is devoid of any merit and is only to be dismissed for want of any legal grounds. The facts and law governing the situation is covered against the appellants and the CGRF have adverted to the applicable law laid down by the Apex Court have declared the entitlement of the Licensee to realize the short assessment charges issued to the appellant. The order passed by the CGRF does not suffer from any infirmity on any ground and as such is liable to be upheld.

The demand raised is pertaining to the actual energy charges liable to be paid against the actual consumption in the premises that escaped assessment since the bills happened to be issued on a mistaken premise by treating the connection as that of with CT meter of multiplication factor 20 while CT meter of multiplication factor 40 have been actually installed at the premise. Due to this defect the billing was done without applying the proper corresponding multiplication factor of 40. The electric connection of the appellant has been effected on 12.4.2007 with a CT operated static meter with ratio 200/5 A for which the corresponding multiplication factor is 40. Unfortunately, while entering the connection particulars in the 'Oruma' software, the multiplication factor has been wrongly entered as 20 instead of 40, that of an electric connection granted with a CT operated static meter with ratio 100/5 A. The CT operated static meter installed at the premise is one having a ratio of 200/5 supplied by the appellant. The said anomaly was detected only on 9/7/2021 when an inspection took place in the premises. Upon detecting the anomaly, site mahazar has been prepared and thereafter the undercharged amounts were assessed and the appellant has been issued with appropriate short assessment bill. The demand notice is accompanied by the calculation details of the assessment by which the undercharged amount has been arrived. The copy of the site mahazar prepared has been duly served on the appellant at the end of the inspection. The inspection and demand raised is perfectly valid and done as per law. The appellant is liable to remunerate the demand made through the demand notice.

On detecting the anomaly on 09.07.2021 necessary corrections were made in the system data base and the actual CT ratio of 200/5 was incorporated. Thereafter, the actual energy charges payable by the appellant was calculated from

the date of installation of the CT meter and a short assessment bill of Rs.23,79,177/- was served on the appellant under Sec.45 of the Electricity Act 2003 r/w Regulation 134 of the Kerala State Electricity Supply Code, taking the period of assessment from 12/4/2007, the date of connection.

The appellant submitted their written objection on 16-8-2021 and the Assistant Engineer, Electrical Section, Thripunithura heard the objections and on verifying the contentions raised it was found that the objections raised are not valid and accordingly the same was rejected. The rejection was intimated to the appellant vide letter dated 16-8-2021.

Section 45 (2) of the Act deals with charges for electricity supplied by the Distribution Licensee. The section enables the distribution licensee to recover the charges for the supply of electricity by him by virtue of Sec.43. Accordingly, the licensee is entitled to recover the charges for the supply of electricity once it realizes and establish that the appellant has been undercharged and actual charges has not been recovered from the appellant. The Section takes into its sweep the power for recovery of undercharged amounts also. Accordingly, the Regulatory Commission has made regulation 134 of the Kerala Electricity Supply Code, 2014 enabling the licensee to recover the amount so undercharged from the consumer by issuing a bill.

Payment for the electricity consumed in the premises is an obligation undertaken by the consumer while availing the supply. Further, the service connection agreement executed by the consumer enables the licensee to recover the charges for the electricity consumed by him.

The only restriction contained in Sub Section (2) of Section 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 provisions in the Electricity Act 2003 there is no restriction in recovering the actual charges of electricity as determined by the tariff order. In the case on hand, the licensee discovered the mistake of billing on 9/7/2021 and thereafter issued additional demand on 29/7/2021. Therefore, the sum became due only on

29/7/2021 on identifying the mistake. As per Sec. 17 (1) © of the limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. Therefore, if the appellant neglects to pay the short assessment bill the Licensee is open to take recourse to the remedies available in law for recovery of the additional demand.

The demand made by the licensee is not hit by any of the principles of limitation and the right of the licensee to issue a supplementary demand and recover the charges has been clearly upheld by the Apex Court in the judgment rendered in Civil Appeal No.1672/2020 in the matter of Assistant Engineer, Ajmer Vidyut Vitharan Ltd & Another Vs. Rahmathulla Khan (2020 (4) SCC 650) and that of in Civil Appeal No. 7235 of 2009 in the matter of M/s. Prem Cottex Vs. Haryana Bijli Vitaran Nigam Ltd & Others decided on 5-10-2021. The scope and ambit of Section 56 was interpreted by the Apex Court in the aforesaid decisions and in later it was conclusively held that what is covered by Sec.56, under Sub Section 1, is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the Licensee. In other words, the negligence on part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub Sec.1 of Sec.56. Consequently, any claim so made by the licensee after the detection of their mistakes may not fall within the mischief, namely, "No sum due from any consumer under this Section", appearing in Sub Section 2. The Apex Court also examined the scope and ambit of Section 56 (1) in another angle and held that Sub Section 1 of Sec.56, deals with disconnection of electric supply if any person neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the Licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charges for electrified. Sub Sec.2 of Sec.56 has a non-obstante clause with respect to what is contained in any other law regarding the right to recover including the right to recover including the right to disconnect. Therefore, if the Licensee has not raised any bill, there can be no negligence on the part of the consumer to pay bill and consequently the period of limitation prescribed under Sub Section 2 will not start running. So long as limitation has not started running the bar for recovery and disconnection will not come into effect. At paragraph 6 of the former decision, Hon'ble Supreme Court has observed that the Electricity Act 2003 is a self-

contained comprehensive legislation. It was further observed at paragraph 6.6 that the liability to pay arises on the consumption of electricity and obligation to pay would arise when the bill is issued by the licensee company quantifying the charges to be paid. At paragraph 8, the Hon'ble Supreme Court observed that Section 56 (2) does not preclude the licensee company from raising a supplementary demand after the expiry of limitation period of 2 years. It only restricts the right of the licensee to disconnect Electricity Supply due to non-payment of dues after the period of limitation of 2 years has expired. It does not restrict other modes of recovery which may be initiated by the licensee company for recovery of supplementary demand. In the above said case the licensee company discovered a mistake in billing under a wrong tariff code on 18-3-2014 and a bill for the period from July 2009 to September 2011 was raised. The Hon'ble Supreme Court held that the Licensee company might take recourse to any remedy available in Law for recovery of additional demand. Further the Hon'ble Supreme Court relied on Section 17(1) (c) of the Limitation Act 1963 and held that in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. Applying the aforesaid principles enunciated by the Hon'ble Supreme Court, in the aforementioned decisions the Electricity Board is empowered to collect the differential amount of electricity charged from the inception till it is detected and rectified.

The fact that 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.

The Hon'ble High Court of Kerala in the decision Sunderdas Vs. KSEB reported in 2009(2) KLT SN 5 relying on Regulation 37 (5) of the Terms and Conditions of Supply 2005 in similar set of facts held that under recovery on account of adopting wrong multiplication factor is permissible. The said decision was confirmed in W.A. No.476 of 2009. Another judgment of Hon'ble High Court of Jharkand in M/s Sheo Shakthi Cement Industries, Jharkand Vs. Jharkand Urja Vikas Nigam Limited (Reported in AIR 2016 Jharkand 98) has held that "the contention that the bills for the period between 29.01.2011 to 31.03.2014 were paid by the petitioner and thus, supplementary bill dated 04/06/2014 is barred under Section 56(2) of the Electricity Act 2003 cannot be accepted. The petitioner has consumed electricity supplied by respondent Nigam is not in dispute. The

Installation Report dated 27.01.2011 discloses the particulars of the CTPT metering Unit which was installed on 27.01.2011 and those particulars are corroborated by the Installation Report on 31.01.2014 and therefore, the petitioner cannot avoid payment for the electricity consumed by it. The supplementary bill dated 13.05.2014 as corrected by bill dated 04.06.2014 raised on account of less Multiplication Factor is not barred under Section 56(2) of the Electricity Act 2003". In the case on hand also, it is clearly revealed that there was a wrong entry in the data base and the actual multiplication factor applicable was not applied and regular bills were issued less than the actual and the anomaly was detected only on 9/7/2021. Hence, short assessment was done for the period from 10/5/2007 to 1/7/2021 by considering MF as "40" instead of "20" is legitimate one and binding on the appellant.

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 have to 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. Licensee has challenged contents of Regulation 152 before the Hon'ble High court of Kerala in writ petitions WP(C)31791/18, WP(C)20545/19, WP(C)21799/19 and more. The same has been admitted by the Hon'ble High Court of Kerala and are pending consideration.

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. The same has been unambiguously held by the Apex Court. As such the 3rd proviso to Regulation 152 (3) of the Supply Code has no operative effect and is ultra vires of section 56 of the Electricity Act 2003 and the licensee is not bound by the same.

The licensee is bound to abide by the statutes and is bound to recover the unbilled portion of the consumption and the same amounts to public money. As far as State of Kerala is concerned, it is a power-starved state wherein the deficit electricity is outsourced at exorbitant rate from across the nation. As of now the licensee is facing severe financial stringency on account of the large amounts due from the consumers across the state and the licensee is running deficit of its income. Therefore, the licensee is bound to recover the charges for the electricity supplied from the consumer in terms with the tariff fixed by the regulatory commission for its survival and effective distribution of electricity to its consumers throughout the state. The appellant is capable of paying the amounts demanded as it is an association of 116 residents occupying an apartment complex and the liability is to be divided in between the owners. There is no dispute with regard to the efficiency of the meter in the premises and there is no change of any ownership in the premise.

Considering the above facts, the respondent requests this Authority to accept the contentions raised through this statement of facts and dismiss the above appeal with cost to the respondents and, declare that the short assessment bill issued is in order and to direct the appellant to pay the short assessment amount Rs.23,79,177/-.

Analysis and findings:

The hearing of the case was conducted on 17-03-2022 in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri. Johny Thomas, Advocate

attended the hearing for the appellant and Sri. B. Pramod, Advocate and Smt. M.B. Pankajavally, Assistant Executive Engineer, Electrical Subdivision, Tripunithura attended the hearing 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 appeal petition pertains to the wrong application of Multiplication Factor for arriving at the actual consumption in the premises of the appellant and thereby a short assessment bill amount to Rs.23,79,2177/- for the period from 14-04-2007 to 09-07-2021 was issued to the appellant. The CGRF, Central Region dismissed the petition filed by the appellant.

The argument of the appellant is that the attempt of realization of the short-assessed amount from the existing occupants/residents is illegal. The maximum period for which realization of amount is 24 months.

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. The short assessment bill was issued to the appellant under Section 45 of the Electricity Act 2003 r/w Regulation 134 of the Kerala Electricity Supply Code 2014 and hence, the appellant is liable to remit the entire amount. Moreover, there is no dispute in the accuracy of the energy meter.

Another question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (4) of the Kerala Electricity Supply Code, 2014. Section 56 (2) Electricity Act 2003, which reads as under;

“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 became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity”.

The Apex Court have interpreted this Section in detail in the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794

AIR 2008 Jha 99) and other and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

“The period of two years as mentioned in section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of Electrical energy”. “Amount of charges would become due and payable only with the submission of the bill and not earlier. Word “due” in this context must mean due and payable after a valid bill has been sent to consumer”.

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.

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.

But in this case, the appellant was given the bill for a period of more than 14 years, which revealed that the respondent had not taken any action to inspect the metering system in the premises whether the meter recorded the actual consumption or not. This Authority is of the view that the officials entrusted by the Licensee made a serious lapse in realizing the energy charge for actual consumption in time for a long period. Regulation 113 of Kerala Electricity Supply Code 2014 provides “Testing of Meter”:

113 (2) The licensee shall also conduct periodical inspection or testing or both and calibration of the meters, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

113 (6) The licensee shall conduct periodical inspection or testing or both of the meters as per the following schedule:-

single phase meters	once in every five years
LT 3-phase meters	once in every three years
HT or EHT meters including maximum demand indicator (MDI)	once in every year

Regulation 2 (57) of Kerala Electricity Supply Code 2014 provides “meter” means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose.

Regulation 152 of Kerala Electricity Supply Code 2014 provides “Anomalies attributable to the Licensee, which are detected at the premises of the consumer”.

152 (1) 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 Section 126 of the Act or of Section 135 of the Act.

(2) 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.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub-regulation (8) of regulation 155 shall be considered:

Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months.

(4) The consumer may be given installment facility by the licensee for a maximum period of twelve months without interest for the remittance of such amount of short collection.

As per Regulation 152 (3) of Kerala Electricity Supply Code 2014, the short assessment bill issued to the appellant is not sustainable.

Decision: -

From the analysis done and the conclusions arrived at, which are detailed above, I decide to quash the short assessment bill for Rs.23,79,177/- dated 29-07-2021 issued to the appellant. The respondent is directed to revise the bill period for twenty-four months prior to the date of inspection and issue within 15 days from the date of order. The respondent shall grant 12 numbers instalments without interest to the revised bill amount so prepared. The appeal petition filed by the appellant is disposed of as such.

The order of CGRF, Central Region in OP No. 26/2021-22 dated 23-12-2021 is set aside. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/008/2022/ _____ dated _____.

Delivered to:

1. Secretary, M/s. Royal Gardens Apartment Owners Welfare Association, S.N. Junction., Opp. Milma, Thripunithura, Ernakulam Dist.682301
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Tripunithura, 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.