

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/041/2022

(Present: A. Chandrakumaran Nair)

Dated: 26th August, 2022

Appellant : Sri. C.M. Mustafa,
Chundakkadan House,
Ponjassery P.O.,
Perumbavoor,
Ernakulam Dist. 683547

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

ORDER

Background of the case:

The appellant is an LT industrial consumer with consumer number 1155853012616 under Electrical Section, Vengola. The tariff applicable is LT IV A with connected load of 176.13 kW and Contract Demand of 93 kVA. This industrial unit was functioning under Electrical Section, Vazhakkulam and shifted to Electrical Section, Vengola due to the bifurcation of Section w.e.f. 01-02-2020. The recorded demand of the appellant was above 100 kVA from 01-07-2017 every month. The recorded maximum demand was 104 kVA to 162 kVA in different months. The Licensee has never given a letter for the enhancement or informed him about the low voltage surcharge. On 24-07-2022, the appellant received a bill claiming Rs.6,67,140/- towards the low voltage surcharge from July 2017 to January 2022 as per the internal audit of RAO, Perumbavoor. The claim in the above bill towards low voltage surcharge from 07/2017 is four years old and so the claim is barred by limitation.

The appellant approached the Consumer Grievance Redressal Forum, Central Region and the Forum ordered vide order dated 28-04-2022 that the appellant is bound to pay the short assessment bill.

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

Arguments of the appellant:

The respondent calculated the low voltage surcharge from 01.07.2017, even though the appellant's recorded maximum demand exceeded 93 kVA (Approved CD) from 2017 onwards and the respondent never given a letter for enhancement or informed the appellant with the provision of low voltage surcharge.

The appellant's permitted maximum demand is 93kVA. It is alleged that the maximum demand has gone above 100 kVA from 2017. Whenever the kVA is exceeded 93kVA, the respondent has collected 1.5 times the fixed charge either as penal charge or as the part of tariff. The agreement with the Licensee also confirms the same. But in the calculation, the respondent has not considered the already remitted additional amount as per agreement.

As per Supply Code Regulation 101 "Annual review of contract demand, (3) In the case of LT consumers under demand based tariff, similar review and consequential process shall be carried out.", i.e, as per Regulation 101 (1), "In the case of HT and EHT connections, if the maximum demand recorded exceeds the contract demand in three billing periods during the previous financial year, the licensee shall issue a notice of thirty days to the consumer directing him to submit within the notice period, an application for enhancement of contract demand." The appellant has not received any notice from the respondent for enhancing the contract demand.

As per Supply Code Reg.69 (3) "For consumers who have opted for availing phased contract demand, revision of security deposit for the existing load shall be based on actual consumption in the previous financial year and security' deposit for additional load sanctioned during the year shall be estimated on the basis of the methodology given in Annexure - 3 to the Code."

Both Regulations confirms that every financial year there is annual review of Contract Demand and Security Deposit. In the case of appellant, the Licensee has never followed the process till now. Without seeking their annual review option, respondent has claimed Rs.6,67.140/- towards the low voltage surcharge. Which is not fair and just.

The ROA Audit report served to the appellant shows that the short assessment may be Rs.5,86,050/-. But in the bill which served to the appellant is Rs.6,67,140/-. In KSEBL replay to CGRF says the difference is for 01.10.2021 to 24.02.2022.

The appellant has given a letter to KSEBL on 04-03-2022, stating that the appellant has already paid all monthly bills and the appellant don't have any idea about the additional low voltage surcharge claim of Rs.6,67,140/-. The respondent replied to that they are in process of ROA audit report preparation, hence they cannot cancel the bill given to the appellant.

As per CGRF analysis, the Licensee has suffered distribution loss while supplying high demand at low voltage. It is the responsibility of the respondent to educate consumer about low voltage surcharge and collect the same at the time of bill preparation of which the respondent says the KSERC tariff order 2017 allowed them to collect low voltage surcharge. As a responsible institution KSEBL officials should know how the low voltage surcharge can be collected from each consumer. If KSEBL given the low voltage bill along with the regular bill, as an industry, the appellant may pay the actual amount.

All the industries of the appellant are suffering for survival, suddenly the Licensee claiming low voltage surcharge due from more than four years back, which is not fair.

Relief Sought

1. Direct KSEBL not to disconnect the supply till hearing and disposal of the petition.
2. May cancel the impugned bill.
3. May direct KSEBL to limit the short assessment as 12 months and 12 instalments without interest may provide.

Arguments of the respondent:

The appellant is having a maximum demand above 100 kVA from 01.07.2017 every month without exemption. RMD exceeded 104 KVA to 162 kVA in different months. But the connected load remained below 100 KW up to 01.11.2019. This means that the argument of the appellant based on the regulation 101 of the Supply Code is irrelevant since that regulation is applicable for revision of contract demand only and not for low voltage surcharge. Second contention on Regulation 69(3) is

also irrelevant to the context and is misleading since those regulations are deals with the revision of contract demand and not with low voltage surcharge.

The Electricity Regulatory Commission, as per the Section 50 of the Electricity Act, 2003 has notified the Kerala Electricity Supply Code, 2005 on 2nd march 2005, wherein it is specified that, for new connections at Low Tension the maximum load permitted is only 100 kVA. If the load is more than 100 kVA, such consumer has to avail supply at High Tension. Subsequently, the Commission vide the fourth amendment to the Supply code, 2005 dated 24th October 2008, ordered to permit all the consumers exists as on date of implementation of the Supply Code, 2005 to operate in LT up to connected load/contract demand of 150 kVA. However, all the new consumers, the maximum load permitted for availing supply at LT is limited to 100 kVA.

The Commission vide notification dated 31.01.2014, completely revised and updated the supply code and notified the Kerala Electricity Supply Code, 2014. As per Regulation 9 of Supply Code, 2014, the consumers availing supply at voltage lower than the limit specified under Regulation 8 above has to pay low voltage surcharge to the Licensee, which is extracted as follows. "9 - Low voltage supply surcharge - Consumers availing supply at voltage lower than the one specified in Regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the Licensee at the rates as approved by the Commission from time to time in the tariff order".

The Regulation 11 of the Supply Code 2014, permits the consumers with sanctioned load exceeding 100 kVA as on the date of implementation of 'Supply Code, 2005' to continue to avail supply at LT, subject to the realization of low voltage supply surcharge as specified under Regulation 9, till an upward revision of connected load is sought by the petitioner.

The Electricity Regulatory Commission issued revised Tariff order for all categories of consumers with effect from 18.04.2017 vide KSERC order No. 1007/F&T/2016/ KSERC dated 17.04.2017. As per the condition 3 (1) of the Annexure-I of the above tariff order, the consumers, who are required to avail supply at HT as per the Regulation 8 of the Kerala Electricity Supply Code, 2014, but availing supply at LT, shall pay the low voltage surcharge as ordered by KSERC.

As per the provisions of Supply Code, 2014 and its subsequent amendments, and also as per the order of the Commission dated 09.10.2014, the settled position of the law is that;

(a) In the case of new connections after the notification of the Supply Code, 2014, the maximum load that can be connected/maximum contract demand at LT is limited to 100 kVA, as the case may be.

(b) Consumers availing supply at voltage lower than the one specified in the Regulation 8 of connected load or contract demand shall pay the low voltage surcharge to the licensee at the rate approved by the Commission.

(c) The distribution loss associated with providing supply at LT is much higher than that for providing supply at HT. In order to compensate a part of the distribution loss contributed by those consumers who has to avail supply at HT as per the provisions of the Supply Code, 2014, but continuing at LT, has to pay low voltage surcharge to the distribution licensee.

Hence, the appellant is liable to pay low voltage surcharge as specified therein the tariff order dated 17.04.2017 as the appellant availed supply for the contract demand of 93 kVA at voltages lower than the limit specified under Regulation 8 of the Kerala State Electricity Supply Code, 2014.

The Regional Audit Officer of KSEB Ltd., (Perumbavoor) in the audit report pointed out for assessment of low voltage supply surcharge as notified in the Tariff Notification issued by Kerala State Electricity Regulatory Commission from time to time. As per Tariff Notification 560/DD(T)/2018/KSERC dated 08.07.2019, the low voltage supply surcharge applicable to LT-IVA tariff is 170/KVA/month. As such the consumer is liable to pay low voltage supply surcharge and for the period from 01.07.2017 to 01.10.2021, it works out to Rs. 5,86,050/-. The respondent issued low voltage surcharge bill for the subsequent month of 11/2021 (141KVA x Rs.170 =23,970/-), 12/2021 (139 KVA x Rs.170 = 23.630/-), 12/2021 (139 KVA x Rs.170 =Rs 23.630/-) and 01/2022 (133 KVA x Rs.170 = Rs. 22,610 /-) till the date of serving the challenged bill. Accordingly, short assessment bill of Rs.6,67,140/- (Rs.5.86.050/- + Rs.70,210/- + Rs.10,880/-) served to the appellant on 24.02.2022 covering the period from 01.07.2017 to 01.02.2022.

When the Recorded Maximum Demand (RMD) exceeds the contract demand, the excess over portion is charged at 150% extra as notified in Tariff order. Low voltage supply surcharge is in different footing and separate charge is imposed in tariff notification to maintain High-Tension, Low-Tension ratio. The distribution loss sustained to the Licensee will be high when recorded maximum demand exceeded 100 kVA at low voltage level of supply. Therefore, to maintain an efficient distribution system the distribution loss shall be minimized. Increase in distribution loss will lead to increase in average cost of supply resulting in increase in retail tariff of all consumers of the Licensee. In order to compensate the loss sustained by the Licensee in this regard, low voltage supply surcharge shall be demanded for the billing months in which the recorded maximum demand exceeded 100 kVA. Towards this purpose a separate rate for different categories of consumers has been built into the Tariff Notification. Hence, the bill towards Low Voltage Supply Surcharge served to the appellant is as per the notified rate and is in order.

For these and other reasons to be urged at the time of hearing, it is requested to dismiss the appeal petition with a direction to the appellant to remit the low voltage surcharge bill.

Analysis and findings:

The hearing of the case was conducted on 17-08-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Sri. C.M. Mustafa was attended the hearing and Sri. Sudhir. S., Assistant Executive Engineer, Electrical Sub Division, Kizhakkambalam was 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.

On verifying the records, it is noted that the contract demand of the appellant was 93 kVA and the recorded demand exceeded the limit of 100 kVA on many months. The respondent has not billed the low voltage surcharge along with the

energy bill. The Section 8 of the Kerala Electricity Supply Code 2014 states that the maximum contract demand for 415 V, three phase supply shall be 100 kVA.

“Provided that the limit of connected load or contract demand specified for different supply voltage levels may be exceeded up to a maximum of twenty percent if supply at the appropriate higher voltage level is not feasible due to non-availability of distribution line at such higher voltage level in that area of supply:

Provided further that the limits of connected load or contract demand specified for different supply voltage levels as specified above may be exceeded in exceptional cases with the approval of the Commission, subject to the conditions stipulated in such approval.”

Section 9 – ‘Low voltage Supply Surcharge’ states, “Consumers availing supply at voltage lower than the one specified in regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff order.”

Section 11 (2) – ‘Limits of connected loads and contract demand for new LT connections’ states “The maximum contract demands permissible for low tension consumer who avails power under demand-based metering shall be 100kVA, irrespective of his connected load.”

This is very clear that the consumer availing supply at a lower voltage than that specified in the regulation, shall pay the low voltage surcharge approved by the Commission. Accordingly, the Kerala State Electricity Regulatory Commission approved the low voltage surcharge during the tariff fixation exercise. Accordingly, the Licensee has to charge the same from time to time in each bill.

The Section 109 (1) of Kerala Electricity Supply Code 2014 regarding “Supply and installation of meters and circuit breakers” states that “Check meters and stand-by meters shall be installed wherever necessary in accordance with the provisions in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.”.

Section 101 of Kerala Electricity Supply Code 2014 states on “Annual review of contract demand” as follows: -

101 (1) In the case of HT and EHT connections, if the maximum demand recorded exceeds the contract demand in three billing periods during the previous financial year, the licensee shall issue a notice of thirty days to the consumer directing him to submit within the notice period, an application for enhancement of contract demand.

- 101 (2) If there is no response from the consumer by the end of the notice period, the licensee shall enhance the contract demand of the consumer to the average of the top three readings of maximum demand shown by the maximum demand indicator (MDI) meter of the consumer during the previous financial year, if the additional load can be sanctioned without augmentation or upgradation or uprating of the distribution system.
- 103 (3) In the case of LT consumers under demand-based tariff, similar review and consequential process shall be carried out.

The above Sections states about the annual review of the contract demand and when the recorded demand exceeds the contract demand, the consumer is to be directed to enhance the contract demand. In the case in hand, there is no scope for enhancement of demand as the appellant has already been reached to the maximum permissible limit. Then the Licensee has to advice the appellant for conversion to HT connection. This is not done by the officials of the Licensee, which is violation of this regulation.

Further, the low voltage surcharge would have been billed to the appellant every month since 07/2017, this has not been adhered by the officials of the Licensee, which results the financial losses to the Licensee as well as a heavy burden on the appellant asking this huge amount to pay in one go.

The short assessment bill issued on 20-02-2022 for Rs.6,67,140/- is the low voltage surcharge applicable for July 2017 to January 2022 and calculated as per the tariff approved by the Commission.

Section 134 (1) of Kerala Electricity Supply Code 2014 “Under charged bills and over charged bills” states, “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.”

This Section empower the Licensee to raise the bills of any undercharging has been noticed.

Section 152 of Kerala Electricity Supply Code 2014 states on “Anomalies attributable to the licensee which are detected at the premises of the consumer” as follows: -

- 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.
- 152 (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.
- 152 (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 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.

In this case whether the limitation of time is applicable or not ?

The order of the Hon'ble Supreme Court of India in the judgment dated 05-10-2021 in Civil Appeal No. 7235 of 2009 (M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others) clearly described the terms of "first due" and limitation period, the electricity charges would become first due only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Rahamatullah Khan case that that the period of limitation of two years would come from the date on which the electricity charges became first due under Section 56(2). This Hon'ble Court also held that Section 56(2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of period of limitation in the case of a mistake or bona fide error."

Though this particular case was for the application of Section 56 (2), but it is very clear about the application of limitation period and also defines, when this amount will become first due. Then the limitation period of two years is not applicable in the case in hand also.

Decision: -

From the analysis of the arguments and the hearing, following decisions are hereby taken:

- (1) The appellant is liable to pay the short assessment bill amount issued by the Licensee.
- (2) The Licensee shall grant instalment facility of 24 monthly instalments without interest for making the payment.
- (3) The Licensee shall enquire and take suitable action for not billing the low voltage surcharge in time, which resulting into revenue loss to the Licensee and also resulting into huge one-time financial burden to the consumer.
- (4) The Licensee shall enquire the lapses of the officials who has not adhere to Section 101 of the Kerala Electricity Supply Code, 2014 and take necessary action.
- (5) The order of CGRF, Central Region is modified accordingly.

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

ELECTRICITY OMBUDSMAN

P/041/2022/_____ dated _____.

Delivered to:

1. Sri. C.M. Mustafa, Chundakkadan House, Ponjassery P.O., Perumbavoor, Ernakulam Dist. 683547
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.