

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/078/2022**(Present: A. Chandrakumara Nair)****Dated: 12th December, 2022**

Appellant : Sri. M. Asokan,
Managing Director,
M/s. Gijas Rebbers Pvt. Ltd.,
Industrial Development Area,
Edayar, Ernakulam Dist.

Respondents : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Aluva Town, Ernakulam Dist.

ORDER**Background of the case:**

The appellant Sri. M. Asokan is the Managing Director of M/s. Gijas Rubbers Pvt. Ltd., Edayar, Aluva is the consumer of the Licensee (KSEBL) with consumer number 1157128008690 under Electrical Section, Edayar. This service connection is LT service connection under tariff LT IVA with connected load 123 kW and Contract Demand 120 kW. The contract was enhanced to 120 kVA on 18-12-2021 without changing the supply voltage. The appellant stated that he has received short assessment bill for a period from July 2016 to December 2016 for Rs.41,925/- and a low voltage surcharge bill of Rs.70,510/- for the period from February 2019 to August 2021. On 28-02-2022, the appellant approached KSEBL 'Adalath Committee' and the decision was the bills cannot be revised. Then the appellant approached the Consumer Grievance Redressal Forum (CGRF), Central Region and CGRF (CR) vide order dated 23-09-2022 ordered that the appellant is liable to pay these two undercharged bills.

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

Arguments of the appellant:

According to the statement filed by the respondent before the Forum, two low voltage surcharge bills were served on the appellant and those bills were issued for realizing low voltage surcharge for the period from July 2016 to December 2016 and from February 2019 to August 2021.

So far as an ordinary consumer is concerned, he is unable to understand anything from the above demands except the fact that those demands relate to the period 2016 and 2019-2021. The licensee failed to establish such demands with proper notice to the appellant.

There is no dispute regarding the fact that the KSE Board has issued periodical monthly/bimonthly demands to the consumer during the above-mentioned months and that the appellant has paid those demands.

Hence, admittedly amounts were due, bills were issued with respect to electricity charges at that point of time and the appellant paid those amounts.

In the statement the respondent mentioned about Regulation 9 of the Supply Code and other provisions of the tariff order whose essence is that the consumers who have availed supply at voltage lower than the one specified in regulation 8 of Supply Code shall pay surcharge to the licensee at rates approved by the Commission. Apart from issuing the impugned demands, there is no evidence with the licensee to prove that the appellant availed supply at voltage less than the one specified in Regulation 8. No show cause notice was issued to the appellant seeking explanation in the matter and to establish that there was undercharging. The Board was not legally competent to demand the payment of any amount without establishing that the Board has undercharged the consumer.

With regard to demand in the year 2022 for realizing Low Voltage surcharge for the period 7/16 to 12/16, a money suit is not maintainable before a court of law unless it is filed within a period of three years from the date of cause of action. A cause of action of the year 2016 is attempted to be encashed by the KSE Board in the year 2022 which cannot stand scrutiny of

law. This is exactly the reason why Section 56 of the Electricity Act 2003 makes all demands for disconnection subject to right of the licensee to recover such charge or other sum by suit. In other words, the Electricity Board can issue a disconnection notice only if it can legally maintain a suit for recovering the subject amount. Therefore, the impugned demand for the period 7/16 to 12/16 and all other demands beyond the limitation period for filing a suit are not legally sustainable.

These impugned demands have nothing to do with Regulation 125 of the Kerala Electricity Supply Code 2014 because this is nowhere related to any defective or damaged meter.

Regulation 134 of the Kerala Electricity Supply Code 2014 is quoted as follows "If the licensee establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the 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". So, there are two steps (1) to establish by review or otherwise that the licensee has undercharged the consumer. (2) issue demand. Here without performing the first step by issuing notice to the appellant, bills are issued and that action is against law.

Here the licensee has not established with notice to the appellant that the impugned demands are due or recoverable from the appellant. No show cause notice was issued by the licensee to the appellant directing him to explain as to why the impugned demands should not be collected from him. Basic principles of natural justice are violated by the licensee. Therefore, the impugned demands do not stand scrutiny of law.

CGRF which is supposed to redress the grievance of the consumer has not considered the above mentioned arguments advanced by the appellant orally and filing argument notes. There is not even a mention in the order regarding the above contentions raised by the appellant.

A consumer who was peacefully sleeping after paying all his dues to the KSE Board is called upon to pay huge demands that too after long years from the date of alleged cause of action. A licensee which has already collected all kinds of penalty for minor variations in load/voltage has now come forward with another

demand in the form of low voltage surcharge after about six years of the cause of action. Limitation Act clearly bars a claim for money after three years of cause of action.

Without considering the abovementioned contentions raised by the appellant, the CGRF issued a unilateral order dated 23/9/2022. According to the order, the licensee failed to charge the low voltage surcharge from time to time during the months 7/2016 to 12/2016 and 2/2019 to 8/2021 which results in financial loss to the licensee.

So, this is not a case of non-issuance of periodical bills to the consumer. This is an admitted case of non-demand of low voltage surcharge, which ought to have been demanded along with periodical bills in the years 2016 and 2019 to 2021. The provisions under Section 56 of the Electricity Act 2003 applies in such circumstances. The above provision bans the recovery of such sums after two years from the date on which such sum became first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied.

The impugned demands dated 28/2/2022 for Rs.41,925/- and Rs.70,510/- were signed and sealed by the Senior Superintendent, Electrical Section office, KSEB, Edayar, Ernakulam district. A Senior Superintendent has no authority under law to issue such demands.

Relief sought:

To set aside Order dated 23.09.2022 in CGRF-CR/OP No 31/2022-23 250 of the CGRF Central Region, Kalamassery, Ernakulam and to consider the complaint of the appellant and to set aside the illegal demand of Rs.41,925/- and Rs.70,510/- dated 28/02/2022 raised by the Senior Superintendent, Electrical Section, KSEB Ltd, Edayar, Ernakulam District

Arguments of the respondent:

Admittedly, the appellant is a consumer under Electrical Section, Edayar Industrial Area under the tariff category of LT IV A with a connected load of 123 kW and contract demand 120 kW. Now Contract Demand of the appellant was enhanced to 120kVA on 18-12-2021, without change in Supply Voltage.

The two undercharged bills raised for the two periods of time are truly in accordance with the regulation of the Kerala Electricity Supply Code 2014. The two undercharged bills amounting to Rs.41,925/- and Rs.70,510/- were served for realizing the low voltage supply surcharge which was not collected from this appellant for the period from July 2016 to December 2016 and from February 2019 to August 2021.

The Licensee has kept a soft copy of the month-wise consumption data of all consumers, and based on that data the audit team of the respondent realized the shortage in payment of electricity dues.

In so far as the allegation of infringement of the principles of natural justice, it is significant to note that the licensee served with a 30 days demand notice and it has given more than enough time period to raise objection if any and more often than not the consumer get a grace period of 15 days as per the regulation 139(1) of the Supply Code for making payment as per the demand notice. Therefore, the appellant is left with the liberty to raise any objection during the notice period of 45 days. While so, the respondent is duty bound to act in consonance with the statutory provisions and in compliance with the principles of natural justice.

The appellant has further stated in the complaint that the respondent issued the undercharged bill in contravention of the statutory provisions of the Electricity Act and regulation. Whereas the respondent may reproduce hereunder some of the provisions of the act, regulation, and precedent of the Hon'ble Supreme Court to contravene the arguments of the appellant.

As per the Regulation 9 of the Supply Code, 2014, the consumers availing supply at voltage lower than the limit specified under regulation 8 has to pay low voltage surcharge to the licensee, the said provision reads thus "*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 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 LT the maximum

load permitted is only 100 kVA. If the load is more than 100kVA, such consumers have to avail supply at HT. 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 100kVA. Again, the commission vide the notification dated 31.01.2014, completely revised and updated the supply code and notified the Kerala Electricity Supply Code, 2014. The regulation 11 of the Supply Code 2014, permits the consumers with sanctioned load exceeding 100 kVA as on the date of implementation of the '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. So, the settle position of law is that 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 100kVA, as the case may be. Secondly, consumers who availing supply at voltage lower than the one specified in the Regulation 8 of the connected load or contract demand, shall pay the low voltage surcharge to the licensee at the rate approved by the Commission in the tariff order revised periodically. Thirdly, the existing consumers as on the date of implementation of the Supply Code, 2005 is permitted to operate at LT up to a connected load/ contract demand of 150kVA subject to the realization of the low voltage surcharge, until an upward revision of connected load or contract demand is granted on application by the consumer.

As regards of limitation periods of arrear bills, regulation 134 of the Kerala State Electricity Supply Code 2014 states that, "*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".

Again, the Electricity Act, 2003 Section 56(C) states 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 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'.

Combined reading and analyses of the above provisions make it clear that there is no question of law or facts involved in the appeal petition and could not find any error committed by the Forum below in arriving at the conclusion in the order No. 31/2022 dated 23rd September, 2022.

The respondent requested that this Authority may be pleased to dismiss the petition and upheld the order of the Forum.

Analysis and findings:

The hearing of the case was conducted on 30-11-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Advocate Sri. Jose J. Matheikel was attended the hearing on behalf of the appellant and Sri. Pradeep. K.A., Asst. Executive Engineer, KSEBL, Aluva Town 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 appellant is availing power from the LT line with connected load of 123 kW and Contract Demand 120 kW. The Section 8 of the Kerala Electricity Supply Code 2014 states about the maximum connected load permissible level of voltage. Accordingly, the maximum connected load and contract demand for LT 3 phase is 100 kVA only.

The Section 9 of Kerala Electricity Supply Code 2014 deals with the low voltage supply surcharge: -

Section 9 “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.”

Here in the case, the connected load is 123 kW and maximum demand is 120 kW as such the low voltage surcharge is applicable to this appellant.

Then what will be the low voltage surcharge applicable : As per the Section 9, it is mentioned that low voltage surcharge rates as approved by the Commission from time to time. The Kerala State Electricity Regulatory Commission issued an order OA26/2019 dated 03-12-2019, which states as follows:-

The Commission in compliance of judgement of the Hon'ble High Court dated 24-06-2019 in WP(c) No. 39396 of 2015 and after examining the issues raised by the petitioner as per the provisions of the Electricity Act 2003 and regulations notified by the Commission, hereby issues following orders for the compliance of the petitioner and the respondent, KSEBL Ltd.

- (1) The petitioner as a consumer having connected load and recorded maximum demand more than 100 kVA, has to pay low voltage surcharge as determined by the Commission as per Regulation 9 of the Kerala State Electricity Supply Code 2014 to continue availing supply at LT.
- (2) Till the Commission explicitly determine the low voltage surcharge vide the tariff order dated 7-04-2017, the petitioner has to pay electricity charge at the rate applicable to “Deemed HT consumers as per the clause-9 of General Conditions for HT / EHT tariff under Part-B-EHT and HT tariff order dated 14-08-2014 i.e., demand charges applicable for HT 1(A) Industry and energy charge at LT IV(A) Industrial tariff.
- (3) With effect from 18-04-2017 onwards in addition to the electricity charges approved by the Commission for LT Industrial consumers including the demand charge and energy charge, the petitioner has to pay low voltage surcharge also as determined by the Commission from time to time.

According to the above order for the period from 07/2016 to 12/2016, this is to be treated as the deemed HT consumer and the demand charges as applicable to HT consumer is to be charged and consumption charges as per LT IVA. Therefore, the period from 02/2019 to 08/2021, the low voltage surcharge as per the tariff orders are to be charged.

The Section 134 of Kerala Electricity Supply Code 2014 deals with under charged bills and over charged bills.

Section 134 (1) 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.

Here in this case the appellant states the Licensee has to establish either by review or otherwise, that it has undercharged the consumer. The respondent on reviewing the charges applied through an audit has find out this short payment of low voltage surcharge. The recorded maximum demand, contract maximum demand, etc. are available in the monthly bill. The tariff order of KSERC is published in Government Gazette and the same is available in the public domain. This itself establishes the findings of the Licensee.

Another contention of the appellant is that he has not been heard properly before raising the short assessment bill. The data such as recorded demand, contract demand, etc. were available with the consumer, the rates and charges were available in the public domain. These charges are the mandatory payments. Then the requirement of hearing the consumer does not arise.

The next contention is about the limitation period. The Section 136 of Kerala Electricity Supply Code 2014 deals about the recovery of arrears and its limitation.

Section (3) No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.

Section (4) If the consumer fails to remit the amount of arrears with interest on or before the due date indicated in the bill or in the demand notice, the licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions.

In this case, it is pertinent to refer the order of Hon'ble Supreme Court in the Civil Appeal No. 7235/2009 pronounced on 05-10-2021.

The para 11, 12 & 16 of this order states as: -

“Para 11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term “first due” in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.”

“Para 12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, 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 Court held in Rahamatullah Khan (supra), that “the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)”. This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh 2.”

“Para 16. Be that as it may, once it is held that the term “first due” would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to

disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that “the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act”.

This order is very clear that the amount is become ‘first due’ when the demand notice is issued. The limitation of two years commences only from the date of issue of this bill.

Decision: -

From the analysis of the arguments and the hearing, following decision is hereby taken:

- (1) This Authority hereby agreed on the decision of the CGRF (CR).
- (2) The appellant is liable to pay the short assessment bills as raised by the Licensee.

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

ELECTRICITY OMBUDSMAN

P/078/2022/_____ dated _____.

Delivered to:

1. Sri. M. Asokan, Managing Director, M/s. Gijas Rebbers Pvt. Ltd., Industrial Development Area, Edayar, Ernakulam Dist.
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Aluva Town, 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.