

**THE STATE ELECTRICITY OMBUDSMAN**

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**Appeal Petition No. P/031/2024  
(Present A. Chandrakumaran Nair)  
Dated: 01-08-2024**

Appellant : Fort-In-Infra Developers Pvt Ltd  
Ravi's Arcade, 3<sup>rd</sup> Floor  
Vadakkumbhagam Road, Nr.Kacheri Jn.  
Kollam Dist.,

Respondent : The Special Officer (Revenue)  
Vydhyuthi Bhavanam, KSE Board LTD.  
Pattom, Thiruvananthapuram -4

The Deputy Chief Engineer  
Electric Circle, KSE Board LTD  
Kollam Dist.,

**ORDER**

**Background of the case**

The appellant Shri. Fort- In- Infra Developers Pvt. Ltd, Ravi's Arcade is an HT consumer of the Licensee with consumer No: LCN5/6302 with connected load 935 Kw and contract Demand 529 KVA. This consumer is under the Electrical Section, Cantonment Kollam, under the Jurisdiction of the Electrical Circle Kollam. This service connection was availed for the shopping mall named as R.P.Mall. When the power connection was obtained the tariff applicable was HT.IV commercial.The KSERC divided the HT.IV commercial in to HT.IV A & HT.IV B during the tariff determination and published the tariff order dated 08/07/2019,which has been published in the Kerala Government Gazette dated 30/09/2019. The regular bills were raised under the tariff LT.IV A. APTS had conducted an Inspection on 16/03/2023 and found that the consumer was billed on wrong tariff. The tariff applicable would have been LT. IV B. The tariff has been changed with retrospective effect from 08/07/2019 onwards. The difference in the tariff has been assessed and worked out to Rs. 12,43,161/- and issued the demand notice to the appellant. The appellant had contented the bill raised by Licensee and filed petition of CGRF. CGRF issued order dated

23/03/2024 stating that the appellant is liable to pay the bill raised by the Licensee. Aggrieved by the decision of the CGRF this petition is filed to this Authority.

## **Arguments of the Appellant**

Fort- In Infra Developers Private Limited, (hereinafter referred to as 'the Complainant') is a Registered H. T. Consumer carrying on business activity in the name and style of "Kollam Mall" (R. P. Mall) under the Cantonment Section of the Kerala State Electricity Board Limited, Kollam, with Consumer number LCN 5/6302. under H. T. IV (A) Commercial tariff w. e. f. July 2019 The connection to the premises was energised as per the H. T. Agreement No. 09/14-15 dated 27-10-2014 between the Kerala State Electricity Board Limited (hereinafter referred to as the 'Respondents') and the Complainant and was classified as an H. T. Consumer under Tariff H. T. IV - Commercial by the Respondent after going through the Procedures and Processes mentioned in sections 75 to 85 and their sub sections under Chapter V of the Kerala Electricity Supply Code 2014 mutatis mutandis by both the Complainant and the Respondent.

The Complainant continued to be billed under the Tariff HT IV Commercial up to and including the month of June 2019. The Tariff was changed to HT IV (A) Commercial w. e. f. July 2019 consequent on the revision of the tariff vide Tariff Order dated 08-07-2019.

The respondent continued to Invoice the Complainant under HT IV (A) Commercial through the ensuing four years (48 months) - up to June 2023. The Complainant had been diligently paying all the amounts demanded by and due to the Respondent against the Invoices raised for the energy consumed by the Complainant's installation based on the original classification and as per the prevailing tariff schedule without any default. The Kollam unit of the APTS of the Respondents conducted an inspection of the Electrical Installation of the Complainant at Kollam Mall at 10:30 a. m. on 16th March 2023 presumably in line with Section 126 under Part XII / Section 135 under Part XIV of the Indian Electricity Act 2003. A 'mahazar' was prepared and handed over to the representative of the Complainant - again presumably following Regulations 149 and 151 under Chapter IX of the Kerala Electricity Supply Code 2014.

The Complainant received a "Notice" dated 04-04-2023-a "Notice under Section 97 of Kerala Electricity Supply Code 2014 - from the third Respondent - the Special Officer Revenue, KSEBL, Thiruvananthapuram on 08-04-2023 intimating the Complainant that, based on the inspection of the premises of the Complainant by the APTS unit of the Respondent and on the 'Joint Inspection Report No. DB 3/22-23/APTS.KLM/222 of the AEE, APTS Kollam, the Respondent proposes to "change" the existing tariff HT IV (A) of the commercial HT connection of the Complainant (LCN 5/6302) to HT IV (B) with effect from 08/07/2009, the date of the Tariff Order by the KS Electricity Regulatory Commission. All bills issued during this period were also to be revised. (emphasis supplied). Aggrieved by the proposal and as instructed by

the Respondent in the notice, the Complainant filed their letter expounding the objections to the decision of the Respondent, primarily before the 2nd Respondent on 04/05/2023 and copies of the letter itemizing the objections and arguments were filed before the 1st Respondent and the 3rd Respondent as well.

The Petitioner was given an opportunity of being heard in person at 2:00 p. m. on 23.06.2023 at the chambers of the Deputy Chief Engineer, Electrical Circle, Kollam, On 22.08.2023 the 3rd Respondent issued a Demand Notice, under Regulation 134 (1) of the Supply Code 2014 for an amount of Rs. 12,43,161/- (Rupees Twelve lakh forty three thousand one hundred and sixty one without making any reference whatsoever to Complainant's objections, how the objections were analyzed or on what grounds the objections were rejected. The respondent justified the issue of the demand of Rs. 12,43,161/- citing two judgments of the Hon'ble Supreme Court of India and one Order of the Hon'ble Kerala State Electricity Regulatory Commission. The salient aspects and valid points of the two judgments and the Order on which the Respondents relied for their actions are attached.

As the Respondents had made no mention in the notice of the documents and arguments submitted by the Complainant in defence of their arguments, the Complainant proceeded to pay the amount demanded by the Respondent under protest and remitted the entire amount of Rs.12,43,161/- by way of cheque number 527068 dated 16.09.2023 drawn on the State Bank of India, Beach Road, Kollam. Aggrieved by the action of the Special Officer Revenue resulting in the issue of the Demand Notice dated 22.08.2023 for an amount of Rs.12,43,161/- the complainant filed an appeal before the Consumer Grievance Redressal Forum, Southern Region, Kottarakkara.

The Forum heard the case on 29/02/2024 and issued an Order on 27th March 2024. The complainant received the copy of the Order on 12-04-2024. The judgment was highly disappointing and discernibly unfair. Apparently the Forum has not considered, discussed, analyzed or evaluated any of the arguments put forward by the complainant, or the material evidences presented in support of the arguments. The Forum has not even mentioned how it has reached to the decision, nor has it justified the sustainability of the decision before the plentiful counter arguments expounded by the petitioner. Aggrieved by the Order of the Forum the petitioner has approached the Ombudsman for an impartial analysis of the issue and a fairer dealing and judgment.

## **Arguments of the Respondents**

### **Deputy Chief Engineer**

This appeal is not maintainable either under law or on facts. The matter involved in the subject case has already been heard and disposed by the Hon'ble CGRF, Kottarakkara in OP No. 90/2023. Therefore the appeal petition is to be dismissed in limine without entering in to merits of the case. However in following facts are submitted. M/s. Fort -in Infra Developers Pvt Ltd Ravis Arcade, (Kollam Mall), Kollam is a live consumer bearing Number (LCN 5/6302) with HT - IV (A) Commercial Tariff Service Connection holding 935 KW Connected Load and 529 KVA Contract Demand, under Electrical Section, Cantonment Kollam under the jurisdiction of the Deputy Chief Engineer, Electrical Circle, Kollam. The APTS Kollam Unit has conducted an inspection on 16-03-2023 in the premises of M/s. Fort -in-Infra Developers Pvt Ltd (LCN 5/6302) and found that he Service connection is being used for the purpose of R.P Shopping Mall and had directed to change the tariff from HT-IV (A) to HT IV (B) Commercial. As per tariff order by KSERC date 08-07-2019 published on Kerala Government Gazette dated 30-09-2019, the tariff prescribed to the shopping Mall is HT IV Commercial. On the APTS Kollam inspection it was found that HT connection was used for working of lift, escalators, common light points, water pump in the above nine storey Shopping Complex, Therefore, the site Mahazar was prepared by the authorized officer of Electrical Section, Cantonment. Hence, the tariff has been changed to HT- IV (B) Commercial with effect from 08-07-2019.

As per the Regulation 134 (1) of Kerala Electricity Supply code 2014, 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. On this circumstance bill from 07/2019 to 06/2023 has been revised and short assessment bills have been issued as per Regulation 134 (1) of Kerala Electricity Supply Code 2014. The details of revised bills are attached herewith. As per the Demand Notice total amount i.e Rs. 12,43,161/- was paid by the consumer. Due to this wrong application of tariff, the consumer has been billed under HT IV A tariff instead of HT IV B. The short assessment bill has been issued as per Regulation 134 (1) of the Kerala Electricity Supply Code 2014. It is an 'escaped assessment' and the legal right of the Distribution licensee has categorically emphasized by the Hon'ble Supreme Court of India in M/s. Prem Cottex Vs Utter Hariyana Bijli Nigam Ltd and others. It is pertinent to note that no interest has been demanded from, the consumer for the escaped assessment. The appellant himself knows these facts and paid the bill within the stipulated period.

The appellant came before this Hon'ble Ombudsman with suppressing material facts mentioned above. The grounds raised for filling this appeal has no legal basis. KSEBL is public sector undertaking and its functions as per rules and regulations as established by the statues. None of the reliefs

sought for in the petition can be allowed. Considering the contentions of the petitioner challenging Regulations of Kerala Electricity Supply Code 2014 and the appeal conditions of the Tariff order, the appeal filed by M/s. Fort - in-Infra Developers Pvt. Ltd (Kollam mall) may be dismissed with cost to these respondents.

### **Special Officer Revenue**

As per the Regulation 134(1) of Kerala Electricity Supply Code 2014 "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. On this circumstance, bill from 07/2019 to 06/2023 has been revised and short assessment bills have been issued as per Regulation 134(1) of Kerala Electricity Supply Code 2014. The details of revised bills are attached herewith (Exbt. P2). As per the Demand Notice, total amount i.e., 12,43,161/- was paid by the consumer under protest.

Billing has been done as per the Tariff Order. Tariff has been retrospectively changed to HT-IV(B) Commercial with effect from 08.07.2019. The matter has been brought to the attention of the consumer vide letter dated 04.04.2023. Site Mahazar has been attached. Consequent on the inspection conducted by the APTS Unit, Kollam on 16.03.2023 and as per the provisions contained in Tariff Order dated 08.07.2019, the tariff change from HT-IV(A) Commercial to HT-IV(B) Commercial with Prescribed various judgements/orders in the various circumstances. As a Distribution Licensee, KSEBL has every right to claim such 'escape assessment' as per Regulation 134(1) of Kerala Electricity Supply Code 2014. The legal right of the Distribution Licensee has categorically emphasized by the Hon'ble Supreme Court of India in the judgement in Civil Appeal No.7235 of 2009.

Case:-M/s. Prem Cottex Vs. Uttar Haryana Bijli Nigam Ltd. and others.

Kerala State Electricity Regulatory Commission is not bound to follow the judgement pronounced by various Regulatory Commission of other States and Forum. Accepted, the order of the Kerala State Electricity Regulatory Commission.

The tariff order and relevant Act may allowed the revision of tariff with retrospective effect. Hence, the act of KSEBL has admissible and to revise the bills issued to the consumer is sustainable under the law and it is in favour of the principle of natural justice. The Hon'ble Forum please be noted the order of the CGRF (SR), Kottarakkara. The Hon'ble Forum decided the valuable decision that is the short assessment bill of Rs.12,43,161/- issued by the Licensee dated 22.08.2023 is legal and sustainable. KSEBL is a Public Sector Undertaking and its functions as per rules and regulations as established by the statutes. Considering the contentions of the petitioner challenging Regulations of Kerala Electricity Supply Code 2014 and the condition of the Tariff Order, the petition No.31/2024 filed by M/s. Fort-in-Infra Developers Pvt. Ltd. (Kollam Mall) may be dismissed with cost.

## **The Counter Arguments of the Appellant**

The fact that the learned Consumer Grievance Redressal Forum, Southern Region has passed a non-speaking order in respect of the grievance filed by the complainant points to the probability that the Forum might have failed to properly discuss and evaluate the evidence, and has fallen into error in not finding that the preponderance of probability was in favour of the complainant. The judgement and order under appeal are erroneous both on facts as well as law.

In spite of the fact that there was sufficient evidence led by the complainant to prove the issues raised in the complaint and that the respondent has failed to effectively rebut the complainant's evidence, more particularly the documentary evidence, from any angle, none of the points is seen mentioned, discussed or evaluated in the order of the Hon'ble CGRF. Nor has the Forum justified how or why any of the arguments put forward by the complainant has been discarded. The statement filed by the complainant before the CGRF in reply to the Statement of Facts and Exhibits submitted by the 3rd respondent on 08.02.2024, the Statement of facts submitted by the respondents before the Hon'ble Ombudsman the respondents have not put forward any argument to substantiate how or why any of the arguments or grounds presented by the Complainant to prove its standpoint is not sustainable. Nevertheless the respondent has stated in the concluding paragraph that the petitioner has challenged the Regulations of the Kerala Electricity Supply Code 2014 and the conditions of the Tariff Order. This is not true or based on facts.

The Complainant has, undeniably, not challenged any of the Sections of the Supply Act, the Regulations of the Supply Code 2014 or the conditions of the Tariff Order. The Petitioner only has raised objections to the way the respondents appear to have interpreted and implemented the Regulations. The complainant has only challenged the demand for Rs. 12,43,161/- through a Supplementary Bill. This position is clearly stated first in Para 5 and later in para 61 of the 'Grounds of Complaint'. None of the sections or regulations or conditions of the Act or the Code or the Order nor any judgment of any Court of Law categorically empowers the licensee to issue a "Supplementary Invoice" with "retrospective effect" for the loss of revenue resulting from a wrong classification of a consumer in a particular category and subsequent 'suo motu reclassification' because the cause of such a requirement is borne out of "deficiency of service" on the part of the licensee.

The respondents have averred further that "the appellant has come before this Hon'ble Ombudsman suppressing the material facts mentioned above". This statement is totally against the facts of the case, as there is literally nothing that need to be suppressed, concealed or circumvented in the issue on hand. The respondent would not have had to make such a statement had

they carefully gone through the "Statement of Facts" submitted by the complainant along with the complaint. It may be observed that the petitioner has only elucidated each and every thread of the string of events so that the glaring un sustainability of the order can be unequivocally established. The "Grounds of Appeal" submitted by the Complainant is made up of 61 paragraphs, spread over 27 pages and analyses the supporting evidences from 18 Exhibits. In the light of the evidence, discussion and detailed analysis (in paragraphs 37 to 49 of the Grounds of Appeal filed by the complainant) of the judgments relied on by the respondents, especially in CA 7235 of 2009 of the Supreme Court of India, to justify their act, the petitioner wishes to repeat that the judgments do not anywhere endorse the action of a licensee raising an Invoice with retrospective effect to realise the 'arrears' generated owing to a belated 'suo motu reclassification' of a consumer in a particular category which should have been done at the time of issue of the tariff order or the execution of the agreement.

In the light of the evidences, facts and arguments presented in the 'Grounds of Complaint' and the 'Statement of Facts' submitted on 10.05.2024, and the additional arguments vide this statement, the Petitioner wishes to point out that the proposal to implement the revision of tariff with retrospective effect from 07/2019 and to revise the bills issued during this period is not sustainable under the law and is in violation of the principle of natural justice.

For these and such other grounds as may be permitted to be raised at the time of hearing it is once again prayed that the supplementary demand generated by the respondent under Section 97 of the Supply Code 2014, under challenge may be set aside and the complaint may be allowed.

## **Analysis and findings**

The appellant availed the service connection on 27/10/2014 and an HT agreement was signed between the appellant and the Licensee and the tariff mentioned was HT.IV commercial. The power supply is utilized for the operation of Kollam Mall (R.P. Mall). The consumer number was LCN : 5/6302 and the agreement page no: 10 it is mentioned that the tariff applicable is HT.IV commercial and page 11 it is mentioned as R.P.Mall. Though the power supply agreement is executed by Fort-In-Infra Developers P.Ltd, the purpose of the power supply is a for a shopping Mall. The common facilities of the 9 storied shopping complex such as Lifts, (Elevators)Escalators, Common area lighting, water pump sets were working with the power from this connection. During the tariff determination exercise during 2019, Kerala State electricity Regulatory commission has divided the HT.IV commercial in to HT.IV A commercial and HT.IV B commercial. Then the tariff applicable for Hotels, marriage halls, convention centers, shopping malls and multiplexes was tariff HT.IV B commercial. This

was published in the Kerala Government Gazette dated 30/09/2019 and the tariff was effective from 08/07/2019. The tariff order has been to the all concerned officers of the Licensee to apply the tariff in the field sections. As per the direction from the Licensee the meter readings of the HT consumers were taken by the Asst. Engineers of the concerned section. Which means that the Asst. Engineer would visit every month in the mall to take readings. Why this has not been noticed. Kollam Mall (RP mall) is a Known shopping Mall in Kollam. It seem to be a serious lapse from the Section Engineer in noting the change in the tariff order and billing the Consumer in the right tariff.

The regulation 84 of the Electricity Supply code 2014 States as

*84(1). Obligation of the Licensee to energise connection:- The obligation of the Licensee to energise the connection shall arise only after receipt of full payment as per the demand note.*

*84(2). Before enegising any connection, the licensee shall make sure that the applicant has complied with all requirements regarding safety and standards as per the law in force and that the approval for energisation is obtained from the Electrical Inspector and such other statutory authorities wherever necessary.*

This is an HT connection and hence it is mandatory to obtain the approval for energistaion from the Electrical Inspector. The schematic drawing and other details, test report etc., of the load connected would have been submitted to the licensee along with agreement for energisation. These details shows about the utilisation of power and which load this power is connected. As this information was available, either the section officer or the billing authority that is the special officer revenue would have been noticed and the tariff change would have been effected in time.

The regulation 113(6) States about the periodical inspection.

*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 3 years*

*HT or EHT meters including maximum demand indicator (MDI)once in every year."*

According to the regulation above all HT&EHT connection would have inspected once in every year. If this inspection would have been conducted the purpose of energy utilization would have been identified and accordingly the tariff change would have been applied much earlier. Here in this case the tariff change was effective during 2019 and the inspection of the premises was conducted only on 16/03/2023. Then the arrears were

calculated from 07/2019 to 06/2023, that is almost 4 years after the tariff revision.

The regulation 152 describes about the anomalies attributable to the licensee which are detected at the premises of the consumer.

*152. Anomalies attributable to the licensee which are detected at the premises of the consumer:*

*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 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 realisation 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.*

This regulation clearly says that the amount short collected shall be limited for a maximum period of 24 months. It is very pertinent to refer two orders of Hon'ble Supreme Court in Civil appeal No: 7235 of 2009 in the case of Shri.Prem cotex Vs. Uttara Haryana Bijili Nigam.Ltd., and also the judgement of Hon'ble supreme court in Civil Appeal as: 1672 of 2020 with case of Ajmer Vidyut Vitaran Nagar Ltd Vs Rehamatullah khan. Also the order of Hon'ble KSERC in RP3/2021 in the case of M/S.KSERC VS M/s. Bennet Coleman & Co Ltd.

In the Judgement of petition 7235/2009

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,

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*<sup>2</sup>.

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).

14. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Sub-section (2) of Section 56 is dissected into two parts it will read as follows:-

(i) 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; and

(ii) the licensee shall not cut off the supply of electricity.

15. Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors a court of law. However, section 56(2) bars not merely the normal

*remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.”*

The civil appeal No:1672/2020 is very similar to the case in hand which is the wrong tariff application. The Judgement: para 8

*Section 56(2) “however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two 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 two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.”*

*9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.*

*The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.*

*Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bonafide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.*

*As per Section 17(1)(c) 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. In Mahabir Kishore and Ors. v. State of Madhya Pradesh,5 this Court held that:*

*"Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.*

*In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.*

In the above judgement it is very clearly spelt out that the limitation period of two years commence only when the mistake is detected and the bill is raised. This Judgement is not spelt out how long (how many years)the arrears could be calculated and levied. Though the Kerala Electricity Supply Code 2014 is limiting the period of two years, the Hon'ble Supreme Court orders supersede the supply code. Further the Hon'ble KSERC have reviewed the order originally placed on OP/21/2021 based on these Court Judgement in the petition RP3/2021 and issued the order stating that the petitioner is liable to pay for the entire period.

The case of Mr. BCCL Vs KSEBL Petition No:0P/21/2021 of KSERC is also a very similar case and Commission observed is Para 24 of the order on RP3/2021

*“Sub-section (2) uses the words **“no sum due from any consumer under this Section”**. Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 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.”*

The appellant has already made the payment on 16/09/2023 under protest.

## **Decision**

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the demand raised by the Licensee.
2. No other costs ordered.

**ELECTRICITY OMBUDSMAN**

No. P/031/2024/ \_\_\_\_\_ dated: \_\_\_\_\_

Delivered to:

1. Fort- In-Infra Developers Private Ltd., Ravi's Arcade, 3<sup>rd</sup> Floor, Vadakkumbhagam Road, Nr.Kacheri Jn. Kollam Dist.,
2. The Special Officer (Revenue), Vydhyuthi Bhavanam, KSE Board Limited, Pattom, Thiruvananthapuram - 4
3. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd, Kollam Dist.,

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, 2 nd floor, Vydhyuthi Bhavanam, KSE Board Limited, Kottarakkara.