

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P /236 /2011.

(Present: T P Vivekanandan)

APPELLANT : Sri. Biju Karnan,
M/s KKR Flour Mills,
Okkal, Kalady, Ernakulam-683550.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Perumbavoor, Ernakulum Dt.

ORDER.

Background of the case: -

The appellant is a LT industrial consumer No. 19900 under Electrical Section, Perumbavoor, and is engaged in the manufacture of Rice powder. The appellant has been remitting the monthly bills without any default including the bills for the period from 01/2005 to 09/2005 and from 09/2006 to 08/2008, during which the meter became faulty and changed the meter on 14th January 2005 and 5th October 2005. On 21.3.2011, the respondent had issued a back assessment amounting to Rs. 1, 96, 980/= based on an audit conducted by the audit wing of KSEB. Aggrieved by this, the consumer filed a petition dated 6.4.2011 before the CGRF, Ernakulum. The CGRF disposed of the petition vide order no. CGRF-CR/Comp.3/2011-12 dated 13.6.2011 and passed the following;

“The back assessment bill issued to the petitioner for Rs. 196980/- shall be revised as follows. For the meter faulty period of 5/05 to 9/05 back assessment shall be done based on the average for succeeding six months. Back assessment shall not be done for the period from 1/05 to 4/05. Back assessment for the period from 9/06 to 8/08, for not including light consumption, is correct and hence shall be done in the same manner”.

Aggrieved by the said order, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his petition submitted before this Forum. The appellant has been remitting regular bills without any default from time to time including the bills related to the following periods:- 01/05 to 04/05, 05/05 to 09/05 and 09/06 to 08/08. During this period the meter became faulty and changed the meter on 14th January 2005 and 5th October, 2005 respectively. The KSE Board raised bills during the period in question and the appellant paid the amounts as per the bills. The said bills became final and conclusive as between the appellant and the KSEB as the KSE Board did not revise the said bills within two years period from the date when such sum became first due. The appellant quotes Section 56 (2) of the Electricity Act 2003 in support of his above argument. Section 56 (2) reads “ 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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity." According to appellant, the amount of energy charges was due to the Board during the period in question and not from the date of back assessment bills raised.

On 17-8-2009, an audit was conducted by KSEB and auditors observed certain anomalies in the assessment during the period in question. Based on the audit report, on 21-3-2011, the respondent had issued a back assessment bill for the following periods.

1. Bill for Rs. 79008/- for the period 01/05 to 04/05
2. Bill for Rs. 99791/- for the period 05/05 to 09/05
3. Bill for Rs. 18181/- for the period 09/06 to 08/08

Aggrieved by this, the appellant filed a complaint before the CGRF, Ernakulam. According to the appellant, the back assessment bill raised by the KSE Board is wholly illegal, arbitrary and in excess of jurisdiction vested in the KSEB under the Electricity Act, 2003. The Hon Supreme Court held that in all cases, it is essential for the party to prefer the claims within the period of limitation prescribed under the Act. The question is when did the energy charges of the consumer's premise become due? It is the succeeding month in which the consumer used the energy and not the date of revised assessment. A perusal of the provision shows that the amount due can be recoverable within two years from the date when such sum became first due.

Reliefs sought are: -

1. To quash the orders of the CGRF related to the back assessment for the period from May 2005 to September 2005 and September 2006 to August 2008.
2. To stay all further proceedings pursuant to the order passed by the CGRF, pending disposal of this appeal.
3. To grant such other and incidental reliefs that may deem just and necessary on the facts and circumstances of the case'
4. To allow the appeal with costs to the appellant.

Arguments of the Respondent: -

The respondent has furnished the following details on the petition filed by the appellant.

An audit by the RAO of KSEB was conducted on 17.8.2009, on the records of the consumer and as per its report a bill dated 21.3.2011 amounting to Rs.1, 96, 980/- was served on the consumer with the last date of payment as 4.4.2011. It was detected that the multiplication factor applied for the period from 01/05 to 04/05 was 2 i.e. the ratio of the installed CT of the meter was 200/5 while that of meter was only 100/5. The power meter of the consumer was changed on 14.1.2005. Meter reading pattern after changing the meter was as follows:-

- 1/2005=1266x2 units,
- 2/2005=1206x2 "
- 3/2005=1284x2 "
- 4/2005= 0957x2 "

Therefore the average consumption after change of faulty meter was, $9426/4 = 2357$ units. But an average of 2298 units was charged for the period, 5/05 to 9/05. The meter was again changed on

5.10.2005 due to MF. Average consumption and consumption pattern after this change was given.
10/05= 8280 units,
11/05= 6320 units
12/05= 9280 units i.e. an average consumption of $23880/3 = 7960$ units per month.

The respondent has furnished a detailed calculation statement of back assessment done for the meter faulty period from 1/05 to 9/05 and the back assessment done due to not assessing the recorded light consumption, for the period 9/06 to 8/08, which was noted as per the audit report. The consumer had not remitted the sum arrived as per this back assessment, though he is liable to remit the amount.

The respondent argues that the assessment was done, obeying Section 56 (2) of Electricity Act 2003, as this sum became first due on the date of the assessment bill, i.e. on 21.3.11. Hence it is recoverable.

The consumer had approached the CGRF against the back assessment bill issued to him. The CGRF vide order dated 13.6.2011, has directed to revise the bill. Accordingly, the back assessment for the period 10/05 to 3/06 has been revised to Rs. 89, 447/- plus Rs. 18, 181/- (back assessment for the non-billing of light consumption). This amount has not been remitted by the consumer as directions were sought from the higher office for issuing the bill as per the orders of CGRF.

The respondent has also requested to revise the orders of CGRF, as per the BO (FM) No. 793/2009 (DPC.II/Replacement of faulty and sluggish meters) dated 21/3/2009, which reads; "the consumption during the meter faulty period shall be assessed based on regulation 33 (2) of Terms and Conditions of Supply 2005". Regulation 33(2) reads "the assessment for the meter faulty period shall be done based on the average consumption for succeeding three months if previous average could not be taken or was not reliable"

Analysis and Findings: -

The Hearing of the case was conducted on 10.01.2012, in my chamber at Edappally and Mr. B K. Gopalakrishnan, Advocate for the Petitioner, appeared for the Appellant and Mr. John Varghese, Assistant Executive Engineer, Electrical Sub Division, Perumbavoor, for the opposite. On perusing the Petition, the statement of facts of the Respondent, the documents attached and considering all the facts and circumstances of the case, this Forum comes to the following conclusions and findings, leading to the decisions thereof.

The main contention of the Appellant is based on the Limitation or Time Bar under Section 56(2) of Indian Electricity Act, 2003, which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first due unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied".

The question to be decided is on the point 'when the electricity charges become due for payment' i.e. the date from which the electricity charges are 'liable to pay' by the consumer, which is also termed as the 'due date'.

This 'due date' is an important date as far as both consumer and KSEB (Licensee) is concerned. This is because after a period of 2 years from the 'due date' the bills are time barred and hence the consumer is not liable to pay the amount even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of Notices of long pending arrears after a period of 2 years. On the other hand, in

the case of Licensee he should be more vigilant and smart in preferring the bills in time, otherwise he has to suffer the loss, for the omissions and laxities occurred on his part.

The consumer does not dispute the short assessment bill raised by the respondent as a bogus claim. His only contention is that it is time barred and hence invalid. Since this is a delicate issue which can only be interpreted by Learned Judges, I am of the view that, if this issue has been dealt with, analyzed and given a firm opinion by any Upper Court of Law/Jurists, we may follow the same, till it is reversed by a still superior body or a larger bench of Jurists. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide case No: 3784/2007, which has dealt the 'due date' issue in detail and pronounced its considered opinion. In this context, I am reproducing the relevant portion of the main point spelt by Hon: Judge as follows; 'In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him.'

Here the Appellant does not question the quantum or method of assessment of the bill raised against him. Even during the Hearing, the appellant has agreed to remit the light consumption charges for a settlement of the Case. The mistake or omission of raising a bill, for the faulty meter period, was noticed by the Audit wing of KSEB and subsequently issued the bill on 21.3.2011. The consumer's only objection is with respect to time bar limitation.

It is difficult for me to agree with the argument of appellant that the claim is barred by section 56 (2) of Electricity Act 2003. The period of two years as mentioned in section 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board against consumption of electrical energy and have become due for payment only after that demand has been raised. In the above said case it has been further clarified by Hon: High Court that;

"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 the consumer", (Brihatmumbai Municipal Corporation Vs Yatish Sharma and others-2007 KHC 3784:2007 (3) KLTSN 11 (Bom)).

In our case the bill is seen raised in 3/2011, and became due thereafter and time period of two years start from 3/2011 only and hence the appellant's argument is not maintainable. Further, it is not an arrear, but is the charge for the unrecorded portions of energy used by the consumer only. The consumer is bound to pay the charges for the true electricity he has consumed. The appellant has forwarded an argument in his Petition as, 'Supreme Court decisions on similar cases', without citing any specific Case orders and hence cannot be relied upon as the statement is not supported.

The KSEB has reassessed the consumer, during meter faulty period, as per the provision of Regulation 33 (2) of the Terms and Conditions of Supply, 2005. Regulation 33 (2) reads; "If the Board is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the Board shall issue bill based on the previous six months average consumption. In such cases the

meter shall be replaced within one month. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of the meter."

The Regulation 42 (3) of the Terms and Conditions of Supply, 2005, which reads; *"The consumer may report any complaint regarding meter to the concerned Electrical section..... If the existing meter after having found faulty is replaced with a new one, the consumption recorded shall be reassessed based on the average consumption for previous six months prior to replacement of the meter. If the average consumption of the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of the meter and excess claimed if any, shall be adjusted in the future current charge bills"*.

Here the CGRF has ordered to reassess the consumer based on Regulation 42 (3), but I think it is not correct, since it is the rule to be applied when the consumer dispute the accuracy of his meter and Regulation 33(2) deals, when the Meter is malfunctioning and the Licensee is unable to raise a correct bill and instead prefers a past average bill, based on the consumer's previous six months average consumption. Hence, I am of the view that the relevant provision, under which the consumer has to be assessed, is as per Regulation 33(2) only, in this particular case.

DEECISION: -

From the analysis done above and the findings and conclusions arrived at, I take the following decisions.

From the detailed analysis done above, it has been conclusively established that in the present case under dispute, the Time bar under Section 56(2) of IE Act, 2003, will not be applicable here.

The consumer is legally bound by the agreement, executed between the party and the Licensee, to pay the cost of the actual electrical energy he has consumed. The meter being an electronic/mechanical or electro-mechanical instrument, are likely to develop faults or go malfunctioning in course of time due to various reasons, either on its own fault or purposefully done to escape from a higher billing or defect in wiring or defect in the inputs to meter like the CT's etc. In the case of meter fault, due to malfunctioning, not recording properly, reading not visible etc. provisions are given in KSEB T & C of Supply, 2005, how to act in such cases and to reassess the consumer in a systematic and logical way. The Regulations under Clause 33(2) and 42(3) of KSEB T & C of Supply, 2005, are almost the same but are intended for the Licensee, when the meter malfunctions and for the consumer, when he suspects the accuracy of the meter and has a complaint, respectively.

The next point is the decision on the legitimate amount payable by the consumer on the case under dispute. The consumer does not dispute the short assessment bill raised by the respondent as a bogus claim. His only contention is that it is time barred and hence invalid. On a perusal of the Meter reading Register of the consumer for the last 10 years the following details are revealed;

During 11/02 to 5/03, the meter recorded around 3000 units per month and on changing the meter in 5/2003, suspecting faulty, the consumption rose to an average 7500 units per month. Similarly, when the meter was changed in 3/04 there was increase in the consumption recorded. The meter was seen going faulty in most of the time from 10/2003 to 11/2005 and at least 5 times the meter was replaced during this period. During the period of 12/2005 to 03/2009, the Meter

reading Register shows, that the consumer had an energy consumption ranging in between 5000 to 23400 units per month. In most part of this period (12/2005 to 3/2009) the consumer has a recorded consumption of more than 10,000 units per month. Nowhere is seen a consumption recording of around 3000 units during this period. Hence I am convinced that the back assessment done for the meter faulty period of 5/2005 to 9/2005, for 5 months, at an average consumption of 7960 units per month is reasonable and justifiable. Therefore the Bill issued for Rs.99791/-, for the period 05/05 to 09/05 is decided as maintainable.

Similarly the Bill for Rs.18181/- towards the recovery of Light meter consumption for the period 09/06 to 08/08 is also found maintainable as the consumer has not raised any serious objection against the same.

The CGRF has made a finding that the back assessment done for the period 1/05 to 4/05 for Rs. 79008/- was not proved. Since the respondent has not made any relevant argument to counter it, I endorse the view of CGRF that the bill is not maintainable.

Having concluded and decided as above, it is ordered that the consumer is liable to pay the disputed Bills of; 1). Bill for Rs. 99791/-, reassessed for the meter faulty period of 5 months i.e. 05/05 to 09/05 and 2). Bill for Rs. 18181/- for the Light meter consumption for the period 09/06 to 08/08, only. The consumer may be allowed, five installments, if requested for. There will not be any interest payable by the consumer, for the Bill amounts, for the Petition pending period, before the CGRF and this Authority and up to 30 days from the date of this order i.e. for the period, 6.4.2011 to 10.01.2013. The Appeal Petition filed by the consumer stands disposed of with these directions ordered. No order on costs.

Dated the 11th of December, 2012.

Electricity Ombudsman.

Ref: No. P/ 236/2011/ 1487/ Dated 11.12.2012.

Forwarded to :

- 1).Sri. Biju Karnan
M/s KKR Flour Mills
Okkal, Kalady, Ernakulam Dt.
- 2).The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Perumbavoor, Ernakulam Dt.

Copy to

- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,
Vydyuthibhavanam, Pattom,
Thiruvananthapuram- 4. Pin-695004
- 3). The Chairperson, CGRF,
KSEB, Power House Buildings,
Cemetery mukku, Ernakulam, Cochin- 18. Pin-682018.