

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/086/2016
(Present: V.V. Sathyarajan)
Dated: 13th March 2017

Appellant : Sri. E.V. Paul,
Sun Tower Building,
8/147/1, East Fort,
Thrissur.

Respondent : The Assistant Secretary,
Electrical Wing,
Thrissur Corporation,
Thrissur.

ORDER

Background of the case:

The appellant is a consumer with consumer No. 10123 under Electricity Department, Thrissur Corporation, with a connected load of 6 kW. It is alleged that the appellant has connected unauthorized additional load (UAL) of 24 kW, to licensee's system. So, the respondent, Assistant Engineer issued a short assessment bill for Rs. 1,20,240.00 for the billing period from 12/2011 to 04/2016. Aggrieved by the said bill, the appellant filed a petition before the CGRF, Thrissur Corporation which was disposed of directing the licensee to charge the appellant for the additional load with effect from 12/2011. Not satisfied with the decision of CGRF, the appellant has filed this appeal petition.

Arguments of the appellant:

The appellant is having an LT VII A connection with a connected load of 6 kW. Based on report dated 04-04-2016 the Assistant Engineer has given an invoice as a letter with the subject as short assessment order. There is no procedure in the Supply Code as alleged.

The respondent has claimed the dues from 05-08-2011 to 07-04-2016 that is about five years. As per Section 56 [2] of Electricity Act which 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 become first due unless such sum has been shown continuously as recoverable as arrears of charge for electricity supplied and the licensees shall not cut off the supply of the electricity”. Hence the claim for five years is unreasonable and unsustainable.

The Assistant Engineer has claimed the additional charge from 05-08-2011 onwards. The appellant has added the additional load after 02-02-2015 only. To prove the genuineness of the same the appellant is attaching herewith the approval of Electrical Inspectorate no. B1-526/15/EIR dated 02-02-2015. Hence even if the claim is there it should be from 02-02-2015 only.

As per Regulation 152(3) of Supply Code, 2014 Provision 4 “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.”

More than above all the proceedings of Assistant Engineer are not in compliance with Regulation 150 and subsection of Supply Code, 2014. The appellant has filed a complaint before CGRF and they have given an order confirming the impugned bill. The CGRF have not considered the Supply Code 2014 Regulation 152(3), Provision 4 '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.'

The respondent also has not considered the Electricity Act Section 56(2) which limits the liability of Electricity dues as two years as elaborated earlier. In the order while analyzing the consumption pattern the CGRF have considered only the random consumption and not the continuity from the date of connection onwards. For the year 2011 they have considered for 10 months, for 2012 six months and after that they have given only the consumption of 5th and 6th months. This is illogical. The limitation put forward in the Act as well as the Supply Code is only to restrict the illogical calculation and also collection of unreasonable amounts.

In the above circumstance it is only fair and just to have the impugned bill cancelled.

Relief Sought for

1. Direction may be given to the Assistant Engineer not to disconnect the supply till hearing and disposal of the complaint.
2. Direction may be given to the Assistant Engineer to cancel the impugned bill.
3. The Hon'ble Ombudsman may release any order with which the consumer may be relieved from the harassment of the license.

Arguments of the respondent:

Consumer No 10123-A allotted to Sri E.V. Paul, owner of the building, on 05-10-2000 with a sanctioned load of 6 kW and the appellant conducted some business with the connected load 6 kW. The energy consumption pattern is attached herewith from the date of connection to 2011. The energy consumption was reasonable with 6 kW connected load, till February 2011, the appellant had rented out the building to HDFC bank and connected very high load of 23.740 kW with indoor transformer in the month of March 2011.

Due to which the licensee has incurred loss in fixed charge which can easily be established by review of energy consumption pattern of the consumer. 5600 kWh to 8080 kWh power was consumed by the HDFC bank for which energy charge was already paid by the consumer, but the fixed charge was paid only for 6 kW instead of actual connected load of 24 kW.

So licensee issued a short assessment bill, as per Regulation 134 of Supply Code, 2014 for 24 kW load. No other charges have been added to the bill and sufficient time was given to submit application to review the short assessment bill, if required. The consumer submitted an application to limit the penalty up to 2 years and no other request from consumer or HDFC bank was received in this regard. Regulation 134 allows the licensee to issue bill for more than 2 years without any time period. The licensee has acted as per the existing Regulation and Electricity Act. HDFC bank was consuming same energy from 2011 to till date. The additional load applied by the consumer on 12-08-2016 for 28 kW clearly reveals that he was consuming same energy from 2011.

As per CGRF order, the licensee has cancelled earlier bill and issued fresh bill. The appellant has so far not remitted the amount. The fresh bill is only electricity fixed charges short collected by the licensee. So it is humbly requested to direct the consumer to remit the amount.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam on 03-03-2017. Smt. Neenu Skaria was present for the appellant's

side and Sri. Shyne M.V., Assistant Engineer, Electricity Department, Thrissur Corporation represented the respondent's side. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant vehemently argues and opposes the penal bill, emphasizing on the Section 56(2) of the Electricity Act, 2003, which 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 become first due unless such sum has been shown continuously as recoverable as arrears of charge for electricity supplied and the licensees shall not cut off the supply of the electricity”***.

According to appellant, Section 56(2) is barred by limitation and that would run from the date when such a bill is raised against consumption of electrical energy and would become due for payment, only after that demand has been raised. In a related case, it has been clarified by Hon'ble High Court that; “Amount of charges would become due and payable only with the submission of the bill and not earlier. The word ‘due’ in this context must mean due and payable after a valid bill has been sent to the consumer”, (Brihanmumbai Municipal Corporation V Yatish Sharma and others-2007 KHC 3784).

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 licensee against the consumer and become due for payment only after that demand has been raised. In this case, the bill was raised during 4/2016 and as such the bar of limitation will not prevail. In such a situation, I am of the opinion that, even if the bill was raised under Electricity Act, 2003, the bar of limitation under Section 56(2) will not attract, since the bar will start only from the due date of the bill, which is 4/2016 in the instant case. Hence it is concluded that the short assessment bill issued to the appellant is not time barred, even if it falls under the purview of Electricity Act, 2003. In this case, the short assessment bill was dated 04-04-2016 and I am of the view that the argument of appellant that the claim is time barred under Section 56 (2) of Electricity Act, 2003, is not sustainable.

Further, on perusal of the records would show that the short assessment bill was issued for the unauthorized additional load as per Regulation 134 of the Electricity Supply Code, 2014. The Regulation 134 of the Electricity Supply Code, 2014, reads as; ***“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.”

Regulation 152 which deals with the **“anomalies attributable to the licensee which are detected 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”**. But the appellant relies on particularly Sub clause (3) of Regulation 152 of Supply Code, which reads as;

“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.”

Here in this case, the detection of unauthorised additional load is not an anomaly attributable to the licensee as per Regulation 152 and hence the argument of the respondent that realization of electricity charges short collected shall be limited for a period of 24 months cannot be justified.

Another contention of the appellant is that the additional load was connected to the licensee’s system only after 02-02-2015 and produced the energisation sanction certificate dated 02-02-2015 issued by the Electrical Inspector to prove this contention. But the respondent argued that the consumption was reasonable with 6 kW connected load till 2011 February and the appellant had rented out the building to HDFC Bank with a connected load of 23.740 kW during March 2011. On verification of the appellant’s consumption pattern it can be noted that there is an increase in consumption from 10/2011 onwards. Here in this case it is pertinent to note that either an inspection was not seen conducted or an inspection report or site mahazar detailing the irregularities detected / unauthorized use of additional load etc., as per Regulation 151 of Supply Code, 2014, was not prepared. In the event of detection of unauthorised use of electricity or of theft or of any other irregularity, a detailed site mahazar shall invariably be prepared at site by the Assessing Officer under Section 126 of Electricity Act.

Further, a copy of the mahazar should be handed over to the appellant or his representative present at the premises under proper acknowledgement at the spot itself on completing the inspection. The above procedure was not seen followed in this case. The respondent has not proceeded as per Section 126 of Electricity Act and not issued penal bill under the above Section for unauthorised use of electricity. The penalty for any continued unauthorized

additional load can be imposed only if the Assessing Officer is convinced that the unauthorized additional load had actually continued during any period after the date of inspection, that too after complying with all procedure under Section 126 (2) and (3).

It is the bounden duty of the licensee to take appropriate action against the appellant on detection of unauthorised additional load as per Regulation 153 of the Supply Code, 2014. The Sub clause (2) of the Regulation 153 of Supply Code 2014 says **“the difference between the total connected load in the premises of the consumer at the time of inspection and the sanctioned load of the consumer shall be reckoned as unauthorised additional load”**. A higher consumption pattern in the appellant’s premises does not mean that the appellant has connected and used unauthorised additional load. Even without conducting a comprehensive inspection in the premises of the appellant to find out the actual reason for the excess consumption, there is no justification for issuing such a huge bill for Rs. 1,20,240.00 for a period from 12/2011 to 04/2016.

The respondent had issued a notice on 07-10-2014 directing the appellant to remit additional cash deposit on the basis of an increase in consumption of 1216 units on 08-10-2011 to 5656 units on 04-02-2012 which was not followed by any inspection as stipulated in Regulation 173 of Supply Code, 2014. As per Regulation 174(2) of Supply Code, 2014, **“the licensee shall specify the reason for notice and the likely action by the licensee with a request to the consumer to contact local office of the licensee”**. As per Regulation 153(7) **“if it is found that any additional load has been connected without due authorisation from the licensee or in violation of the provisions of Central Electricity Authority (Measures Relating to Safety & Electric Supply) Regulation, 2010, as amended from time to time the licensee shall direct the consumer to disconnect forthwith such additional load and the consumer shall comply with such direction, failing which supply of electricity to the consumer shall be disconnected by the licensee”**.

On perusing the records it can be held that the appellant has admitted the fact that he connected the additional load after 02-02-2015. The respondent’s contention is that though the appellant was using the additional load from 2011 onwards, he submitted application for regularising the additional load for 28 kW only on 12-08-2016 is without any documentary evidence. So, a probable conclusion can be arrived in this case is that the additional load was connected after 02-02-2015 and hence the claim is limited to the date of submission of application for regularisation.

Decision

In view of the above facts, it is decided to quash the short assessment bill issued to the appellant for an amount of Rs. 1,20,240.00. It is made clear that the respondent is at liberty to revise claim for the unauthorized additional load for the period from 02-02-2015 to the date of submission of application for regularizing the additional load.

The order No CGRF/TCED/72 dated 21-10-2016 of CGRF, Electricity Department, Thrissur Corporation is hereby set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/086/2016/_____ /Dated:_____

Delivered to:

1. Sri. E.V. Paul, Sun Tower Building, 8/147/1, East Fort, Thrissur.
2. The Assistant Secretary, Electrical Wing, Thrissur Corporation, Thrissur.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Chairperson, Consumer Grievance Redressal Forum, Electrical Wing, Thrissur Corporation, Thrissur.