

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/003/2017

(Present: A.S. Dasappan)

Dated: 31st May 2017

Appellant : N. Raveendran
Director,
Sree Niketan Central School,
Karamcode, Chathannoor,
Kollam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Chathannoor
Kollam

Background of the case:

Dr. N. Raveendran, Director, Sriniketan Central School, Karamcode, Kollam, the appellant is the registered consumer of electricity bearing Consumer No.11055 under Electrical Section, Chathannoor. The sanctioned connected load is 16 KW and the tariff allotted was VI A for functioning a self financing educational institution namely Sree Niketan Central School. An invoice for Rs. 28,374/- issued to the consumer for the short assessment period from 01/2008 to 01/2009 towards the misclassification of tariff and for the meter faulty period from 09/2011 to 03/2012. The appellant had approached the Hon'ble CGRF (SR) by filing a petition in OP No. 1588/2015. The Forum ordered to quash the bill dated 7-9-2015 for Rs. 28,374/-and directed to issue the revised bill only for the misclassification of tariff, vide order dated 16-12-2015. The bill was revised to Rs. 23,323.00 and a revised bill dated 21-1-2016 was issued to the appellant. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant had filed a petition challenging the assessment bill for the period 01/2008 to 01/2009 issued by the respondent, before the CGRF, KSEB, Southern Region, Kottarakkara and it was allowed by order dated 16-12-2015 in OP No. 1588/2015. The respondent without scrupulously complying the direction in the above order issued the present demand against appellant for the same period, in which the appellant have brought

to the notice of the respondent by filing an objection dated 25-01-2016, however it was not considered and issued a disconnection notice No. BB/2016-17 dated 18-12-2016 threatening that if appellant failed to pay the demand amount, the power connection will be disconnected. The above notice was issued to appellant on 29-12-2016, the time mentioned in the notice expires as on 12-01-2017.

The appellant's version is that he was waiting the revised demand from the respondent in view of the directions in OP No. 1588/2015. However the respondent made an arbitrary demand directing to pay Rs. 28,374/- for the same demand period by demand dated 21-01-2016. Since the appellant was awaiting favourable orders in his objection against the above demand submitted before the respondent dated 25-01-2016, he could not file the complaint before this Forum within time. Further he submitted that if the disconnection of power supply is effected, it will affect the functioning and studies of the children and he will be put to suffer irreparable loss, injury, hardship and prejudice. Another main contention of the appellant is that the present bill is seen issued without applying mind and without considering the implication of Section 56 (2) as the period of billing is specifically mentioned as that of the year 2008.

Therefore the appellant humbly prays in the interest of justice that the Hon'ble Ombudsman may pen appropriate order regarding to this issue and also stay the disconnection notice issued by the respondent till the disposal of the petition.

Arguments of the respondent:

The respondent has submitted the following contentions in his statement of facts filed before this Authority.

This Appeal is filed challenging the findings in the order dated 16-12-2015 of the Hon'ble Consumer Grievance Redressal Forum (S), Kottarakkara in OP No. 1588/2015. The Regulation 12 (3) of the Kerala State Electricity Regulatory Commission, Regulations 2005 stipulates that any appellant aggrieved by the order made by the Forum may make a representation against such order to the Ombudsman within a period of thirty days from the date of the receipt of the order.

That is the Appellant has to file an appeal on or before 15-01-2016. But now the complaint is filed through email only on 04-01-2017 i.e., a delay of around one year. Since the complaint is not filed within the time limit specified by statute, it is to be dismissed in limine without entering into the merits of the case.

In the Kerala Gazette dated 27-11-2007 with regard to the tariff classification and revision of energy charges, it clearly reclassify the self

financing educational institutions in the tariff category of VII A commercial. But by mistake, the appellant's firm has been billed at VI A instead of VII A for the period from 01/2008 to 01/2009. After that the consumer has been changed to VII A tariff. Regulation 37 (5) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 stipulates that if the licensee establish 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. The above under billing and a meter faulty defect has been detected by the officers under Regional Audit Office, Kollam and instructed the Assistant Engineer, Electrical Section, Chathannoor to issue fresh bill in this respect. Hence an invoice for Rs. 28,374/- has been prepared and issued to the consumer for the short assessment period from 01/2008 to 01/2009 and for the meter faulty period from 09/2011 to 03/2012. The Hon'ble Forum ordered to revise short assessment invoice for the misclassification of tariff only. Hence the bill was revised to Rs. 23,323.00 in compliance of Consumer Grievance Redressal Forum order excluding the assessment for the meter faulty period. The bill was issued during January 2016 and the consumer has not turned to remit the bill within the last date. With repeated requests from the part of officials of KSEB, the appellant has not remitted the bill till date.

The revised bill issued is as per rules and also in compliance of the order of the Hon'ble Consumer Grievance Redressal Forum, Kottarakkara, i.e., the competent authority to resolve disputes of the impugned nature.

The appellant came before this Hon'ble Forum suppressing the material facts of the case. Board's power to classify consumers in different categories according to nature of supply and purpose for which it is used has been upheld by the Apex Court in various judicial pronouncements. The averments of the appellant against this are baseless and have no legal basis.

The Hon'ble High Court of Kerala in V.A. Balakrishnan V/s. KSEB (OP.5935/85P) unambiguously held that the demand for electric charges is not like an assessment to tax which requires a specific provision for re-opening the assessment. If there is an under-billing it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer. In the instant case, there is an under-billing in tariff VI A instead of VII A. The above under-billing has been rectified and correct invoice was issued and hence the appellant is liable to pay the bill. The phrase 'Sum due' appearing in Sub Section 56 (2) has been interpreted as means as the sum first due after the bill for energy charges have been issued and served. Consequently, the period of limitation prescribed under the provision of Sub Section 56 (2) would also become applicable from the date of service of bill (Thangal Kunju Musaliyar College of Engineering V/s. KSEB).

The undercharged bill was issued as per the existing provision of the law which subsequently confirmed by the Forum. The appellant is liable to

pay the undercharged bill amount since he has consumed the electrical energy under the tariff of LT VII A for which he has dispute. Board's power to classify consumers in different categories according to nature of supply and purpose for which it is used has been upheld by the Apex Court in various judicial pronouncements (now this power is entrusted with Kerala State Electricity Regulatory Commission). The averments of the appellant against this are baseless and have no legal basis.

The Hon'ble High Court of Kerala in Sunderdas P V/S. KSEB and another (Reported 2009 (1) KHC 945) held that "the meaning that the amount becomes due and first due in my view must be linked with the issuance of the bill". Here the bill issued was only on 21.01.2016 on that day onwards the bill becomes due. If there is an under billing it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer. In the instant case, there is an under billing in tariff VI A instead of VII A. The above under billing has been rectified and correct bill was issued and hence the Appellant is liable to pay the bill. Electric charges are not like an assessment to tax which requires a specific provision for re-opening the assessment. If there is an under billing it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer. Judgment of the Hon'ble High Court of Kerala dated 09-02-2012 in W.A.No.211/2012 in W.P (C) No. 34768/2011 has pointed out that the question of normal period of limitation is not applicable both towards Electricity and Water charges. Hence the limitation clause under Section 56 (2) of the Act has no relevance in this case.

Analysis and findings:

The hearing of the case was conducted on 15-05-2017 in the CGRF Court Hall, Kottarakkara. Sri. Dr. N. Raveendran and Sri. Vijayakumar, advocate represented for the appellant's side and the respondent Assistant Executive Engineer, Electrical Sub Division, Chathannoor was absent. On examining the petition and 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 conclusions leading to the decision.

The appellant has not filed the appeal petition within the specified time as prescribed in the rules. The appellant's submission is that the delay occurred was not deliberately but on account of the circumstances beyond his control and requested to condone the delay. As per Regulation 21 of the KSERC(CGRF and Electricity Ombudsman) Regulations, 2005, the Ombudsman may entertain a representation after the expiry of the said period of 30 days if he is satisfied that there was sufficient cause for not filing it within the said period. Considering the request of the appellant, the petition is admitted.

The main contention of the Appellant is based on the Limitation or time bar under Sec. 56(2) of Electricity Act, 2003, which implies as; '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'. Hence *the point is; 'when will the electricity charges become due for payment i.e. 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.

The Judgment in a Petition filed before the Hon High Court, Bombay, vide case No: 3784/2007, has dealt with the 'due date' issue in detail and pronounced its considered opinion. The same judgment is referred in this context and is reproduced herewith the relevant portion as;

'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'.

Based on the above judgment, the period of two years as covered in Sec. 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the said case, it has been further clarified by Hon: High Court that; "Amount of charges would become due and payable only with 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)). As such, the period of two years would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. Hence, the bar of limitation under Sec. 56(2) is not admissible in this case, as the disputed bill was seen raised only on 7/9/2015.

Applying the aforesaid principles, in the present case, I find that the CGRF's decision that the respondent's claim for the dues related to the meter faulty is not sustainable and not in order. According to CGRF, as per the limitation clause the respondent ought to have been issued the bill within two years. This is not correct on the basis of the above judgments.

It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the respondent declared the meter as sluggish for the previous period due to the dip in consumption. The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Here in this case, the respondent declared the meter as faulty that too even without conducting any testing.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters), Regulations, 2006, the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts. In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant as meter faulty. Further, there is no mechanism for the appellant to know whether the meter is working properly or not. Hence the argument of meter faultiness cannot be proved conclusively without conducting testing of the meter. The statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class is not done before declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. Without complying with the statutory formalities, the assessment now made in this case is not sustainable before law and liable to be quashed. So I am not interfering the decision of the CGRF regarding quashing the disputed bill for meter faultiness.

The provisions in Section 61 and 62 of the Electricity Act, 2003, read as;

61. Tariff regulations: The Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff and in doing so shall be guided by the following, namely:(d) safeguarding of consumers interest and at the same time recovery of the cost of electricity in a reasonable manner.....

62. Determination of tariff. The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.

As such, the Hon KSERC which is the empowered statutory body, as per Electricity Act, 2003, to frame the Power tariff rules and rates, do so after conducting the hearings of the general Public and the versions of interested stakeholders in the field, on the new tariff proposals notified. No specific direction, under Sec. 108 of the Act, was seen issued by the Govt. to the Commission, before notification of Power tariff categorization and

formulation of connected rules in 11/2007, on the fixation of tariff applicable for Self Financing Educational Institutions exclusively.

Further, the Regulation 24(5) of the Electricity Supply Code, 2005, reads as; "If the Licensee establishes that it has under charged the consumer either by review or otherwise, the licensee may recover the amount under charged from the consumer by issuing a Bill...". This regulation empowers the Licensee to correct a mistake or error that has occurred due to oversight or for genuine reasons.

The appellant's version is that CBSE affiliated schools are being run by Charitable Societies registered as per CBSE Affiliation Bye-laws. They do not come under the purview of Self Financing Institutions. The appellant is of the view that, fixation of wrong tariff assignment to him was not due to his fault, as he has no role in the fixation of tariff and also there is no allegation of any misdoing or malpractice being done by the consumer, from the KSEB's side. This argument is not correct because any genuine error or omission occurred on either side has to be rectified. The consumer is also bound to pay the charges of electricity, he has consumed, at the eligible tariff fixed by Hon KSEB. As per the schedule of tariff and rules notified by KSEB in 11/2007, only Govt. or aided private educational institutions come under the LT-VI-A (non-domestic) tariff. Hence appellant's institution is not eligible for VI A tariff as per the tariff orders.

The Hon: High Court of Kerala has disposed a WP (C) No. 26041/2012 filed by St. Mary's Educational & Cultural Society with a direction to the respondents (KSEB) to keep in abeyance the recovery of arrears till decision is rendered by the Hon. Supreme Court in the related Bro. Joseph Antony's case, which is pending before the Apex Court.

Decision

From the analysis done and the Findings arrived at, I take the decisions as; Exactly following the decision of the Hon High Court stated above, the bill raised for the arrears of the period from 01/2008 to 01/2009 towards the misclassification of tariff shall be kept pending. But the same will be subject to the result of the judgment in the batch of SLP's pending before the Hon: Supreme Court on the issue of electricity tariff applicable to Self Financing Educational Institutions and the respondent shall act as per the verdict, on its pronouncement.

It is clarified that the disputed short assessment bill dated 21-01-2016, issued to the appellant shall be kept pending, till the decision in the referred SLPs filed before the Hon Supreme Court on the same issue (eligible tariff applicable to Self Financing Educational Institutions) is decided by the Hon Court and the respondent shall act accordingly.

The order in OP No. 1588/2015 dated 16th day of December, 2015 of CGRF (South), Kottarakkara, stands modified to this extent.

Having decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is disposed of with the said decisions taken and issued. No order on costs.

ELECTRICITY OMBUDSMAN

P/003/2017/ _____ /Dated: _____

Delivered to:

1. N. Raveendran, Director, Sree Niketan Central School, Karamcode, Chathannoor, Kollam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Chathannoor, Kollam

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, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.