THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/121/2017
(Present: A.S. Dasappan)
Dated: 8th January 2018

Appellant : Sri. Ashokan O.D.
Hitech Plast, Kodanad P.O.,
Perumbavoor, Ernakulam

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd., Kuruppampady,
Ernakulam

ORDER

Background of the case:

The appellant is an industrial consumer with consumer No. 7429 under Electrical Section, Koovappady having a connected load of 33 kW. The Audit team of Regional Audit Officer, Perumbavoor conducted auditing the records of the respondent and found that the consumer was issued with undercharged bills for the months of 09/2013 and 10/2013. Accordingly the appellant was issued with a short assessment bill 28/07/2017 amounting to Rs. 3186/- (Rupees three thousand one hundred and eighty six only). Aggrieved by this, the appellant had approached the Hon'ble CGRF, Ernakulam by filing a petition in OP No. 43/2017. The Forum dismissed the petition due to lack of merits. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant is paying his electricity bill without any objection regularly and there is no due till the date. On 28.07.2017 KSEBL have given a demand claiming Rs.3186/- as RAO bill. From the bill it is seen that the claim is towards PF disincentive for two months 9 /13 and 10/13.

As per tariff order of Hon. Commission it is mandatory to have ToD metering from 01.01.2013, as per Clause 11 of General conditions. 'ToD tariff shall be applicable to LTIV Industrial consumers having connected load 20kW and

above and LT I(a) domestic (3Phase) consumers having monthly consumption of above 500 units.. The charges and other terms & conditions for ToD tariff is given as Annexure 'D & E' to the schedule. The scheme shall be effective from 01.01.2013'. Here the claim is for 9 /2013 and 10/2013.

If KSEBL have been providing the consumers with proper bill indicating all required parameters like zone wise kWh, zone wise kVA, cumulative kVAh and cumulative kWh the consumer would have understood the magnitude of penalisation towards low PF and they would have taken corrective measures by adding capacitors. Now the consumers have lost the opportunity for the correction and hence this claim is not reasonable. All the ToD meters are having MRI facility and it is the bound duty of KSEBL to provide the consumer with details of short assessment.

The entire short assessment was done as per the audit report of RAO and not as per the facts. This is evident from the fact that the Assistant Engineer have given the claim with the regular bill format stating the 'P/F disincentive for the months 9 /13 and 10/13' and there is no Site Mahazar. .

The entire claim is already time barred because it is older than two years. As per the Electricity Act Sec. 56 (2) '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'. They cannot arbitrarily claim an amount after four years and threaten us with disconnection notice.

The CGRF never consider the argument of 2 year time barred limitation and the CGRF order is also without analyzing the genuineness of the records. Hence Hon. Ombudsman may interfere in the matter.

Arguments of the respondent:

1. This complaint is against the RAO Audit bill dated 28/07/2017, for Rs. 3186/- issued to Sri. O.D. Ashokan, Hitech Kodanad, Koovappady, Ernakulam. The complainant Sri. OD. Ashokan is an LT IV(A) industrial consumer (Connected Load 33 kW, 3 phase) with consumer no. 7429 under Ele. Section, Koovappady.

2. During the internal audit at Electrical Section, Koovappady by the Regional Audit wing, certain anomalies were noticed in respect of the ToD consumer.

a) The power factor disincentive had not been billed for the two months of 09/ 2013 and 10/2013 due to oversight.

KSEB had introduced the ToD billing for the consumption from 01/09/2013, in respect of LT IV consumers based on the Board's direction dated 24/08/2013. Accordingly, Electrical Section, Koovapady, KSE Board has

started ToD billing regularly from 11/2013 onwards, but omitting two months of 9/2013 and 10/2013 due to oversight.

b) Also, there has been short assessment of Demand charges due to rounding of recorded maximum demand from 16/08/2014 to 31/12/2016.

3. Based on the RAO report, the KSE Board Ltd. has issued a short assessment bill for an amount of Rs. 3186/-, on 28/07/2017 towards short assessment of Power factor disincentive for the months of 9/2013 and 10/2013 (Rs.1405/-) and also towards short assessment of demand charges (Rs.1781/-).

4. Aggrieved by this, the consumer has raised an objection dtd.16/08/2017 before the Assistant Engineer, Electrical Section Koovappady and in reply dtd.30/08/2017 to the objection raised by the consumer, the Assistant Engineer has clearly mentioned that the short assessment bill is towards the Power factor disincentive for the months of 9/2013 and 10/2013 and also towards short assessment of demand charges and has explained it clearly.

5. Regulation 134(1) & 152 of the Electricity Supply Code 2014 allows the licensee to realise the amount short assessed/undercharged, from the consumer, under normal tariff applicable to the period during which such anomalies persisted, without any interest, by issuing a bill, if the licensee has undercharged the consumer.

Accordingly the consumer has been issued with the short assessment bill for the period. The detail of this bill is as follows.

	Month 09/2013	10/2013
Basic Power factor	0.9	0.9
Average Power factor	0.752	0.752
Difference of Power factor	0.148	0.148
Current charge for the month	3854	5640
Disincentive Amount=Diff PF x CC	570	835

Total Disincentive for two months Rs.1405

Connected load kW kW 32.811

Connected load in kVA as per Agreement) kVA 30.00

75% connected load in kVA kVA 22.50
Minimum contract demand to be billed kVA 23.00
Already billed kVA 22.50
Short to be billed kVA 0.50
16.8.2014 to 31.8.2014 Rs. 31.25 (Rs.125x0.5kVA x ½ month)
01.09.2014 to 31.12.2016 Rs. 1750 (Rs.125 x 0.5kVA x 28 months)
Short assessment of demand charges Rs. 1781
Total short assessment of bill amount Rs. 3186

6. As per Regulation 123, the regular bills for energy charges are usually being issued containing information in detail, but this may not be applicable in the case of short assessment bills, and the regulation also states that "the bill shall not become invalid only because of any one or more item of information are absent in the bill".

7. As per Regulation 136 (3) for Recovery of arrears and its limitation.-, "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.

However in this case, this regulation is not applicable, since, this case is not regarding arrear collection, but a short assessment for which there is no regulation or time limit been mentioned in the Supply Code or Supply Act. Moreover, though the assessment is for the period 09/2013 and 10/2013, the amount became first due to the consumer only when it is billed. In this case, the amount has become due only on 28/07/2017 when the bill has been issued.

8. From the above facts it is clear that the demand is a genuine one, as it is only the demand for the undercharged amount towards the complainant without any penalisation, and it is only a delayed bill served by the KSE Board which the consumer ought to pay and has not incurred any additional loss to the consumer due to the issue of this short assessment bill.

Considering the facts in the above statements, the respondent requests this Authority to reject this representation.

Analysis and findings:

Hearing of the case was conducted on 21/12/2017 in the Office of the Electricity Ombudsman, Edappally. Smt. Jesna Jose represented the appellant and Smt. Ciby K. John, Assistant Executive Engineer, Electrical Sub Division, Kuruppampady appeared for the respondent. The respondent Smt. Ciby K. John, Assistant Executive Engineer, Electrical Sub Division, Kuruppampady, Sri Biju Raj, Assistant Engineer, Electrical Section, Koovapady and Sri. Sasidharan Nair Senior Assistant, Electrical Section, Koovapady appeared for a second hearing on 26-12-2017. Both sides have presented their arguments on the lines as stated above. 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 ToD billing was effective in the appellant's premises from 09/2013 onwards and accordingly ToD billing of the energy charges has been done from 09/2013 onwards. Hence the short assessment was calculated comprising power factor disincentive and short assessment in demand charges amounting to Rs. 3186/-. During the period of 09/2013 and 10/2013

the disincentive due to low power factor was not demanded due to omission by the respondent. The respondent assessed short assessment on this account amounting to Rs. 1405/-. There was also short assessment in demand charges amounting to Rs. 1781/-.

As argued by the appellant, it is found that the impugned short assessment bill which was prepared on the basis of the audit report and the audit report was prepared not as per facts. The appellant's contention is that no site mahazar prepared for the billing of short assessment.

The details of ToD billing calculation done by the respondent was verified. On verifying the records, it is found that revenue assessment of Rs.3186/- comprising of short assessment in demand charge and a fresh assessment of disincentive for low power factor which is the newly generated demand. Others are actually the reassessment of short collected amount for the period from 16/08/2014 to 31/12/2016 for demand charges. Monthly bills of energy consumption and demand charge were remitted by the appellant without any objection. As such the amount of penalty is the only new one, is seen included in the short assessment based on the power factor. It revealed from the records that no error occurred on the part of the respondent in calculating the shortage of demand charge. But error in raising demand of power factor disincentive occurred on the part of the respondent. In the meter reading register, power factor is not furnished for 09/2013 and 10/2013, but disincentive is assessed in the calculation statement for Rs. 1405/-. As per Regulation 2 (15) of Supply Code, 2014, "(15) "average power factor" for a billing period means the ratio of the total kilowatt hours (kWh) to the total kilovolt ampere hours (kVAh) supplied during that period; ratio being rounded off to two decimal places". kVAh is seen only furnished from 11/2013 onwards in the meter reading register. However it is found that in the latest bills, the average power factor is seen calculated from total kWh and total kWAh.

The appellant argues that if KSEBL have been providing the consumers with proper bill indicating all required parameters like zone wise kWh, zone wise kVA, cumulative kVAh and cumulative kWh the consumer would have understood the magnitude of penalisation towards low PF and they would have taken corrective measures by adding capacitors and this opportunity was not provided to him by the respondent.

Power factor is the ratio of active power and apparent power in the power system. The result of improving power factor is the reduction of reactive power. Power factor cannot be utilised as a factor for transferring revenue from one account to another account by way of incentive/disincentive, which indicate the system healthiness. The incentive/disincentive factor includes to make aware the importance of power factor to the consumers that disincentive to be paid by the consumer can be shifted to incentive, double benefit, if adequate steps are taken by them for the improvement of the power factor.

Power factor is not a billing factor like kWh and kVA. Average power factor for a billing period means the ratio of the total kWh & kVAh total supplied during

that period and not the average of the power factor prior or after to that particular period.

In the hearing on 26-12-2017, the respondent informed that during the period of 09/2013 and 10/2013, the licensee could not compute the power factor incentive/disincentive as kVAh was not taken, which is required for the purpose. As such the licensee arrived at a disincentive of Rs.1405/- during 09/2013 and 10/2013 by taking average power factor for 11/2013,12/2013 and 01/2014 which is not justifiable and sustainable. The calculation was done without taking the actual kVAh, but based on a presumption. Further the respondent has calculated the short assessment in demand charges for the periods from August 2014 to December 2016. This has to be limited to 24 months as per Regulation 152 of the Supply Code, 2014.

The appellant states that entire claim is already time barred as per the Electricity Act Sec. 56 (2) since it is older than two years. In this case, the short assessment bills became due only after realization of a mistake. Amounts of the short assessment bills were never issued earlier and the same cannot be said to be 'due' at any earlier time. In short, the word 'due' in Section 56(2) means the amount due and payable after a valid bill has been served on the consumer. In this case the short assessment bill was issued on 28/07/2017 and hence the amount of the impugned bill cannot be said to be unrecoverable and barred under Section 56(2) of the said Indian Electricity Act, 2003. In an identical case, reported as, 2009(1) KHC 945 of Hon High Court of Kerala in W P (C) No. 90 of 2009 (1), Sunderdas P Vs KSEB, it was decided as follows; "….The scheme of Section 56(2) is that the amount becomes due when the bill is issued". Hence the above argument of the appellant regarding limitation is not admitted.

Decision

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 3186/- issued to the appellant. The respondent is directed to revise the short assessment bill by deducting the disincentive Rs.1405/- from the calculation statement and also limit the short assessment of demand charges for a period of 24 months prior to the period from December 2016. The respondent shall issue the revised bill to the consumer within fifteen days from date of receipt of this order. No interest is payable by the consumer up to the due date of the revised bill as ordered now.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the consumer is allowed as ordered and stands disposed of as such. The order of CGRF, Ernakulam in OP No. 43/2017 dated 09-11-2017 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/121/2017/ /Dated:

Delivered to:

1. Sri. Ashokan O. D., Hitech Kodanad, Koovapady, Kodanad P.O., Perumbavoor, Ernakulam

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kuruppampady, Ernakulam.

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, Central Region, 220 KV Substation Compound, HMT Colony P.O., Kalamassery 683 503