

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

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APPEAL PETITION No. P/090/2019  
(Present: A.S. Dasappan)  
Dated: 30<sup>th</sup> January 2020

Appellant : Sri. Shyam Mohan  
Blue Mount Resort,  
Chinnakkanal, Munnar,  
Idukki.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd,  
Chithirapuram,  
Idukki.

### **ORDER**

#### **Background of the case:**

The appellant, Sri. Shyam Mohan is a three phase commercial consumer with consumer number 13488 under LT VII A tariff of Electrical Section, Chithirapuram. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the letter dated nil directed the appellant to remit an amount of Rs. 64,700/- being the short assessment of fixed charge for the period from 01/2009 to 10/2018 based on the findings in the Regional Audit Report. Against the short assessment bill, the appellant had approached the CGRF, Ernakulam by filing a petition in No. 131/2018-19. The Forum dismissed the petition vide order dated 31-10-2019. Aggrieved against this, the appellant has submitted the appeal petition before this Authority on 25-11-2019.

#### **Arguments of the appellant:**

The appellant had received a notice (Number BB/Audit/18-19) from KSEB (the licensee) against consumer No - 1156159013488 on March 2019 regarding fixed charge dues of almost last 10 years starting 1/7/2009 to 23/11/2018 amounting to Rs. 64,700/-.

In the notice KSEB have stated that it is due to their negligence they failed to account for fixed charges for all these years and is now asking to remit the charges for the same. The appellant had filed a petition to the CGRF stating that he is ready to pay charges up to 2 years as per Section 56(2) of the Electricity Act 2003 which clearly states that "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"

KSEB went to challenge the Section 56(2) of the electricity Act of 2003 stating the expression "due" mentioned in the Act. This is almost an attempt to render the Section 56(2) of the Electricity Act void and meaningless. As per their explanation and interpretation it seems there is no need for Section 56(2) to even exist as it can be easily manipulated by their claim that "due date" can be any date and the 2 years should be accounted from that date. In such a case they believe they are at the liberty of giving past due bills even 10, 20 or 30 years after any customer.

Secondly, the appellant had also raised this issue on the CGRF hearing that the licensee KSEB claims they have provided 10 kW all these years but due to an error in billing they have collected only fixed charges for 5 years. It is up to KSEB to prove whether they really gave 10 kW or they allotted only 5kW between the said date of 17/1/2009 to 23/11/2018. When the standard electricity in India and Kerala should be 220 volts where always till date, appellant receive heavy under voltage most of the time all these years around 150 to 185 volts average and on very rare occasions touching 200 volts even at bare minimum consumption of under 2 kW.

It is very apparent that transformer from which electricity is allotted is not capable of load demand in the area or over supply for other connections. Hence the consistent drop in voltage. So, it is up to KSEB to prove whether they allotted 10 kW in the 1<sup>st</sup> place. The appellant believes it is totally unfair from the licensee to demand fixed charges for the last 10 years even when till date they really are unable to meet half the load demand in the 1<sup>st</sup> place.

Thirdly, the management who was running the property at that time have vacated now and they will never pay the disputed amount. Had the notice been served as per correct proceedings back then the appellant could have correctly remitted whatever fixed charges KSEB would have asked for. So, the whole financial burden has now come to appellant which is very taxing.

Lastly this area is affected with frequent power cuts and this in turn makes the expenditure almost double as the appellant have to use the generator for backup power which amounts to almost the same money as a usual KSEB bill would be. An average KSEB bill is between Rs. 15,000 to Rs. 20,000/-. The same is spent on generator diesel because of such low voltage and power cuts. There is almost double expense for power requirements which is never viable for the business,

Due to two constitutive floods and Munnar Gap road national highway construction and road blocks since the last 2 years the business is in a very bad financial situation, the appellant requests to solve the case with payment for up to 2 years of fixed charges.

**Arguments of the respondent:**

The electric connection bearing Consumer number 13488 under Electrical Section, Chithirapuram has been given to Sri. Mohanachandran, Bluemont Resort, Chinnakkanal in LT 7A tariff with a sanctioned load of 5kW on 17/05/1999. The consumer enhanced their connected load from 5 kW to 10 kW by remitting additional cash deposit on 17/01/2009. But the connected load was not changed in the billing software of KSEB due to oversight. The load was changed in the billing software only on 23/11/2018. Hence the fixed charge for the additional load of 5kW was not billed for the period from 01/2009 to 10/2018. In the RAO audit dated 19/07/2018, it was pointed out that KSEB Ltd. has suffered financial loss due to short fall in fixed charge of the consumer. As per the audit report a bill of Rs. 64,700/- was issued to the consumer on 26/02/2019 which is the short assessment of fixed charge from 01/2009 to 10/2018.

1. As per Regulation 136 of Kerala Electricity Supply Code 2014, "(I) the licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments become due"

"(2) The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice"

"(3) 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"

"The short assessment bill of Rs. 64,700/- was issued under Regulation 136 of Electricity Supply Code 2014 and KSEB Ltd. is well within in its right to issue such a demand notice as per the above regulation,

The petitioner has quoted in his complaint Section 56(2) of Electricity Act 2003 which is reproduced below.

"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".

In the Judgment of Hon: High Court, Bombay vide No. 3784/2007, the issue of due date has been dealt with in detail. From the judgment,

"In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in 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 of Electricity Act 2003, a sum can be regarded as "due" from the consumer only after a bill on account of the electricity charges is served upon him." Also, in the Judgment of Hon: High Court, Kerala vide WP (C) No. 90/2009, the above interpretation of due date was accepted.

So, 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 and have become due for payment only after that demand has been raised. In the present case the bill is raised on 26/02/2019 and has become due thereafter. The time period of two years start from 26/02/2019 only and hence the petitioner's argument is not maintainable under the bar of limitation.

2. On verification of records in its billing software, it is seen that the consumer had remitted an additional OYEC amount of Rs. 1700/- and additional cash deposit of Rs. 5000/- on 17/01/2009. The rate of additional cash deposit for LT 7A connection is Rs. 1000/- per KW. The date of remittance of additional cash deposit is the date of regularisation of the additional load. Hence it is clear that the consumer enhanced his connected load from 5 kW to 10 kW by remitting all the required fee and the date of effect is 17/01/2009. But the connected load was not revised in the billing software due to oversight. This omission was detected in the audit conducted by RAO. Later the connected load of the consumer was revised to 10 kW in the billing software on 23/11/2018. So a short assessment bill of Rs. 64700/- was issued to the consumer which is the shortfall in fixed charge for the period from 01/2009 to 10/2018. The short assessment bill issued is in order and the consumer is liable to remit the same.

So, it is requested that the complaint by the consumer may be dismissed.

### **Analysis and Findings: -**

The Hearing of the case was conducted on 21-01-2020 in the Office of the State Electricity Ombudsman, Edappally, Kochi 24. Sri Shyam Mohan, the appellant appeared for the hearing and argued the case on the lines stated above. Sri Dennis Rajan, Assistant Executive Engineer Electrical Sub Division, Chithirapuram has represented for the respondent's side.

On perusing the Appeal Petition, the counter statement of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

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 states that entire claim is already time barred as per the Section 56 (2) of Electricity Act 2003 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) of the Electricity Act and the Regulation 136 (3) of Supply Code, 2014 means the amount due and payable after a valid bill has been served on the consumer. In this case, as per the respondent, the short assessment bill was issued on 26-02-2019 (but the notice not bears a date) 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.

Refuting the above contentions, the respondent has averred that as per Kerala Electricity Supply Code, 2014 Regulation 136, the licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments become due.

In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board then in the case of undercharging, the Board shall have a right to demand an additional amount and in the case of overcharges, the consumer shall have the right to get refund of the excess amount provided at that time such claims were not barred by limitation under the law then in force.

It is not known that the audit party's observation is based on which documents and the respondent has not produced the audit report and the supporting documents for verification. The appellant was charged fixed charge of 5 kW with effect from the date of service connection. Since receiving the audit report also, no officer from the KSEBL inspected the premises and not prepared a site mahazar regarding the load connected in the premises. Moreover, if the respondent had to inspect the premises soon after the receipt of the audit report, it can be easily detected the actual connected load and to avoid the loss if any occurred to the licensee. The appellant has also challenged the enhancement of connected load in his premises based on the capacity of the transformer and frequent voltage problems in the area. The respondent has not responded to this argument of the appellant. The respondent has stated that the date of remittance of additional cash deposit is the date of regularisation of the additional load. But the respondent has not inspected the premises and confirmed whether there is additional load in the premises. By remitting the additional cash deposit, it cannot be considered that the respondent sanctioned additional load to the appellant's premises. A supplementary agreement is to be executed in between the consumer and the licensee for the enhancement of the connected load. The appellant has contended that the connected load in his premises is below 5 kW and he has taken the management of the resorts only recently.

On going through the consumption pattern of the appellant it is found that the consumption is for a minimum connected load. Anyhow a part of the

loss sustained to KSEBL has to be compensated by the appellant in compliance with the provisions of Regulation 152 (3) of the Supply Code, 2014. He shall charge the fixed charge for the connected load accordingly for a period of 24 months as agreed by the appellant himself.

### **Decision**

From the findings and conclusions arrived at as detailed above, this Authority decides to set aside the short assessment bill amounting to Rs. 64700/- issued to the appellant. The respondent is directed to revise the bill by limiting the period for 24 months for the fixed charge of the present connected load after conducting an inspection in the premises of the appellant.

No interest or surcharge is payable by the consumer for the Petition and Appeal pending period before the CGRF and this Authority up to 30<sup>th</sup> day of the revised bill date.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is allowed as ordered and stands disposed of as such. The order of CGRF in OP No. 131/2018-19 dated 31-10-2019 is set aside. No order on costs.

### **ELECTRICITY OMBUDSMAN**

P/090/2019/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Shyam Mohan, Blue Mount Resort, Chinnakkanal, Munnar, Idukki.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Chithirapuram, Idukki.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.