

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/040/2021**(Present: A.S. Dasappan)****Dated: 29th October 2021**

Appellant : **Sri. T. Padmajan & 10 others,**
Archives Vittoria,
KRL Road, S.N. Junction,
Thripunithura,
Ernakulam Dist. 682301

Respondent : Asst. Executive Engineer,
Electrical Sub Division,
KSEB Ltd.,
Thripunithura, Ernakulam Dist.

ORDER**Background of the case:**

The appellant is the builder of the premises M/s. Archive Vittoria, a residential apartment complex at Thripunithura and a consumer of electricity of Electrical Section, Erroor with consumer number 1157338010051. The other appellants are the owners/occupants of the residential complex residing at present. The apartment having 44 number residential units under LT 1A tariff category and the sanctioned connected load is 14500 watts. The service connection was effected on 14-12-2012 and billing was being done without any complaint or disputes till 12-11-2020. The appellant was given an electricity bill by the respondent on 24-12-2020 for Rs.8,08,870/- stating the regular bills were given without using Multiplication Factor (MF) "20" for the period from 14-12-2012 to 04-11-2020. The appellant approached the officials of the Licensee, KSEB Ltd. and further before CGRF, Central Region vide OP No. 96/2020-21 and the Forum in its order dated 24-04-2021, dismissed the petition. Aggrieved on the decision of the Forum, the appellant filed this Appeal Petition before this Authority.

Arguments of the appellant:

The service connection in respect of 11 storied building was provided to Sri. T. Padmajan (builder of the project). All statutory permits were issued in the name of Shri. Padmajan. The building consists of 44 residential units out of which 35 are occupied. Power charges in respect of the service connection were paid as per the demand without any default since the inception of the project. From December 2012 onwards, the residents are occupying their residential apartments. The service connection was assessed in the name of the builder and the charges were paid by the occupants without any fault in the respective due date till 12.11.2020. Surprisingly, the builder received a demand notice dated 24.12.2020 by the Assistant Engineer, Electrical Section, Eroor to the effect that the service connection was being under billed from the beginning i.e from 14.12.2012. The multiplication factor was missed at that time and as a result the billing was done for only 1/20 of actual consumption from the very beginning. We were also informed that due to an error/omission from the part of KSEB officials, direct meter reading is recorded and therefore a short assessment bill for a period from 14.12.2012 to 04.11.2020 amounting to Rs.8,08,870/- needs to be paid within 25.01.2021. Thereafter as an abundant caution the appellants 2 to 11 remitted a sum of Rs.10,000/- towards dues.

Thereafter, 2nd appellant preferred a representation to Senior Superintendent dated 05.01.2021 to give a discount and grant 24 months' time to pay balance 50% amount. After two months, 2nd appellant received a reply directing to remit the amount in 12 instalments. Thereafter on 16.03.2021 another communication was received directing to remit the amount within 15 days of notice of receipt failing which service connection will be disconnected without further notice.

The act of respondents is to recover stale claims after expiry of 8 years. As per provision 152 (3) of the Electricity Supply Code, 2014 the maximum recoverable arrears are for a period of 24 months preceding to the date of demand. So, the present demand is illegal and barred by law of Limitation. Even assuming but not admitting the liability to pay dues, the appellants are liable to pay only 24 months dues. Appellants 2 to 11 are still in dark as the builder does not effect registration and handover of resident's association as per the provisions of the Apartment

Ownership Act. Therefore, the liability to pay legally enforceable arrears, if any, is vested on the builder. The owners of apartments have changed several times during the span of 8 years and it may not be possible to recover the dues from the previous owners as well as subsequent owners. The present owners are not prepared to pay the arrears payable by the previous occupants. The present owners are put to serious difficulties and loss due to the non-cooperative attitude of the builder and threat of disconnection by the KSEB officials. The present assessment is the result of negligence/ error from the part of KSEB officials. The mistake is not attributable on the part of builder or occupants of the residential complex.

The error in calculation occurred due to the omission from the part of officials since the year 2013. The mistake committed by the officials cannot be put on the shoulders of the occupants/owners after a long period. At any rate the appellants herein are not liable to pay the arrears.

Hence, it is prayed that the Ombudsman may direct the respondents: -

1. To collect only amounts which are due on account of the wrong application of the multiplication factor for a period of two years immediately prior to the date of inspection.

2. To set aside the order dated 24.04.2021 received by the appellants on 05.06.2021 issued by the Consumer Grievance Redressal Forum in O.P. No. 96/2020-21.

3. Not to take any coercive action on the basis of order dated 24.04.2021 including disconnection of electricity in respect of Consumer No. 1157338010051 and stay all further proceedings pursuant to the order dated 24.04.2021 in O.P. No. 96/2020-21.

Arguments of the respondent:

The demand issued by the respondent is for realisation of the actual energy charges liable to be paid against the actual consumption of the appellant in the premises that escaped assessment since the bills happened to be issued erroneously by treating the connection as one provided with a three-phase meter as wrongly entered in the Orumanet software, in the place of CT meter with

multiplication factor 20 actually installed at the premises while providing the electric connection. Due to this defect, direct meter reading was done and bills were issued without applying the proper corresponding multiplication factor of 20. As a result, the billing was done only for 1/20 of actual consumption from the date of connection. The inspection conducted in the premise on 15-12-2020 revealed that the electric connections of the appellant have been effected on 14/12/2012 with a CT operated static meter having the ratio 100/5 A for which the corresponding multiplication factor is 20. Unfortunately, while entering the connection particulars in the Oruma software, the meter details happened to be erroneously entered as 3 phase whole current meter having bi-monthly reading. The meter installed in the premise is one supplied by the appellant along with test report at the time of installation. As per the test report the specification of meter is furnished as 3X5-10 A which belongs to a whole current meter. The connected load at the date of connection is 14500 W. For the aforementioned load, whole current meters are sufficient. The lift load of the appellant was not included as the appellant had not obtained sanction from the Electrical Inspectorate. The appellant undertook that the lift will be operated only after getting sanction from Inspectorate and would enhance and regularise the load. Thus, the connection was granted to the common area excluding the connected load of the lift treating that the connection is effected using whole current meter. Per contra, the appellant had actually opted to install CT meter in the premise anticipating increase in load, but failed to intimate the same to KSEBL. Therefore, the entry in the data base was done without noticing the factual situation. From the date of availing the electric connection, the appellant was not paying the actual energy charges for the energy consumed in the premises. The amounts paid were less than the actual whereby the Licensee was suffering loss. The said anomaly was detected only on 15-12-2020 when an inspection took place in the premises. Upon detecting the anomaly, site mahazar has been prepared and thereafter the undercharged amounts were assessed and appellant has been issued with appropriate short assessment bill. The demand notice is accompanied by the calculation details of the assessment by which the undercharged amount has been arrived. The copy of the site mahazar prepared has been duly served on the appellant at the end of the inspection. The inspection and

the consequent demand raised is perfectly valid and done as per law. The appellant is liable to remunerate the demand made through the demand notice.

The demand raised against the appellant is only the actual price for the energy consumed in the premises and not more.

Electricity is supplied to the consumers against the price fixed for it as per the tariff notified by the Regulatory Commission. The obligation of the consumer to pay electricity charges arises after the bill is issued by the licensee company quantifying the charges to be paid. On 15/12/2020 the licensee discovered the mistake of billing done. On detecting the bona fide error, the licensee took recourse to corrective measure and changed the meter details and incorporated the multiplication factor of 20, for actual computation of the energy consumed in the premises. Consequently, supplementary demand has been made for recovering the undercharged amounts by taking recourse to the enabling statutes under Sec.45 of the Electricity Act 2003 and regulation 134 of the Kerala Electricity Supply Code 2014 for the entire period during which such anomaly persisted. The act and law do not permit the consumer to make an unlawful gain without paying for the energy consumed. The consumer is liable to pay the respective charges applicable under the tariff against the energy that is consumed.

Section 45 (2) of the Act deals with charges for electricity supplied by the Distribution Licensee. The section enables the Distribution Licensee to recover the charges for the supply of electricity by him in pursuance of Sec.43. Accordingly, the Licensee is entitled to recover the charges for the supply of electricity once it realizes and establish that the consumer has been undercharged and actual charges has not been recovered from the consumer. The Section does virtually take into its sweep the power for recovery of undercharged amounts also. Accordingly, the Regulatory Commission has made regulation 134 of the Kerala Electricity Supply Code, 2014 enabling the Licensee to recover the amount so undercharged from the consumer by issuing a bill. The language envisaged in Section 45 unambiguously enables the licensee to recover the charges payable by the consumer against the supply of electricity and no period of limitation is contemplated anywhere in the Act for recovery of the charges due against the supply of electricity.

Payment for the electricity consumed in the premises is an obligation undertaken by the consumer while availing the supply. Further, the service connection agreement executed by the consumer enables the licensee to recover the charges for the electricity consumed by him. The only restriction contained in Sub Section (2) of Section 56 which says 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 2 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 supply. Thus, it can be seen that going by the relevant provisions in the Electricity Act 2003 there is no restriction in recovering the actual charges of electricity as determined by the tariff order. In the case on hand the licensee discovered the mistake of billing on 15-12-2020 and thereafter issued additional demand on 24-12-2020 Therefore the sum became due only on 24-12-2020 on identifying the mistake. As per Sec. 17 (1) © of the limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. Therefore, the Licensee is open to take recourse to the remedies available in law for recovery of the additional demand.

The fact that the appellant has consumed electricity supplied by the respondent is not in dispute. The quantity of supply as well as the period of supply is also not in dispute. In case, where the consumer is undercharged, the Licensee is entitled to recover the undercharged amounts after issuing appropriate bill to the consumer. Once the Licensee establishes either by review or otherwise, that it has undercharged the consumer, the Licensee can recover the amounts so undercharged from the consumer by issuing a bill. Accordingly, the Regulatory Commission has provided Regulation 134 for effectively working out Sec.45 of the Electricity Act 2003. The said regulation has been incorporated under Chapter VII of the Kerala Electricity Supply Code 2014, which enumerates the billing and mode of payment. Further, Regulation 136 under the said chapter in clear terms gives power to the Licensee to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for the belated payments from the date of which such payments became due. Therefore, the applicable law with regard to the case at hand is Sec.45 of the Electricity Act or/with the

provisions enumerated under Chapter VII of the Kerala Electricity Supply Code 2014. By virtue of the above provisions, the respondents are entitled to recover the undercharged amounts from the consumer.

The Hon'ble High Court of Kerala in the decision Sunderdas Vs. KSEB reported in 2009(2) KLT SN 5 relying on Regulation 37 (5) of the Terms and Conditions of Supply 2005 in similar set of facts held that under recovery on account of adopting wrong multiplication factor is permissible. The said decision was confirmed in W.A. No.476 of 2009. Another judgment of Hon'ble High court of Jharkhand in M/s Sheo Shakthi Cement Industries, Jharkhand Vs. Jharkhand Urja Vikas Nigam Limited (Reported in AIR 2016 Jharkhand 98) has held that *"the contention that the bills for the period between 29.01.2011 to 31.03.2014 were paid by the petitioner and thus, supplementary bill dated 04/06/2014 is barred under Section 56(2) of the Electricity Act 2003 cannot be accepted. The petitioner has consumed electricity supplied by respondent Nigam is not in dispute. The Installation Report dated 27.01.2011 discloses the particulars of the CTPT metering Unit which was installed on 27.01.2011 and those particulars are corroborated by the Installation Report on 31.01.2014 and therefore, the petitioner cannot avoid payment for the electricity consumed by it. The supplementary bill dated 13.05.2014 as corrected by bill dated 04.06.2014 raised on account of less Multiplication Factor is not barred under Section 56(2) of the Electricity Act 2003"*. In the case on hand also, it is clearly revealed that the change in multiplication factor due to wrong entry was mistakenly not applied and regular bills were issued wrongly and has been rectified on 24-12-2020 Hence short assessment was done for the period from 14/12/2012 to 04-11-2020 by taking MF as "20" is legitimate one and binding on the appellant.

The appellant has attempted to mould his contentions relying on the provisions contained in Chapter IX of the Kerala Electricity Supply Code 2014. The provisions contained in the said chapter do not have any applicability as far as this case is concerned. Under Chapter IX the regulatory commission deals with regulations regulating to theft, unauthorized use and other irregularities. Therein separate provision as Regulation 152 has been incorporated to deal with the anomalies attributable to the licensee which are detected at the premises of the

consumer. Regulation 152 (2) provides that in cases of anomalies attributable to Licensees, the amount of electricity charges short collected by the Licensees shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted. The further clause under 3 provides that the amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest. Thereafter 3 provisos have been incorporated limiting the scope of the regulation in a paramount manner. The 3rd proviso states that the realization of electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted is found to be more than 24 months. The said proviso is in total violation of the provisions contained in the parent act more particularly Sec.45. It virtually defeats the entitlement of the licensee to recover the electricity charges due provided under Sec.45 of the Electricity Act. It is trite law that a regulation framed under any statute cannot affect the command of law as contained in the parent Act. Therefore, the 3rd proviso attached to Regulation 152(3) of the Kerala Electricity Supply Code 2014 is nonest, void and have no relevance in adjudicating the case on hand and is liable to be ignored.

The Licensee is bound to abide by the statutes and is bound to recover the unbilled portion of the consumption and the same amounts to public money. As far as State of Kerala is concerned, it is a power-starved state wherein the deficit electricity is outsourced at exorbitant rate from across the nation. Therefore, the Licensee is bound to recover the charges for the electricity supplied from the consumer in terms with the tariff fixed by the Regulatory Commission for its survival and effective distribution of electricity to its consumers throughout the State. The appellant is capable of paying the amounts demanded and is having sufficient means to satisfy the same. None of the grounds raised in the complaint are tenable and the appellant is not entitled for any reliefs.

Considering the above facts, it is requested this Authority to accept the contentions raised through this statement of facts and dismiss the above complaint with cost to the respondents and, declare that the short assessment bill issued is in

order and to direct the appellant to pay the short assessment amount Rs.8,08,870/-.

Analysis and findings:

An online hearing of the case was conducted at 03 PM on 25-09-2021 and another hearing in my office at Ernakulam on 28-09-2021 with prior intimation to both the appellant and the respondent. Adv. Sri. Dheeraj Krishnan Perot attended the hearing for the appellant and Smt. Mini. P.K., Assistant Executive Engineer, Electrical Sub Division, Thripunithura and Adv. Sri. B. Premod from the respondent's side in the hearing. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The appeal petition pertains to the short-assessment bill for Rs.8,08,870/- prepared for the period from 14-12-2012 to 04-11-2020 by the respondent and issued to the appellant stating that the Multiplication Factor (M.F.) 20 was used to multiply the recorded consumption in an externally connected 100/5 CT operated energy meter for arriving at the actual consumption.

The argument of the appellant is that there are 35 occupants in the building having a total of 44 residential units and the occupants are remitting the electricity charge. As per Regulation 152 (3) of Kerala Electricity Supply Code 2014, the maximum period of recoverable arrears is only for a period of 24 months and the appellant is willing to remit the amount of that period. The appellant is penalized for the mistake of the KSEB Ltd. Authorities.

The respondent argued that the appellant is liable to remit the short-assessment bill since the appellant had used that much energy for the period from 12/2012 to 11/2020. The metering system was supplied by the appellant and respondent failed to take note of the fact that the meter installed is a CT meter. The respondent wants to get the entire amount from the appellant.

In the hearing of the case, the appellant does not dispute the error in the Multiplication Factor (M.F.) occurred to KSEB Ltd. in raising the monthly bills.

The appellant is bound to pay the charge for the electricity consumed. As per Section 134 (1) of Kerala Electricity Supply Code 2014, “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”.

It is revealed in the hearing that most of the occupants in the building at the period of penalization are not residing in the premises.

Regulation 152 of Kerala Electricity Supply Code 2014 is also relevant in this case: -

152. Anomalies attributable to the licensee which are detected at the premises of the consumer: -

- (1) Anomalies attributable to the licensee which are detected on inspection 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 of Section 135 of the Act.
- (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.
- (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub-regulation (8) of regulation 155 shall be considered:

Provided also that realisation 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.

} Amended by KSERC in its
 } notification dated 22nd January
 } 2020, Thiruvananthapuram, “(4)
 } The consumer may be given
 } installment facility by the
 } licensee for a maximum period of
 } twelve months without interest
 } for the remittance of such
 } amount of short collection;”

The above provision permits the licensee to collect the amount of electricity charges short collected for the entire period during which such anomalies persisted without any interest. 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. In this case, the disputed period is from 14-12-2012 to 04-11-2020 and allowable to collect only for 24 months as per law. Since this is a clear laxity or oversight occurred on the part of the Licensee for which the appellant cannot be overburdened.

Another question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (4) of the Kerala Electricity Supply Code, 2014. Section 56 (2) Electricity Act 2003, which reads as under;

“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 became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity”.

The Apex Court have interpreted this Section in detail in the reported decisions in *Tata Steel Ltd Vs Jharkhand State Electricity Board* (2008 KHC7794 AIR 2008 Jha 99) and other and *Brihanmumbai Municipal Corporation Vs Yathish Sharma and others* (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

“The period of two years as mentioned in section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of Electrical energy”. “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 consumer”.

Decision: -

From the conclusion arrived at as detailed above, I decide to quash the short assessment bill for Rs.8,08,870/- issued to the appellant. The respondent shall issue a revised bill to the appellant for a period of 24 months prior to the detection of wrong Multiplication Factor for arriving at the actual energy consumption within 30 days from the date of this order. The appellant shall be given 12 instalments for the revised bill amount without interest. Also, no surcharge or interest shall be collected from the appellant for the petition pending period before the CGRF, Central Region and the appeal petition pending period before this Authority.

Having concluded and decided as above, it is ordered accordingly. The order of CGRF, Central Region, Ernakulam in OP No. 96/2020-21 dated 24-4-2021 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/040/2021/ dated _____.

Delivered to:

1. Sri. T. Padmajan & 10 others, Archives Vittoria, KRL Road, S.N. Junction, Thripunithura, Ernakulam Dist. 682301
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Thripunithura, Ernakulam Dist.

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.