

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/064/2021**(Present: A.S. Dasappan)****Dated: 10th January 2022**

Appellant : Sri. Sachin. S.,
Sabu Sadanam,
Aickarakonam, Kakkode P.O.,
Punalur,
Kollam Dist. 691 331

Respondent : Asst. Executive Engineer,
Electrical Sub Division,
KSEB Ltd., Punaloor,
Kollam Dist.

ORDER**Background of the case:**

The appellant is a Low Tension (LT) three-phase consumer with consumer number 1145932030423 of Electrical Section, Punalur effected on 19-09-2017 under LT-IVA-Industry tariff having a CT operated metering system. The nature of activity in the premises by name "Master Grip Tyre Retreads" is tyre retreading of vehicles and the connected load is 56015 kilowatts. The industrial unit is situated at Punalur in Kollam Dist. The Anti Power Theft (APTS) of KSEBL conducted inspection in the premises of the appellant on 21-02-2020 and detected that the Multiplication Factor (M.F.) used for arriving at the actual consumption was '20' instead of '40'. In order to compensate the revenue loss sustained to the Licensees, a short assessment bill amounting to Rs.4,40,272/- for the period from 10/2017 to 12/2020 was issued to the appellant and the appellant remitted Rs.30,000/-. Later, the appellant approached Consumer Grievance Redressal Forum (CGRF), Southern

Region, Kottarakkara with a petition for the exemption from remitting the balance amount and of the amount already remitted. The Forum registered the petition vide OP No.38/2021 and issued order on 02-09-2021 as follows:

- (1) The respondent is directed to revise the short assessment bill of Rs.4,40,272/- dated 06-01-2021 by limiting a period of twenty-four months and to allow 12 monthly instalments to the petitioner without interest for the remittance of the amount, if the petitioner desires.
- (2) The respondent is also directed to arrange proper inspection in the premises of all the consumers having meters connected with CT/PT units and ensure the correctness of the multiplication factor, CT connection etc.

The appellant is not satisfied with the order of the Forum, the appellant filed this instant appeal petition before this Authority.

The argument of the appellant is as follows:

On 21-12-2020, the APTS unit of Kollam, KSEB Ltd. inspected the premises of the appellant and found lapses on the part of the employees of the Licensee in using the correct Multiplication Factor in arriving at the actual energy consumption. The officials of the Inspection Squad prepared a site mahazar and handed over to the appellant. On 06-01-2021, the respondent had issued a notice along with the bill statement for Rs.4,40,272/- giving 30 days' time for remittance. The appellant approached the Assistant Engineer, Electrical Section, Punalur and explained the grievances. The Assistant Engineer threatened the appellant stating that the disconnection of the premises would be done, if the amount is not remitted. Hence, the appellant requested for an instalment facility for remittance and remitted Rs.30,000/- being the first instalment on 10-02-2021. On 29-04-2021, the appellant was given a disconnection notice demanding the payment of Rs.4,10,272/- along with surcharge within 15 days, otherwise the electric connection would be disconnected.

Hence, a petition was given to the respondent for the refund of Rs.30,000/- and the allegation in the disconnection notice was against law.

Since no action was taken by the respondent, a petition was filed before the CGRF, Southern Region against the bill and the Forum limited the period of short assessment for 24 months. The appellant is usually realizing the expenditure towards the electricity bill cost of raw materials required for the industry, wages of employees etc. from the customers of the industry. Since the appellant cannot realize any amount from the customers further, the bill amount may be cancelled in total. There are no lapses on the part of the appellant, but on the part of the respondent, and hence, the appellant is not liable to remit the short-assessed bill amount.

The argument of the respondent is as follows:

In the case in hand, the Board has decided to file a Writ Petition against the order of the Consumer Grievance Redressal Forum and the same is being filed immediately

On 21.12.2020, a site inspection was conducted by the APTS, Kollam along with section staff in the premises of the appellant. While checking the metering equipment, it was noticed that the actual CT ratio is (200/5 Amps) and the corresponding Multiplication Factor to be taken is '40'. However due to an inadvertent mistake, the periodical bills were prepared and issued by applying multiplication factor as '201. The above mistake was detected only when an inspection was conducted in the premises of the appellant on 21.12.2020 and prepared a site mahazar. The appellant had acknowledged the mahazar by affixing his signature in the mahazar.

Therefore, a short assessment bill was prepared for the period from the month of October, 2017 to December 2020 by applying the correct MF of 40 after giving due credit for the monthly payments already made. Regulation 134 of the Kerala Electricity Supply Code 2014 enables the respondent to demand and recover the loss sustained by the Electricity Board due to undercharging. Regulation 37 (5) of the Terms and Conditions of Supply, 2005 and Regulation 24 (5) of the Supply Code 2005 also had the similar provisions. An invoice dated 06.01.2021 demanding an amount of Rs.4,40,272/- was served on the appellant.

The fact that the bills were being issued by applying a wrong MF is not in dispute. As per the tariff order, every consumer is bound to pay in accordance with the tariff determined by the KSEERC. Therefore, the petitioner is bound to pay the differential amount for the period during which he was undercharged. It is more so when the Rs.37,400/- (Rupees Thirty-Seven Thousand Four Hundred Only) is aware that the CT ratio of the meter is 200/5 and therefore the Multiplication factor ought to have been applied is 40 and by mistake the Multiplication factor was taken as 20. The demand notice issued before and after the detection of the MF entry mistake is a conclusive proof towards the huge revenue loss of the respondent company as well as the quantum of electricity consumed by the appellant. It is a fact that the respondent had demanded only the actual price of the power consumed by the appellant.

Here the demand is raised only on the identification of the mistake in calculation due to application of wrong multiplication factor rather than an anomaly in meter and amount become due on the date of issuance of the bill. Therefore, the limitation prescribed under Section 56 (2) of Electricity Act is not applicable and the third proviso to Regulation 152(3) of Supply Code cannot be relied upon here. Regulation 152 says that the anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor relates to the technical anomalies/defects which are not detected in time by the officials and can't in any way relate to the calculation errors while billing due to oversight. In the instant case, the appellant has no complaint regarding the functioning of the CT of multiplication factor 40. A calculation error had occurred from the side of Kerala State Electricity Board Limited and the Board officials are empowered to rectify the calculation errors in the bills and to recover the amount thus undercharged in terms of the actual energy consumption under Regulation 134 of the Code. The anomalies/mistakes can be found out only on scrutiny or inspection. Therefore, such sum become due only with effect from the date on which the anomalies/mistake was found out and a bill is issued and not before.

It is trite law in legal jurisprudence that no one is permitted to make unlawful enrichments at the expense of others' mistakes. Being a public utility the KSEBL is duty bound to ensure 24X7 uninterrupted power supply and in the midst of a wide range of activities, it is not humanly possible to detect defects like wrong application of multiplication factor then and there and to inspect and examine each and every electric meter on a routine basis. In a power-starved state like Kerala, after availing electricity that too sourced at exorbitant rates from across the nation, how another business firm can shirk from its moral and legal obligation to honour the bill by citing certain flimsy and unwarranted grounds. Moreover, the KSEBL being a Public Sector Company, is the custodian of the public property and has a moral and legal obligation to safe guard its Master's (people of the land) interest by not allowing a business firm to make unlawful enrichment. In this context, it deserves special mention to advert to Section 70 of the Indian Contract Act, 1872 wherein it is specifically stated that "*Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered*". Moreover, the legal obligation to remit the short assessment bill is no more *res -Integra*. The Honourable High Court of Kerala had occasion to look into similar issue in WP(C) No.90/2009 (P.SUNDERDAS V KSEB) and the Honourable High Court of Jharkhand in LPA No. 665/2015 (M/ Sheo Shakti Cement Industries V Jharkhand UrjaVikas Nigam Ltd.) categorically asserted that licensee is empowered to realize the short assessment amount even at a later stage which is not at all hit by Section 56 (2) of the Act.

Besides, Regulation 134 of the Code empowers the licensee Board with blanket provision to recover the undercharged amount. The Hon'ble Apex Court in 2020 (4) SCC 650, Assistant Engineer, Ajmer Vidyut Vitaran Nigam Ltd. Vs. Rahmatulla Khan has declared that Section 56 (2) of Electricity Act did not preclude the licensee from raising supplementary demand in case of mistake or bonafide error.

The appellant is liable to remit the current charges actually consumed by him. Hence, it is humbly prayed that the Ombudsman may be pleased to dismiss the appeal and direct the appellant/consumer to remit the entire short assessment bill issued by Kerala State Electricity Board Limited.

Analysis and findings:

An online hearing was conducted at 11-30 AM on 05-01-2022 with prior intimation to both the appellant and the respondent. Sri. Sabu. S.S. attended the hearing for the appellant and Smt. Metilda, Assistant Executive Engineer, Electrical Subdivision, Punalur attended the hearing from the respondent's side. On examining the petition, the counterstatement 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 wrong multiplication factor (M.F.) used by the respondent in arriving at the actual consumption in the premises of the appellant while issuing monthly bills and later identified the mistake and issued short-assessment bill for the consumption escaped from the monthly billing.

The appellant argued that the appellant is usually realizing the expenditure towards electricity bill, not of raw materials required for the industry, wages of employees etc. from the customers of the industry. Since the appellant cannot realize any amount from the customers further, the total cancellation of the bill amount is required. Also, argued that there were no lapses on the part of the appellant.

According to the respondent, Regulation 134 of Kerala Electricity Supply Code 2014 enables the respondent to demand and recover the loss sustained by the Electricity Board due to undercharging. Further argued that the respondent had demanded only the actual price of the power consumed by the appellant.

In this case, the appellant was given a short-assessed bill for Rs.4,40,272/- for the period from 10/2017 to 12/2020 on 06-01-2021 following an inspection of the Licensee in the premises of the appellant. The appellant filed a petition before CGRF, Southern Region for the cancellation of

the bill amount and the Forum observed that as per Regulation 152 (3) of Kerala Electricity Supply Code 2014 the realization of amount in the entire period is not sustainable. As such, the Forum limited the period of short-assessment for 24 months as per Regulation 152 (3) of Kerala Electricity Supply Code 2014. The appellant approached before this Authority with a request to set aside the order of CGRF and exempt from remitting the entire amount.

Regulation 152 of Kerala Electricity Supply Code 2014 says,

Regulation 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.

The CGRF, Southern Region issued the order in the petition filed by the appellant within the provision contained in the Kerala Electricity Supply Code 2014, by limiting the period of short-assessment for 24 months.

In the hearing conducted on 05-01-2022, the respondent revealed that KSEB Ltd. had filed a writ petition before the Hon'ble High Court of Kerala vide WP (C) No.26255/2021 against the order dated 02-09-2021 of CGRF, Southern Region in OP No. 38/2021.

Decision: -

In view of the discussions as above, it is decided as follows:

A writ petition is filed by the respondent for KSEB Ltd. before the Hon'ble High Court of Kerala vide WP (C) No.26255 of 2021 against the order dated 02-09-2021 issued by Consumer Grievance Redressal Forum, Southern Region in OP No. 38/2021 and hence, the request of the appellant for the exemption from remitting the short-assessment bill is subject to the judgement of the Hon'ble High Court of Kerala in the said writ petition.

The appeal petition filed by the appellant is disposed of accordingly. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/064/2021/_____ dated _____.

Delivered to:

1. Sri. Sachin. S., Sabu Sadanam, Aickarakonam, Kakkode P.O., Punalur, Kollam Dist. 691 331
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Punaloor, Kollam 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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.