

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/044/2022**(Present: A. Chandrakumaran Nair)****Dated: 30th August, 2022**

Appellant : Sri. V.S. Sadique
S/o. Saidumuhammed,
Vadakeveettil House,
Edavanakkad,
Ernakulam Dist. 682503

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Vypin, Ernakulam Dist.

ORDER**Background of the case:**

The appellant Sri. V.S. Sadique is the consumer of the Licensee under Electrical Section, Njarakkal with consumer number 1155661006787. The appellant is one of the partners of the partnership concern known as 'Ansar Ice Factory'. The connected load is 89 kW and the Contract Demand is 99 kVA. On 01-03-2021, while taking the meter reading, the officials of the Licensee noticed that the meter is damaged. They installed a fresh meter. The appellant had submitted application for the conversion of service connection from LT to HT on 15-03-2021. The application is still pending with the Licensee.

The Licensee has issued a demand cum disconnection notice claiming an amount of Rs.10,41,802/-, which is against Low Voltage Surcharge for the period from 09/2016 to 01/2022. The Licensee had also directed the appellant to convert service connection from LT to HT if the RMD continues to exceeds 100 kVA.

The appellant filed petition before the Consumer Grievance Redressal Forum, Central Region and the Forum vide order dated 06-05-2022 ordered to revise the bill by charging low voltage supply surcharge for the billing months in which RMD exceeded 100 kVA after 17-04-2017. Accordingly, the bill has been

revised to Rs.8,81,574/-. Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

Arguments of the appellant:

The demand-cum-disconnection notice and Consumer Grievance Redressal Forum (Central Region) order are arbitrary, illegal, unreasonable and tainted with arbitrariness and liable to be set aside.

The Forum without discussing the contentions raised by the appellant has passed order directing the respondent to issue revised bill charging low voltage supply surcharge only for the billing months in which the RMD has exceeded 100 kVA after 17/04/2017 solely relying on Regulation 134 of the Supply Code, 2014.

In order to attract the Regulation 134, the Board or the licensee as the case may be has to establish that the consumer has been under charged. There in order to attract the said Regulation, the consumer, either should be charged wrong tariff or when there is escaped /assessment. Here is a case, where the meter has been recorded correctly and for every units recorded, the consumer has been billed and the amount has been paid correctly. Therefore, the regulation cannot be attracted in the present case.

If the Regulation 134 is attracted, amount at the most that can be collected by the licensee as undercharged is for the units which has been used above the sanctioned limit. Therefore, in the present case, the surcharge has not been levied for the usage above the sanctioned load. Hence, the bill should be recalculated based on the units consumed over sanctioned limit and surcharge has to be levied accordingly.

The appellant has never given any warning prior to issuance of notice, stating that the demand has exceeded 100 kVA, which is latches on the part of the officers of the Board, which is blatant violation of Regulation 101, the appellant had reduced the usage and now the said usages are within the limits 100 kVA. Therefore, there is no latches on the part of appellant and no violation of Regulation 11 of the Supply Code, 2014.

Non-consideration of the objection of the appellant and threatening the appellant of disconnection by respondent is unsustainable as the same is in violation of principles of natural justice.

Notice is not maintainable as per law as well as on facts and hence liable to be withdrawn. The threat of disconnection without considering objection is against the principles of natural justice.

Demand cum disconnection notice is purportedly issued based on the Regulation 9 of the Kerala Electricity Supply Code, 2014. The Regulation 9 reads as follows:

"Regulation 9: Low voltage supply surcharge- Consumers availing supply at voltage lower than the one specified in Regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff-order."

As per Regulation 9 of the Supply Code read above, in order to attract the Low Voltage Surcharge either connected load or contract demand should exceed 100 kVA. In the present case as evident from the demand cum disconnection notice neither connected load nor the contract demand is in excess of the limit for LT Service connection. Therefore, this is not an instance where Regulation 9 of supply code would be attracted. In the instant case the Connected load is 90 KW and the Contract Demand is 99 kVA, which is well within the permitted limits. There is no allegation or finding, after the series of inspections done on the premises during recent days, that the above load/demand is incorrect. Thus, issuance of the present notice is highly illegally and arbitrary. Hence liable to be withdrawn.

Thus, even if it is assumed for arguments sake that the Board is entitled to claim from 2016 only if it exceeds supply voltage levels may be exceeded up to a maximum of twenty percent of the contract demand. In the instant case the contract demand is 99kVA and it is permitted till 120kVA. A perusal of the calculation statement would-reveal that during the entire period from 2016 there has only been a negligible variation in the connected load. Therefore, on the said ground, the entire claim is unsustainable and liable to be withdrawn.

The meter which was in use has been changed and a new meter has been replaced. The demand based on the incorrect and faulty meter cannot be made.

It is evident that MD is several months is well within the Contract Demand. The appellant has not added any machinery to the system during the period 2016 to 2021.

Now claiming surcharge for the entire consumption would amount to penalty, which the statute does not contemplate as per Regulation 9. Thus, at most the maximum that can be claimed is for the MD in excess of 100 kVA. Low Voltage surcharge is to offset the possible loss to the Supplier for supplying LT energy to premises which have connected load/contract demand above the permissible limit under the Supply Code 2005 (and Supply code 2014). Low Voltage Surcharge cannot be used as an instrument to force LT consumers whose connected load and contract demand are within LT limit to convert to HT.

The Low Voltage surcharge has been introduced for such old service connections which contract demand over 100 kVA (up to 150 kVA) and have chosen to remain under LT. Such is not the case here. The appellant's contract demand and connected load are within the permissible limit for LT. Therefore, Regulation 9 cannot be invoked.

A perusal of the calculation statement would reveal that on several occasions the RMD recorded is well below the permitted limit and still the low voltage surcharge has been claimed by the licensee. The said claim is illegal.

Even for arguments sake, it is assumed that the Licensee is permitted to collect the low voltage surcharge as per Regulation 9, it can be only based on the various tariff orders issued by the Regulatory Commission from time to time.

Accordingly, the first such order was only issued as per order dated 17.04.2017 in Order No:1007/F&T/2016/KSERC. Thus, any claim prior to date is not maintainable. No amount can be collected in excess of that provided under the relevant Tariff order. Tariff orders are only prospective.

If the Supplier, after inspection comes to the conclusion that the connected load/contract demand has to be revised, then the proper course of action is to issue a Notice under Regulation 97 of the Supply Code, for a suo-motu reclassification of consumer category by the licensee.

A perusal of the regulation along with notice, it would be clear that the Board, if at all required, has issued a notice requesting the consumer to reclassify the category from LT-4 A to HT if the RMD continues to exceed 100 kVA. However, as per the Clause 2 of Regulation 97, the consumer ought to have been granted at least 30 days' time for submitting the objection to notice issued under Regulation 97(1). However, in the instant case the consumer has been only granted 15 days' time to remit the amount to the tune of Rs.10,41,802/-. This against the principles of natural justice. Furthermore, the review of the Contract Demand has to be undertaken each year. There is no provision to go back to any period beyond 12 months. Furthermore, there is also no provision to penalize the consumer as is done in this case.

Perusal of the Regulation 97(3), an opportunity should be given to the consumer to submit the reply and it is on receipt of the said reply, Board should consider the same and pass a speaking order directing to reclassify the of consumer category. However, in the instant case no such steps as contemplated under Regulations 97(1), 97(2) and 97(3) has been followed by the Board and hence on the said ground also the notice is liable to be withdrawn and demand to set aside. Regulation 98 of the Supply Code deals in case the consumer makes an application for reclassification of consumer category.

Here is the case where the appellant makes an application for reclassification of the consumer category. In the instant case, prior to receipt of notice the consumer had already made an application for reclassification of the consumer category on 15.03.2021. The consumer had submitted the application around one year back and the Board had not taken any steps to reclassify the consumer from LT to HT. As per the Regulation 96(2) the Board, has to inspect the property within 7 days from the date of receipt of the application under Regulation 98(1).

As per Regulation 97(5) and 98(5) of the Supply Code, if the actual period of wrong classification cannot be ascertained by the Board, the period of wrongful classification should be confined to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter. In the instant case, the consumer has been fastened with liability from 2016. This is highly illegal and arbitrary.

Further, a reading of Regulation 97(5) and 98(5), since the actual period of wrong classification cannot be ascertained by the Board, the period of wrongful classification should be confined to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.

The licensee is not ready to accept the inspection date as period of wrongful classification, as per Regulation 97(5) or 98(5) of the Supply Code if the Board is unable to assess the actual period of wrongful categorization, then, the period should be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.

In the instant case, on 01-03-2021, when the meter reading was being taken, it was found that the meter was damaged and the new meter was installed in the premises. Thus, going by Regulations 97(5) or 98(5) of the Supply Code, since the meter was replaced, a fresh meter was installed after due inspection, the limit of wrongful categorization, should be limited to the date of last inspection i.e. on 01.03.2021.

If there is failure on the part of the Board to consider the application for enhancement of connected load or contract demand within 30 days as contemplated under Regulation 99(1) and orders are not passed as per Regulation 99(7), then the Regulation 99 (8) comes into force.

Regulation 99(8) a deemed sanction is granted to the Consumer with regard to the request for enhancement. Thus, as evident from records this consumer had submitted appropriate application as early as March, 2021 and no steps has been taken by the Board to pass orders in the said application. Thus, from 31st day the consumers' application for enhancement and reclassifications stands approved.

After consideration of application for reclassification under Regulation 98, the board has the right to assess or determine whether there is arrears or excess charges based on the actual period of wrong classification and the account of the consumer shall be adjusted accordingly.

If the claim of the Board is sustainable, the demand is barred by limitation in light on Sections 56(2) of the Electricity Act, Regulation 136(3) read with Regulation 101 of the Supply Code.

Regulation 101 would make it clear that regardless of the case whether the consumer is HT, EHT or Demand based Tariff in LT consumers, if the maximum demand recorded exceeds the contract demand in three billing periods during the previous financial year, the Board has to issue a notice of thirty days to the consumer directing him to submit within the notice period, an application for enhancement of contract demand. Thus, the Officers of the board are duty bound to review the usage of a consumer annually. Therefore, a reading of Section 56(2) and Regulation 136(3), the amount became first due when the annual review of the contract demands are made. Here the consumer is not in receipt of any such notice as contemplated under Regulation 101(1) and Regulation 101(3). Thus, the Board claim is barred by limitation of time.

The officers of the Board are duty bound conduct annual review of the consumption pattern of the consumers and issue appropriate communication or notice to the consumer requiring them to take steps to reclassify the category of the consumer from LT to HT if the situation so warranted. However, in the instant case no such notices or communications has been issued to the consumer till the receipt of the impugned notice. Thus, for the fault of the officer of the Board consumer cannot be penalized.

The respondent grossly erred in issuing the demand-cum-disconnection notice since 2016 without any basis, thus on the said ground also the bill is liable to set aside.

Nature of relief Sought

For the reasons stated in this application and for the reasons to be argued at the time of hearing this Authority may be pleased to order setting aside demand-cum-disconnection notice bearing No: BS/Ele. Sec/ NKL/LV Surcharge dated 19/01/2022 for an amount of Rs.10,41,802/- for a period from Sept, 2016 to Jan., 2022 and CGRF order dated 06.05.2022.

Arguments of the respondent:

During the Section audit, it was found out that the consumer had exceeded the maximum demand (MD) 100KVA many times during a year. So, a Short Assessment Bill, amounting to Rs.10,41,802/-, vide ref. No. Bs/Ele.Sec/NKL/ LV

Surcharge/2021 dated 19.01.2022 was issued to the consumer as per Regulation 9 read with Regulation 101 (3) of the Kerala Electricity Supply Code 2014. The appellant raised objection through the letter dated 27.01.2022 to the Assistant Engineer, Electrical Section, Njarakkal.

The appellant being an LT consumer, the Contract Demand of the consumer shall not exceed 100 kVA as per Regulation (8) of the Kerala Electricity Supply Code 2014. Since the contract demand of the appellant is 100 KVA, he is bound to limit the RMD within 100 kVA. But the appellant exceeded the contract demand regularly which attracted Low Voltage supply surcharge.

Since the appellant's RMD has been exceedingly more than 100 kVA from 10/2016, he is liable to pay Low Voltage Surcharge up to 01/2022. As per the tariff order dated 17-04-2017 vide order No.1007/F & T/KSERC/2016 dated 17-04-2017, the appellant shall pay Low voltage supply surcharge if the connected load exceeded 100 kVA and is availing supply at LT.

The above position was upheld by the Hon'ble KSERC in its Order in Petition OA No. 26/2019 which was filed as per the direction of Hon'ble High Court in WP (C) 39396/2015 as detailed below: The KSERC, in compliance of the judgment of the Hon'ble High Court dated 24th June 2019 in WP(C) No. 39396 of 2015, and after examining the issues raised by the petitioner as per the provisions of the Electricity Act, 2003 and the Regulations notified by the Commission, has issued the following orders for the compliance of the petitioner and the respondent KSEB Ltd.

- (1) The appellant as a consumer having connected load and recorded maximum demand more than 100 kVA, has to pay low voltage surcharge as determined by the Commission as per the Regulation 9 of the Kerala Electricity Supply Code, 2014, continue availing supply at LT.
- (2) Till the Commission explicitly determined the low voltage surcharge vide the tariff order dated 17.04.2017, the appellant has to pay electricity charge, at the rate applicable to 'Deemed HT consumers', as per the Clause-9 of the General Conditions for HT and EHT tariff under Part-B - EHT 19 and HT Tariff of the Tariff Order dated 14.08.2014, i.e., demand charges applicable for HT-I (A) industry and energy charge at LT-IV (A) Industrial tariff.

- (3) With effect from 18.04.2017 onwards, in addition to the electricity charges approved by the Commission for LT Industrial consumers including the demand charge and energy charge, the petitioner has to pay low voltage surcharge also as determined by the Commission from time to time.

The KSEBL is entitled to recover the undercharged bills as per Regulation 134 Sub Regulation 1 of Electricity Supply Code 2014 which states as follows:

“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 and in such cases at least thirty days shall be given to the consumer for making payment of the bill.”

The monthly bills clearly indicate the consumption, demand and other particulars. As mentioned earlier the short assessment bill is issued on account of exceeding maximum demand beyond 100KVA.

The respondent has complied with Regulation 101 (3) of the Kerala Electricity Supply Code 2014.

The short assessment bill is not an exorbitant one. It is very accurate and in tune with Regulation 101 (3) of the Kerala Electricity Supply Code 2014.

Considering all the above, the Hon'ble CGRF, Ernakulam disposed of the complaint with a direction that, the impugned bill shall be revised by charging low voltage supply surcharge only for the billing months in which RMD has exceeded 100KVA after 17/04/2017.

In compliance of the said order, the original bill has been revised as Rs.8,81,574/-.

For the above and other reasons to be urged at the time of hearing, it is requested to dismiss the representation of the appellant.

Analysis and findings:

The hearing of the case was conducted on 26-08-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Sri. Shiraz Bava. V.S., Advocate was attended the hearing on behalf of the appellant and Sri. Krishna Kumar. P.B., Assistant In-charge of Assistant Executive Engineer, Electrical Sub Division, Vypin was attended the hearing from the

respondent's side. On examining the appeal petition, 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 findings and conclusions leading to the decision thereof.

On verifying the records, it is noted that the contract demand of the appellant was 99 kVA and the recorded demand exceeded the limit of 100 kVA on many months. The respondent has not billed the low voltage surcharge along with the energy bill. The Section 8 of the Kerala Electricity Supply Code 2014 states that the maximum contract demand for 415 V, three phase supply shall be 100 kVA.

“Provided that the limit of connected load or contract demand specified for different supply voltage levels may be exceeded up to a maximum of twenty percent if supply at the appropriate higher voltage level is not feasible due to non-availability of distribution line at such higher voltage level in that area of supply:

Provided further that the limits of connected load or contract demand specified for different supply voltage levels as specified above may be exceeded in exceptional cases with the approval of the Commission, subject to the conditions stipulated in such approval.”

Section 9 – ‘Low voltage Supply Surcharge’ states, “Consumers availing supply at voltage lower than the one specified in regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff order.”

Section 11 (2) – ‘Limits of connected loads and contract demand for new LT connections’ states “The maximum contract demands permissible for low tension consumer who avails power under demand-based metering shall be 100kVA, irrespective of his connected load.”

This is very clear that the consumer availing supply at a lower voltage than that specified in the regulation, shall pay the low voltage surcharge approved by the Commission. Accordingly, the Kerala State Electricity Regulatory Commission approved the low voltage surcharge during the tariff fixation exercise. Accordingly, the Licensee has to charge the same from time to time in each bill.

The Section 109 (1) of Kerala Electricity Supply Code 2014 regarding “Supply and installation of meters and circuit breakers” states that “Check meters and stand-by meters shall be installed wherever necessary in accordance

with the provisions in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.”.

Section 101 of Kerala Electricity Supply Code 2014 states on “Annual review of contract demand” as follows: -

- 101 (1) In the case of HT and EHT connections, if the maximum demand recorded exceeds the contract demand in three billing periods during the previous financial year, the licensee shall issue a notice of thirty days to the consumer directing him to submit within the notice period, an application for enhancement of contract demand.
- 101 (2) If there is no response from the consumer by the end of the notice period, the licensee shall enhance the contract demand of the consumer to the average of the top three readings of maximum demand shown by the maximum demand indicator (MDI) meter of the consumer during the previous financial year, if the additional load can be sanctioned without augmentation or upgradation or uprating of the distribution system.
- 103 (3) In the case of LT consumers under demand-based tariff, similar review and consequential process shall be carried out.

The above Sections states about the annual review of the contract demand and when the recorded demand exceeds the contract demand, the consumer is to be directed to enhance the contract demand. In the case in hand, there is no scope for enhancement of demand as the appellant has already been reached to the maximum permissible limit. Then the Licensee has to advice the appellant for conversion to HT connection. This is not done by the officials of the Licensee, which is violation of this regulation.

Further, the low voltage surcharge would have been billed to the appellant every month since 08/2016, this has not been adhered by the officials of the Licensee, which results the financial losses to the Licensee as well as a heavy burden on the appellant asking this huge amount to pay in one go.

The short assessment bill issued for Rs.10,41,802/- is the low voltage surcharge applicable for August 2016 to January 2022 and calculated as per the tariff approved by the Commission and then revised as per the order of Consumer Grievance Redressal Forum (Central Region). CGRF(CR) ordered to charge the Low Voltage Surcharge only for the months in which the maximum demand exceeds 100 kVA. Then the revised amount calculated is Rs.8,81,574/-.

Section 134 (1) of Kerala Electricity Supply Code 2014 “Under charged bills and over charged bills” states, “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 and in such cases at least thirty days shall be given to the consumer for making payment of the bill.”

This Section empower the Licensee to raise the bills of any undercharging has been noticed. In this case, the electricity bill would have been raised including the Low Voltage Surcharge, the same has not been charged and hence, this is to be treated as undercharged.

Section 152 of Kerala Electricity Supply Code 2014 states on “Anomalies attributable to the licensee which are detected at the premises of the consumer” as follows: -

152 (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.

152 (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

152 (3) 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:

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.

Here in this case, the tariff chargeable is inclusive of Low Voltage Surcharge and it was not included. Hence, this could be considered as the case of incorrect tariff application.

The appellant has submitted application for converting the service connection to HT on 15-03-2021, but the Licensee has not taken any action till date. The Section 98 of Kerala Electricity Supply Code 2014 is very clear about

reclassification of the consumer category. The officials of the Licensee is violated this Section in sanctioning the HT connection.

In this case whether the limitation of time is applicable or not ?

The order of the Hon'ble Supreme Court of India in the judgment dated 05-10-2021 in Civil Appeal No. 7235 of 2009 (M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others) clearly described the terms of "first due" and limitation period, the electricity charges would become first due only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Rahamatullah Khan case that that the period of limitation of two years would come from the date on which the electricity charges became first due under Section 56(2). This Hon'ble Court also held that Section 56(2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of period of limitation in the case of a mistake or bona fide error."

Though this particular case was for the application of Section 56 (2), but it is very clear about the application of limitation period and also defines, when this amount will become first due. Then the limitation period of two years is not applicable in the case in hand also.

Decision: -

From the analysis of the arguments and the hearing, following decisions are hereby taken:

- (1) The appellant is liable to pay the short assessment bill amount issued by the Licensee (revised amount as per the CGRF-CR order).
- (2) The Licensee shall grant instalment facility of 24 monthly instalments without interest for making the payment.
- (3) The Licensee shall enquire and take suitable action for not billing the low voltage surcharge in time, which resulting into revenue loss to the Licensee and also resulting into huge one-time financial burden to the consumer.
- (4) The Licensee shall enquire the lapses of the officials who has not adhere to Section 101 of the Kerala Electricity Supply Code, 2014 and take necessary action.

- (5) Licensee also shall enquire the lapses from the officials who has not adhere to Section 98 of Kerala Electricity Supply Code 2014 and take necessary action for converting the LT connection to HT connection though the consumer has submitted their application for the same on 15-03-2021.
- (6) The order of CGRF, Central Region is modified accordingly.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/044/2022/_____ dated _____.

Delivered to:

1. Sri. V.S. Sadique, S/o. Saidumuhammed, Vadakkeveetil House, Edavanakkad, Ernakulam Dist. 682502
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Vypin, 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.