

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION No. P/049/2022****(Present: A. Chandrakumaran Nair)****Dated: 19<sup>th</sup> September, 2022**

Appellant : Sri. N.A. Hassan,  
Nanethan Housem,  
Vallam, Rayonpuram,  
Perumbavoor,  
Ernakulam Dist. 683543

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

**ORDER****Background of the case:**

The appellant is the owner of the plastic manufacturing unit named as 'Napco Plastic Industries'. The appellant is the consumer of the Licensee with Consumer No. 1157385011596 under Electrical Section Okkal. The tariff applicable is LT IV A. Appellant is regular in making payments as per the bill raised by the Licensee based on the meter reading taken by the Sub Engineer every month and hence, there was no payment outstanding. On 14-02-2022, Sub Engineer along with the APTS, Ernakulam inspected the installation and found that the Multiplication Factor applied was 20 instead of 40 as the CT ratio used is 200/5. A short assessment bill for Rs.34,58,083/- was issued to the appellant and then corrected to Rs.34,64,763.32. This was for a period from February 2018 to February 2022. Based on the complaint of appellant, a hearing was conducted on 01-04-2022 and the short assessment bill was corrected to Rs.33,69,704/- and given time only up to 18-04-2022 instead of 30 days, which he was eligible as per Regulation. The appellant filed petition to the Consumer Grievance Redressal Forum (CGRF), Central Region, Ernakulam and

the CGRF ordered vide OP No. 07/2022-23 dated 28-05-2022 that the appellant is bound to pay the short assessment bill issued by the Licensee.

Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

**Arguments of the appellant:**

On 14.02.2022, the respondent inspected the meter in the presence of Anti-Power Theft Squad (APTS) at the premises of the appellant and issued a mahazar to this appellant and this appellant signed in it as acceptance of copy of it. Thereafter, the Assistant Engineer issued a letter dated 16-02-2022 asking to remit Rs.34,58,083.00 along with bill dated 16-02-2022 with a note short assessment bill due to OMF, period from 02-2018 to 02-2022 for the amount, also accompanied with a calculation statement totalling to Rs.34,58,083/-. Thereafter, after a week the Assistant Engineer issued another bill dated 16-02-2022 for an amount of Rs.34,64,763.23 with a note on APTS inspection dated 14-02-2020, short assessment bill due to wrong multiplication factor period from 02-2018 to 02-2022 along with a calculation statement for the amount. This appellant filed statutory objection against the demand and the Assistant Engineer issued letter No. DB/8/21-22/86/21-03-2022, stating that on detailed examination the bill amount is Rs.33,69,704/- and it is issued under Regulation 152 & 155 of Supply Code, 2014 etc.

After this, the Assistant Engineer invited this appellant for a hearing to be conducted on 01-04-2022 and after hearing issued a letter dated 04-04-2022 and informed that the amount to be remitted as short assessment amount is Rs.33,69,704.00 and a bill amounting to Rs.33,69,704.00 dated the same stating a penal bill, fixing due date of remittance and date of disconnection as same dated 18-04-2022 giving 14 days' time for remittance instead of 30 days as per statutes. However, the Assistant Engineer never issued a statement of calculation furnishing the details as required under statutes despite requesting other than a simple statement, Final assessment bill Rs.34,64,763.35 - amount paid on 19-02-22 Rs.95,059.65 and balance amount to be paid Rs.33,69,704/-.

This appellant filed a complaint before the CGRF (Central) vide OP.No.07/2022-23 and after online hearing, it released the order in

OP.No.07/2022-23 dated 28-05-2022, which was delivered to this appellant dated 01-07-2022. Thereafter, the licensee issued a bill dated 02-06-2022 amounting to Rs.33,69,704/- along with a notice setting last date for payment and date of disconnection if not paid as 01-07-2022. This order of the CGRF (Central) in ORNo.07/2022-23, the bill and demand notice issued by the licensee is the cause of this instant appeal before this Authority.

The demand under dispute under this petition is issued on the plea that, this petitioner has been billed for less energy due to error crept into while taking multiplication factor of the CT connected which is inherent part of the meter as defined under Regulation 2(57) of Supply Code, 2014. This appellant has no role in selecting the meter, fixing the meter, fixing the multiplication factor, billing etc, whereas, all these are mandated duties of the licensee under section 55(1) of Electricity Act,2003 and under Regulation 6(2) of "the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006", and hence, the duties of the respective employees who are assigned with these tasks by the licensee. Therefore, burdening this appellant for the outcome of callous negligence of the part concerned officials of the licensee even after the license issuing administrative circular describing the procedures to be adopted to avoid negligence and hence, avoid occurrence of deficiencies attributed to the licensee at the premises of the consumer and if it occur, how it is to be addressed in accordance with regulations under supply Code, 2014. The instant demand under dispute under this appeal is also issued by the Assistant Engineer in total violation to the regulations and that of the administrative directions issued by the licensee under Circular No. D (D&S) D2/Gel-08/2015 Dated 25-02-2016. Therefore, the licensee has no legal or moral right to oppose this appeal. If any loss has been caused by way revenue due to the gross negligence and dereliction to duties by its employees it has to be realized from the erred employees other than demanding from this appellant. If the allegation is true, that wrong multiplication factor was used from the very beginning after effecting this electric connection during 2018 until the date of detection of it, the dereliction and negligence to assigned duty is evident and on the ground this appellant shall not be burdened with the sour fruit of it. Therefore also, the demand under dispute under this appeal is arbitrary and

illegal and qualified to be set aside. As per mahasar, team conducted some crude test at site and arrived at a conclusion that the multiplication factor is 40, but never disclosed the transformation ratio of the CTs. The APTS is not an NABL accredited laboratory to test the meter under Regulation 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and method adopted by it is also not as specified under the same regulation. Also, these APTS is not an authorized agency to test the meter since it is also not an authorized laboratory of the State Regulatory Commission as detailed under Kerala Electricity Supply Code, 2014. Thereby, this non-standard test conducted by the unauthorized authority such as APTS Ernakulam & Sub Engineer combined is unauthorized and hence, illegal and cannot be accepted.

While issuing the demand the licensee has made an irrevocable statement that, the demand under dispute is issued under Regulation 152 of Supply Code, 2014. However, from close scrutiny of the demand, it is very clear that, the licensee has violated the very same Regulation which it had pledged relied upon to issue the demand. On the ground also, the demand is illegal.

The CGRF (Central) has turned down the pray of this appellant on the reasons as stated in the order is that of basing Regulation 134 (1) of Supply Code, 2014 and the decisions of the Hon: Supreme Court of India in Civil Appeals No.7235 of 2009 & 1672/2020. In this matter it is respectfully submitted that, alleged application of wrong multiplication in billing a consumer is an anomaly attributed to the licensee at the premises of consumer as per Regulation 152(1) of Supply Code, 2014. The licensee have made an irrevocable acceptance while issuing the demand that it has issued the demand under dispute under Regulation 152 of Supply Code, 2014 and at the same time violated the provisos under the same Regulation and hence the demand has become illegal. The Hon: CGRF fetching in Regulation 134 (1) for the rescue of the disputed demand violates the very ground of 134 (1) of Supply Code, 2014 for which it is created and indented for. The heading of a statue decides the intent of it. The heading of Regulation 134 is "under charged bills and overcharged bills", which clearly means that this regulation is applicable to bills already issued which is erroneous due to under charging or over charging. Moreover, it is to be noticed that, for giving stress to "bills" it is given with the adverbs undercharged

and overcharged in the heading before and after the conjunction "and". Therefore Regulation 134 (1) of Supply Code, 2014 cannot be called for, for the rescue of the demand under dispute. Therefore, the first finding of the CGRF in upholding the disputed demand Regulation 134(1) of Supply Code, 2014 is incorrect.

The judgment of the Hon: Supreme Court of India in Civil Appeals No.7235 of 2009 & 1672 of 2020 which the CGRF have relied to order the disputed bill sustainable also does not uphold the disputed bills. The Hon: Supreme Court's well considered orders in the above appeals were on the applicability or the legal interpretation of Section 56 (2) of Electricity Act, 2003, but not on Regulation 152 of Supply Code, 2014. The sum and substance of the above judgments are that, the licensee can issue bills to a consumer at any point of time after detecting the electrical energy consumed which has escaped billing by any reasons and the limitation set under Section 56 (2) only starts at the point when such bill is issued. Here the Licensee have no claim whatsoever that, it has issued the disputed demand under the settled position of Section 56(2) of Electricity Act, 2003. As the settled position under the above judgments entitles the licensee, Regulation 152 of Supply Code, 2014 also entitles the licensee to issue demands at any time on detecting anomalies attributed to the licensee detected at the premises of consumers without any limitation of period. In a nutshell, the intent of the judgments above and that of Regulation 152 (1) of Supply Code, 2014, are the same. However, in the above judgments it is not all prescribed what shall be the quantum of amount that can be collected or not collected. However, even though Regulation 152 (1) of Supply Code, 2014, entitles the licensee to issue bills at any time for the energy escaped billing on detection, in equivalent to the settled position under the judgments above, the provisos under Sub Regulation (3) has brought in restriction in collecting the full amount for the entire period under two circumstances and Sub Regulation (4) prescribe the modalities to be followed and what facilities shall be given to the consumer etc. Under the circumstances and positions averred, the above judgments have no applicability in this case at all and the order of the CGRF is wrong under the dictum of law and also the licensee have made an irrevocable

acceptance that it has issued the bills under dispute under Regulation 152 of Supply Code, 2014. The related regulation is extracted here under.

*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 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 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.*

*(I) The consumer may be given instalment facility by the licensee for a maximum period of twenty months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of instalment.*

While the licensee declaring that it has issued the demand under regulation 152 of Supply Code, 2014 it has demanded full amount for the period while it is not entitled for that and it is also expressly prevented for that under the same Regulation. On the grounds also the demand under dispute is illegal.

#### Nature of relief sought

1. To call for the documents hold and declare that demand amounting to Rs.33,69,704/- is illegal and to quash it.
2. To issue orders to pay such amounts, this Authority may find appropriate towards the expenses for this appeal.
3. Such other reliefs the appellant prays for, during the course of appeal

#### **Arguments of the respondent:**

The respondent licensee with the aid of the Anti-Power Theft Squad (APTS) conducted a site inspection on 14.02.2022 in the premises of the appellant. While checking metering equipments, it was noticed that the actual CT ratio is 200/5 Amps and the corresponding Multiplication Factor to be taken is '40', but

bills were being raised by taking MF as '20' from the very inception of date of connection. The inspection team thereby detected that KSEBL is losing huge revenue on account of wrong application of Multiplication Factor. Towards the evidence of the discrepancy a site Mahazar prepared on the same day and a copy of the site mahasar served with the appellant under acknowledgment.

As per the existing law and procedure of the regulations the Assistant Engineer prepared a short assessment bill for the period from February 2018 to February 2022 by applying 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 licensee to demand the amount of loss sustained 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 21.03.2022 demanding an amount of Rs.33,69,704/- was served on the complainant.

That the argument of the appellant that respondent served more than one bill with respect to impugned short assessment is admitted but the bill dated 16.02.2022 for Rs.34,64,763/- initially served with the consumer was of including the current charge of Rs.95,059/- for the month of February. It was understood later that the consumer was of unclear with that bill so in order to avoid confusion and to differentiate the undercharged bill from the regular bill a fresh undercharged bill of Rs.33,69,704/- served on 21.03.2022.

The appellant has admitted and convinced the fact that the undercharged bill was issued towards the unpaid electricity charges and is bound by law liable to pay bill amount and hence not denied it. As per the tariff order of the Kerala State Electricity Regulatory Commission, every consumer is bound to pay electricity charges in accordance with the tariff determined in the Order. Therefore, the complainant/consumer is bound to pay the differential amount for the period during which he was undercharged. It is more so when the complainant is aware that the CT ratio of the meter is 200/05 and therefore, the multiplication factor is to be taken as '40' and by mistake the multiplication factor applied was '20'.

Regulation 136 of the Supply Code also 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 related payments from the date on which such payments became due. The Honourable Supreme Court considered the scope and ambit of section 56 (2) of the Electricity Act 2003 and also to whether the licensee is entitled to recover undercharged amount and as to when the amount in such case become due in the decision Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd Vs Rahamatullah Khan in Civil Appeal No 1672 of 2020 decided on 18.02.2020. The Honourable Supreme Court held in that case that the amount will become due only when the bill is issued and Section 56 (2) will not be applicable to an additional or Supplementary Bill.

The Regulation 152 deals with anomalies attributable to the licensee which are detected at the premises of and categorized such anomalies as wrong application of MF and incorrect application of tariff by the licensee. Under Sub Regulation (2) of Regulation 152, the amount of electricity charges short collected by the licensee shall be realized from the consumer under normal tariff for the period during which such anomalies persisted. However, as per Sub Regulation (3) no interest shall be realized. 3 provisos were made to the said regulation and by the 3rd proviso the period of under recovery was restricted to 24 months. Limitation is a substantive provision. When no power is given to the Regulatory Commission to frame Regulation on such an aspect the regulatory commission cannot issue such a regulation. 3<sup>rd</sup> proviso to Regulation 152 (3) is therefore, ultra-virus the provisions of the Electricity Act, 2003 and also it is beyond the Regulation making power of the Regulatory Commission. It is clearly against the dictum laid down by the Honourable Supreme Court in the decision Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd Vs. Rahmatullah Khan (Civil Appeal No 1672 of 2020 dated 18.02.2020 Section 56 of the Act is the only provision dealing with Limitation. Section 56 (1) gives power to the licensee to disconnect the supply in case any person neglects to pay charge for the electricity or any sum other than a charge for electricity due from him. There is no period of limitation in that sub section from recovering electricity charges or any other amount due. The only limitation contained is under Sub Section (2) of Section 56. That sub section says that no recovery shall



be made after 2 years from the date of amount becoming due unless it is shown continuously as recoverable as arrear of charges for electricity supply. 3<sup>rd</sup> proviso to Regulation 152 (3) of the Supply Code is therefore ultra-virus of section 56 of the Electricity Act 2003. It is to be noted that under Section 126 of the Electricity Act recovery in respect of misuse of energy there is no limitation. The Hon'ble High Court of Kerala in the decision of 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.

For these and other reasons to be urged at the time of hearing, it is requested to this Authority to uphold the order of the CGRF, Central Region and give a direction to remit the challenge bill within a time fixed by the Forum.

**Analysis and findings:**

The hearing of the case was conducted on 02-09-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Sri. N.A. Hassan, was attended the hearing and Sri. Manoj. K., Assistant Executive Engineer, Electrical Sub Division, KSEBL, Perumbavoor 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 14-02-2022, the Sub Engineer, Electrical Section, Okkal along with APTS, Ernakulam inspected the site and found that the CT connected with the meter is with ratio 200/5 and hence MF is 40. They were wrongly applied the MF as '20' from 02/2018 to 02/2022 and thus, the under-recording of consumption for a period from 02/2018 to 02/2022.

As per Section 110 of Kerala Electricity Supply Code 2014, the meter reading is to be taken by the Licensee regularly once in every billing cycle and the meter reading shall be recorded only by an employee of the Licensee.

As per Section 113 of Kerala Electricity Supply Code 2014 : “(1) It shall be the responsibility of the licensee to satisfy itself regarding the accuracy of the meter before it is installed and the licensee shall test them or get them tested in an accredited laboratory or in an approved laboratory”.

“(2) The licensee shall also conduct periodical inspection or testing or both and calibration of the meters, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.”

As per Regulation 134(1) of Kerala Electricity Supply Code 2014 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.”

As per 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 realized 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 realized 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 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.

As per Regulation 109 - Supply and installation of meters and circuit breakers:-

“(10) Initial installation as well as replacement of the meter shall be done by a qualified employee of the licensee duly authorized for this purpose, in the presence of the consumer or his representative.”

“(11) The licensee shall adopt a format of meter particulars sheet for recording the particulars of the meter at the time of initial installation or replacement.”

It is the responsibility of the officials of the Licensee to install a proper meter with its accessories such as CT etc. and keep the records properly and the same is to be considered while calculating the energy consumption and then the energy charges. In this case, the officials of the Licensee were not performed their duty properly and thus, the huge liability come to the appellant.

It is pertinent to refer the order of the Hon'ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in the matter of M/s. Prem Cottex Vs. Hariyana Bijli Vitaran Nigam Ltd & Others. The scope and ambit of Section 56 of Indian Electricity Act was interpreted by the Apex Court in the aforesaid decisions and in the later it was conclusively held that what is covered by Section 56(1) is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the Licensee. Para 11 & 12 of the said order clearly spelt out that the electricity charges could become “first due” only after the bill is issued, even though the liability would have arise on consumption. Then the period of limitation of two years would commence from the date on which the electricity charges become first due under Section 56(2).

The Hon'ble Apex Court also held that Section 56(2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of the period of limitations in the case of a mistake or bona fide error.

Section 136 (1) of the Kerala Electricity Supply Code 2014, clearly state that the Licensee shall be entitled to recover the arrears of charges or any other amount due from the consumer.

**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.
- (2) The respondent shall grant 30 numbers of monthly instalments without interest to pay the short assessment bill by the appellant to the Licensee.
- (3) The order of CGRF, Central Region in OP No.07/2022-23 dated 28-05-2022 is modified to this extent.
- (4) The Licensee has to device a proper system to avoid such type of errors/mistakes/oversights in recording the consumption to avoid heavy burden on the consumers.

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

**ELECTRICITY OMBUDSMAN**

P/049/2022/ \_\_\_\_\_ dated \_\_\_\_\_.

**Delivered to:**

1. Sri. N.A. Hassan, Nanethan Housem, Vallam, Rayonpuram, Perumbavoor, Ernakulam Dist. 683543
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Perumbavoor, 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.