

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/083/2022**(Present: A. Chandrakumaran Nair)****Dated: 22nd December, 2022**

Appellant : Sri. Biju. M.K.,
Valiyaveettil House,
Cheranalloor. P.O.,
Kochi, Ernakulam Dist. 682034

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

ORDER**Background of the case:**

The appellant Sri. Biju. M.K. is the consumer of the Licensee (KSEBL) since 2003 for running a small-scale industrial unit. The tariff is LT IVA under Electrical Section, Cheranallur. CT connected for metering was with ratio 200/5 and thus the actual multiplication factor is 40. The APTS unit of Ernakulam conducted an inspection in the premises on 22-01-2022. During the inspection they found that the multiplication factor used for billing was 20 instead of 40. The site mahazar was prepared and bill for Rs.63,35/- was issued to the appellant as the undercharged amount from 02-2019 to 01-2022. The appellant challenged the bill and on examination the Licensee has noticed some mistakes and bill has been corrected to Rs.53,805/-. The appellant filed petition to the Consumer Grievance Redressal Forum, Central Region and the CGRF(CR) vide order dated 25-08-2022 ordered to revise the short assessment bill for the month 12/2020 and 01/2021. The CGRF(CR) issued a revised order dated 12-10-2022 and corrected the order to revise the short assessment bill for the months 12/2020 and 11/2021. Accordingly, the bill again revised to Rs.43,350/-.

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

Arguments of the appellant:

The appellant is an electrical consumer since the year 2003 for running a tiny sector industrial unit and has been remitting the energy charges as demanded by KSEB from time to time and no discrepancies have ever been found by the KSEB authorities or APTS during the past years against the appellant so far. The industrial unit was forced to close down owing to Covid restrictions since the last week of March 2020. The unit started functioning again only in the month of October 2021. During the period of total closure also, electricity charges as demanded by KSEB was being remitted regularly. On 22.01.2022, the APTS inspected the unit and consequent to this inspection the Assistant Engineer, KSEB issued a demand of Rs.63,315/- alleging reduced metering of power consumed at the premises. APTS has not found any fault in the metering nor have reported any mala fides on the part of this appellant. The excess demand was made based on alleged application of wrong multiplication factor of 20 instead of 40 in billing by KSEB. The appellant obtained the details of actual power consumed during the period of excess demand from the KSEB section and as per the data obtained, the demand raised was based on incorrect data regarding actual power consumed and remittances made by the appellant during the period in question. The demand raised was also found inconsistent with the actual power consumption. As the Assistant Engineer refused to withdraw the demand raised, the appellant approached the CGRF, Central Region by petition dated 12.01.2022.

The CGRF after hearing this appellant as well as the respondents, issued an order on 25.08.2022 wherein, it was directed that the appellant is liable to pay for the energy consumed by him and further that the respondents shall revise the short assessment bill dated 14.06.2022, as per actual RMD for the months of 12/2020 and 1/2021. Later a corrigendum dated 12.10.2022 was issued correcting the order portion.

Meanwhile, a revised bill dated 5.9.2022 was issued by AE, KSEB, Cheranalloor demanding Rs.43,350/- on 5.9.2022. The demand was received by

the appellant only on 03.10.2022. A reply was filed before the AE, KSEB on 6.10.2022 indicating that the revised bill dated 5.9.2022 is not in full compliance with the order of CGRF in as much as the revision of the bill was not *made* for the month of 1/2021 as directed by CGRF. It was also found that the revised bill dated 5.9.2022 is also inconsistent with **actual** data regarding actual consumption of electricity by the appellant. As this appellant is aggrieved by the demand dated 5.9.2022 and in as much as it is plainly against the directives of the CGRF, the appellant is forced to approach this Authority based on the following and other grounds.

The AE, KSEB has issued various demands on various occasions without any basis. The demands raised are not based on actual consumption of power by this appellant but on speculated data and is only to appease the APTS. The first demand dated 4.3.2022 was for Rs 63,315/-. Subsequently, on filing a complaint before CGRF the bill was reduced to Rs.53,805/- on 14.06.2022. Further, on the directions of the CGRF, further revision was made and a bill for Rs.43,350/- was issued on 5.9.2022. Even the latest bill is inconsistent with the actual consumption as recorded by KSEB, and not supported by any tangible evidence.

As per worksheet, the charges for 2/2019 and 3/2019 are Rs. 2475/- each against the consumption of 284 and 220 units respectively. This cannot be obviously correct. Similarly, the consumption for 12/2020 and 1/2021 are 39 units and 29 units respectively. Whereas the charges for the above months are Rs.500.25 for each month. This also cannot be factually correct. This indicates that the charges calculated are not based on actual consumption but on approximation only. This point was raised before the CGRF but the explanation by the respondent was that the inconsistencies do not matter in as much as the dispute is regarding application of incorrect multiplication factor. This contention is obviously wrong and cannot be accepted.

The total amount already remitted as shown by the calculation sheet is not in confirmation with the calculation statement provided by the AE, Cheranalloor in reply to the RTI enquiries. There is wide variation between the amounts already remitted as per the calculation statements provided by the electrical section and by the statement provided along with the demand dated 5.9.2022.

The unit was closed and not functioning from April 2020 to October 2021, consequent to Covid 19 restrictions. However, consumption is recorded for the period from 8/2020 to 1/2021. During the closure period, as the energy meter was inside the premises, recording the meter readings regularly was an impossibility. This is proved by the fact that from 4/2020 to 7/2020 and 2/2021 to 10/2021 the consumption is shown as zero. This discrepancy by which meter readings has been indicated during the period of closure is not explained by the respondents. Instead, an explanation was given before the CGRF by the respondent No. 1 vide letter dated 1.8.2022 that the meter data for the period from 3/2019 to 11/2020 are not available. Vide the same letter it has been clarified that for the period 12/2020 and 1/2021 the demand issued is incorrect and hence, bills are to be revised.

On a prima facie verification of the worksheet for short assessment vide revised demand dated 14.6.2022, the fixed charges and consumption charges for the months 12/2020 and 1/2021 are exorbitant, inconsistent and without any logic. Notwithstanding the fact that the unit was closed during this period, the fixed charges are double the normal charges which had prevailed during 3 years from 2019 to 2022. The consumption charge for the two months viz. 12/2020 and 1/2021 are also not in conformity with the consumption as recorded by the Board. Equal amounts of Rs. 500.25 each is charged for the two months but the consumption is 39 units and 29 unit respectively. This discrepancy does not have any bearing on the multiplication factor error as pointed out by APTS.

The short assessment by way of applying wrong multiplication factor is not caused by any fault of the appellant but was caused by the KSEB authorities. Under proviso 2 Regulation 152 of the Kerala Electricity Supply code, when the fault is on the part of KSEB, only amount of electricity charges short collected under normal tariff can be recovered. Under this proviso fixed charges, once claimed and realized cannot be subjected to reassessment. Further, the inspection report of APTS has asked for collection of energy charges only because of the wrong application of multiplication factor and shall not have any bearing on the fixed charges. The order of CGRF dated 25.8.2022 had clearly stipulated that the petitioner is liable to pay for the energy consumed by him. On this count also fixed charges cannot be subjected to reassessment.

As per letter dated 25.7.2022, the respondent had reported to the CGRF that the energy meter had been checked for the period from 8/2021 to 7/2022. The report clearly states that during this period the maximum demand has not exceeded 75% of the contract demand. It is further clarified by the respondent that the minimum demand charges of Rs. 5,950/- is only applicable during this period. However, during the month of 11/2021 an amount of Rs. 6,800/- has been charged. The respondent had admitted vide letter dated 25.7.2022, that even though the meter reading is only 0.25 it was "posted as 1" and excess demand issued. This would prove the contention of the appellant that discrepancies have randomly crept into the recorded readings and subsequently resulted in excessive demands to this appellant. The respondent instead of accepting this issue has blindly stated that details for the month of 12/2020 and 1/2021 is not available in the meter data. Proviso 3 to Regulation 152 of the Kerala Electricity Supply Code 2014 specifically mandates that if the short collection cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to 12 months. If the contention of the respondent is accepted to the effect that the meter data for the disputed periods are not available then the revised assessment has to be limited to 12 months only.

The fixed charge has been randomly fixed and applied. It varies from Rs.5,250/- per month to Rs.16,405/- per month during the period from 2/2019 to 1/2022. The APTS had only called for re-fixing the consumption charges by applying correct multiplication factor as they have not found any other discrepancy. There are no justifications for re-fixing the fixed charges also as the multiplication factor apply only to the actual metered consumption. No explanation in this regard has been provided by the respondents. Meter data for the period from 8/2021 to 7/2022 have been verified by the respondents. Vide letter dated 25.7.2022 it has been confirmed that the maximum demand has not exceeded during any of the months where meter data has been verified and therefore it has been confirmed by the respondents that during the 12 months period for which meter data has been verified, fixed charges shall be applicable @ Rs. 5,950/- only. But for the month of 11/2021 the bill was issued for a higher amount. This has been accepted and later corrected by the respondents.

The fixed charges demanded are without any basis. The meter data downloaded by TMR, Angamaly for 1 year confirms that the fixed charges shall be applicable at Rs.5,950/- only. This includes the month of 1/2022 wherein the consumption was 220 units. But the fixed charges demanded is Rs.6,800/- for the month of 5/2020 wherein the actual consumption was Nil. During 1/2021, the actual consumption is shown as only 29 units whereas the fixed charges is Rs.16,405/-. The respondents have failed to explain these discrepancies before CGRF.

Relief sought

1. Stay the realization of the demand dated 5.9.2022 till final disposal of this appeal.
2. The respondents may be directed to withdraw the demand dated 5.9.2022 as the same is without any basis, authority, or jurisdiction.

Arguments of the respondent:

The APTS Unit, Emakulam along with the Section Squad of Cheranelloor Section conducted an inspection in the premises of consumer number 10343 on 22/01/2022. In the inspection, it was noticed that the multiplication factor used for billing the consumer was 20 whereas the ratio of current transformers connected in the premise was 200/5. So, the correct multiplication factor to be applied was 40 but bills were being issued using a multiplication factor of 20.

A site mahazar was prepared on the same day. A bill for Rs.63,315/- was issued to the appellant on 04/03/2022 for the undercharged portion of the energy charges for the period from 02/2019 to 01/2022 as per Regulation 134 of Kerala Electricity Supply Code, 2014.

The appellant was being billed under TOD system in LT IV (A) tariff from 01/08/2014 onwards. The appellant was billed with a multiplication factor of 40 from this date till 01/2019. While obtaining the meter reading of the appellant in February 2019, the scroll button of the energy meter was found not functioning. Hence, on 07/02/2019, the meter was replaced with another energy meter. These details were updated in the billing software 'OrumaNet'. While making the changes

in 'OrumaNet', the multiplication factor was changed to 20 due to oversight. But the actual multiplication factor to be used was 40. The error was detected in the inspection conducted by APTS Unit, Emakulam on 22/01/2022.

As the bills issued for the period from 02/2019 to 01/12/2022 were calculated using the wrong multiplication factor of 20 instead of 40, there was a short assessment for this period. As per Regulation 134 of Kerala Electricity Supply Code 2014, the licensee may recover the undercharged amount from the consumer. So, a short assessment bill of Rs. 63,315/- was issued.

The appellant challenged the above short assessment bill in the CGRF. On verification of the short assessment bill and the calculation statement while preparing the statement of facts by the undersigned, it was noticed that demand charge portion was not included in the short assessment bill. Also, some mistakes were found in the calculation of the energy charges. Hence, a direction was issued to the Assistant Engineer, ES, Cheranelloor for preparing a revised bill after correcting the mistakes.

A revised short assessment bill for an amount of Rs. 53,805/- was issued to the consumer on 14/06/2022.

A hearing was conducted by the CGRF on 08/07/2022. During the hearing, the appellant complained about the bill amounts during the months of 12/2020 and 01/2021. The Forum directed the respondent to test the meter at TMR, Angamaly. The meter was tested at TMR, Angamaly and meter data was downloaded. Along with this data, the meter data downloaded by the APTS Unit, Emakulam was also examined by the respondent. Two reports dated 25/07/2022 and 01/08/2022 were submitted before CGRF. As per the information in the meter data and the recorded reading, it was found that the bill amounts for the months of 12/2020 and 11/2021 was incorrect. The Hon'ble CGRF vide its order dated 25/05/2022, directed the respondent to issue a revised bill after correcting the mistakes in the bills for the months of 12/2020 and 11/2021. In the original order, it was mentioned as 12/2020 and 01/2021. But later this error was corrected as 12/2020 and 11/2021.

As per the order of the CGRF, a revised short assessment bill for Rs.43,350/- was issued to the consumer on 05/09/2022. The appellant has submitted the

appeal before this Authority against this bill and the order of the CGRF.

The appellant has regularly remitted all electricity bills till now. The short assessment bill under dispute has been issued because the bills given to this appellant for the period from 02/2019 to 01/2022 were calculated using an incorrect multiplication factor of 20 instead of 40. The appellant has never disputed the fact that the ratio of current transformer in his premise is 200/5A. So, the correct multiplication factor to be applied for calculating the electricity bill was 40 instead of 20. The appellant's argument that the short assessment bill is inconsistent with the actual power consumption is baseless and factually incorrect. The actual power consumption can only be calculated using the correct multiplication factor of 40.

The short assessment bill issued was for a period from 02/2019 to 01/2022 i.e., for 36 months. There were two errors in the calculation. One in the month of 12/2020 in which the actual demand as per reading was 1(x MF 40) and the calculation was wrongly done for a demand of 2 (x MF 40). The second error was in the month of 11/2021. Here the demand as per the monthly reading was 1 (x MF 40) whereas, as per the meter data, the demand recorded was only 0.25 (x MF 40). Both these errors were corrected as per the order of the CGRF and a revised short assessment bill for Rs. 43,350/- was issued to the appellant on 05/09/2022.

The appellant has stated that the revised bill dated 05/09/2022 is inconsistent about actual consumption of electricity by the appellant. But the appellant has no way to know the actual consumption in his premise other than from the energy meter reading in his premise. He had already remitted the energy bills till now and he never raised any dispute about the accuracy of the energy meter. The short assessment bill has arisen due to the usage of incorrect multiplication factor of 20 instead of the actual 40 for the bills issued from 02/2019 to 01/2022. The appellant has not disputed the fact that the ratio of current transformer in his premise is 200/5A. So, the actual multiplication factor is 40 instead of 20. The revised short assessment bill is issued on 05/09/2022 after correcting the errors in the bill of 12/2020 and 11/2021 as per the order from the CGRF. The licensee is within its right to issue this short assessment bill as per

Regulation 134 of Kerala Electricity Supply Code, 2014 and the appellant is liable to remit the same.

The revised short assessment bill is based on the actual reading and is consistent with the meter data downloaded from the meter by APTS Unit and TMR, Angamaly.

In 02/2019 and 03/2019, the energy consumption recorded are as follows.

| | <u>Zone 1</u> | <u>Zone 2</u> | <u>Zone 3</u> | <u>Total</u> |
|---------|---------------|---------------|---------------|--------------------|
| 02/2019 | 9 | 1 | 1 | 11x 40=440 Units |
| 03/2019 | 9 | 1 | 1 | 11x 40 = 440 Units |

The energy consumptions are same and so the energy charges are also same. The consumptions of 284 units and 220 units in 02/2019 and 03/2019 mentioned by the appellant are incorrect.

Again, the energy consumption recorded in the months of 12/2020 and 01/2021 are as follows.

| | <u>Zone 1</u> | <u>Zone 2</u> | <u>Zone 3</u> | <u>Total</u> |
|---------|---------------|---------------|---------------|-------------------|
| 12/2020 | 1.5 | 0.45 | 0 | 1.95x 40=78 Units |
| 01/2021 | 1.5 | 0.45 | 0 | 1.95x 40=78 Units |

The consumptions of 39 units and 29 units in 12/2020 and 01/2021 as mentioned by the appellant are incorrect.

The revised short assessment bill issued on 05/09/2022 is correct as per the meter reading and downloaded meter data.

Meter data is only available from 01/02/2021 which is downloaded from the meter by the APTS Unit on the date of inspection 22/01/2022. The energy readings entered in OrumaNet is matching with the available meter data downloaded.

The contentions raised by the appellant regarding the bill of 12/2020 is already addressed in the revised bill on 05/09/2022. There is no data available for the month of 01/2021. The arguments raised by the appellant regarding the energy consumption for the months of 12/2020 and 01/2021 are incorrect as already explained.

The argument of the appellant that the multiplication factor applies only to energy charges is completely wrong. For a consumer under TOD billing, both the fixed charges and current charges as per tariff are applicable. For obtaining the actual demand and energy charges, the meter reading is to be multiplied by the multiplication factor.

The demand charges for 11/2021 is already revised in the short assessment bill issued on 05/09/2022 as per the order of CGRF. From the billing data in OrumaNet, it is clearly seen that the multiplication factor applied for this consumer till 01/2019 was 40. The multiplication factor was wrongly changed to 20 while effecting a meter change in 02/2019 as explained before. Hence, the period of short assessment is clearly known. Hence, the short assessment bill issued for the period from 02/2019 to 01/2022 is valid as per Regulation 134 of Kerala Electricity Supply Code, 2014 and the appellant is liable to remit the same.

The fixed charge is based on the kVA demand recorded in the meter or 75% of contract demand whichever is higher. It does not depend on the Unit consumption. The argument of the appellant that the demand charges is high even when consumption is low, is due to this billing procedure.

None of the contentions raised in the complaint disputing the short assessment bill are tenable and the appellant is not entitled for any reliefs. There is also no dispute about the efficiency or accuracy of the energy meter in the premises.

Considering the above facts, it is requested to this Authority to accept the contentions raised through this statement of facts and the complaint may be dismissed by directing the appellant to pay the short assessment amount of Rs.43,350/-.

Version of the appellant against the statement of facts of respondent:

The respondent has stated that the appellant's argument of the short assessment bill being inconsistent with the actual power consumption is baseless and factually incorrect. This contention of the respondent is without appreciating the actual facts on record. A comparative statement of the actual consumption

and demand, prepared based on documents obtained from respondent is based on the calculation statement arrived by KSEB after applying the multiplication factor 40 and produced before the CGRF by the respondent No.1.

The respondent submits that "the petitioner has no way to know the actual consumption in his premise other than from the energy meter reading in his premise". This being the accepted situation, the respondents should have given the actual units consumed by the complainant in the various calculation sheets provided with the demands dated 4.3.2022, 14.6.2022 and 5.9.2022. Various amounts ranging from Rs.63,315/- to Rs.43,350/- were demanded by these notices but in none of these notices the actual consumption, either by applying the correct multiplication factor or otherwise, has been provided. Therefore, the demands are not legally sustainable. The CGRF vide order dated 25.8.2022 has clarified that "the petitioner is liable to pay for the energy consumed by him". Therefore, any demand asking for electricity charges should have specified the quantity of energy consumed by the petitioner which is sadly lacking in the present demand dated 5.9.2022.

Respondent states that "the consumptions of 284 units and 220 units in 02/2019 and 03/2019 mentioned by the petitioner are incorrect". It is further stated that "the consumptions of 39 units and 29 units in 12/2020 and 1/2021 as mentioned by the petitioner are incorrect". It is submitted that these figures were provided by the respondent in the Calculation Statement - Consumer No. 10343 along with the demand dated 4.3.2022. This calculation statement was made after applying the multiplication factor 40 based on APTS report. Therefore, the contention by the respondent is only an afterthought without any factual basis.

The calculation for the month of 12/2020 was admitted to be faulty by the respondent before CGRF and was subsequently corrected. However, they are refusing to correct the demand for the month of 1/2021 stating that no meter data is available. The consumer is liable to pay only for the actual power consumed by him and cannot be penalized for non-availability of the required data by the licensee.

Based on the contentions in the Appeal dated 26.10.2022 along with the submissions herein above this Authority may be pleased to

- (1) Quash the demand raised by letter dated 5.9.2022 by the respondent.
- (2) Without prejudice to the above contentions, the demand may be limited to 12 months only in terms of proviso to Regulation 152 (3) of the Kerala Electricity Supply Code, 2014.

Analysis and findings:

The hearing of the case was conducted on 16-12-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Advocate Sri. Syed Muhamed was attended the hearing on behalf of the appellant and Sri. Vinod V.K., Assistant Executive Engineer, Electrical Sub Division, Central, Ernakulam 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.

The appellant is running a small industry which manufacture small items. The appellant was billed and ToD system in LT IV A tariff since 01-08-2014. The appellant was billed with multiplication factor 40 till 01/2019. During 02/2019, the meter reader noted a fault in the meter and accordingly, the meter was replaced on 07-02-2019. While entering the data in the "Oruma Net," was done with MF as 20. This fault has been located by APTS during their inspection of the premises on 22-01-2022. The Licensee has issued a short assessment bill as per Section 134 of the Kerala Electricity Supply Code 2014.

Section 134 (1) "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."

Then Section 136 "Recovery of arrears and its limitation" (3) "No such sum due from any consumer, on account of default in payment shall be

recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.”

Then the most relevant applicable in 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.

By the above Sections, Licensee is authorized to recover the undercharged bills from the consumer and accordingly consumer is liable to pay. During the hearing also the respondent is of the view that the legitimate due will be paid by the appellant.

Here in this case, the appellant challenged the method of calculation of the short assessment bill. Initially, the short assessment bill issued was for Rs.63,315/-The respondent had found out some mistakes in the calculation and accordingly the amount was corrected to Rs.53,805/-. Then the calculation was examined by the Consumer Grievance Redressal Forum and found that there is a mistake in the calculation of months 12/2020 and 11/2021. The respondent has corrected the bills and accordingly the amount arrived was Rs.43,350/-. Again,

the appellant has questioned the calculation for the month of 01/2021 where the demand charges arrived is Rs.16,405/-.

The calculation for the month 01/2021 has been examined in detail. The reading of demand indicator is noted as '2' which is the data taken from Oruma Net. Then the maximum demand would be $2 \times 40 = 80$ kVA. The connected load of the appellant is only 41.557 kW. The maximum demand indicator may record the maximum load connected to any $\frac{1}{2}$ hr. of that particular month. If all the load of 41.557 kW is connected for $\frac{1}{2}$ hr., then also the maximum demand may not read 80 kW, then the reading considered is not correct. The data such as monthly reading entered in the system only captured to 'Oruma Net'. Then there is a mistake in the data entered and hence, only 75% of the contract demand only is to be applied here i.e., for 35 kVA. That is the minimum demand charge i.e., $35 \times 170 = \text{Rs.}5,950/-$. Then Rs.16,405/- is to be corrected to Rs.5,950/-. Similarly, there is a mistake in the data of 05/2020 that the maximum demand reading is 1 and demand is 40 kVA. The consumption is recorded as '0'. If the 40 kVA load would have operated for a period of $\frac{1}{2}$ hr., the consumption would have been around 19 units. As the consumption recorded is Zero, the maximum demand indicator reading also may be wrong. Therefore, minimum demand charge only can be charged for the month of 05/2020.

The question arised here is the applicability of limitation period. The Section 136 (3) states that the default payment shall not be recoverable after a period of two years from the date when such sum became first due? Then when this amount is first due? The amount is "first due" when the short assessment/ undercharged bill is issued. This is very clearly spelt out by the Hon'ble Supreme Court in the order of Civil Appeal No. 7235/2009 pronounced on 05-10-2021 which is in the case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others.

The para 11, 12 & 16 of this order states as: -

"Para 11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong

billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.”

“Para 12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, 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 Court held in *Rahamatullah Khan (supra)*, that “the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)”. This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in *Mahabir Kishore & Ors. vs. State of Madhya Pradesh 2.*”

“Para 16. Be that as it may, once it is held that the term “first due” would mean the date on which a bill is issued, (as held in para 6.9 of *Rahamatullah Khan*) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of *Rahamatullah Khan*), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But *Rahamatullah Khan* says in the penultimate paragraph that “the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act”.

“Para 21. The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

From the above orders, it is very clear that 24 months period is applicable only from the date on which the amount is 'first due'. The amount is first due only on issuing the bills. The period at which the mistake is happened is clearly assessable i.e., from the date of replacement of meter.

Decision: -

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

- (1) The Licensee shall revise the bill correcting the amount for the months of 01/2021 and 05/2020.
- (2) The appellant is liable to pay the revised short assessment bill being issued by the Licensee as per decision (1) above.
- (3) The Licensee has to fix the responsibility to the person who made this mistake and take suitable action.

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

ELECTRICITY OMBUDSMAN

P/083/2022/_____ dated _____.

Delivered to:

1. Sri. Biju. M.K., Valiyaveettil House, Cheranalloor. P.O., Kochi, Ernakulam Dist. 682034
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Central, 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.