

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/004/2023
(Present A. Chandrakumaran Nair)
Dated: 21st March, 2023

Appellant : Sri. Kuriakose. T. Kuriakose,
President,
Skyline Grace,
Apartment Owner's Association,
Pala, Kottayam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEB Limited,
Pala, Kottayam

ORDER

Background of the case

The service connection with Consumer No.1156242022576 is registered in the name of the President, Skyline Grace Apartments, Pala and the present President is Sri. Kuriakose T. Kuriakose. The connected load is 89 kW under Tariff LT I A. This connection is for the common facilities in domestic apartments. On 18-06-2022, the APTS of Licensee conducted an inspection and found that the R phase of energy meter is not recording the energy actually consumed. The error was found out that the reading is 31.52% less than the actual. Also found that the current transformer used is 200/5 and MF applied for billing purpose was 20 instead of 40.

Accordingly, the licensee issued a short assessment bill amounting to Rs. 12,06,931/-. The appellant filed petition to CGRF, and CGRF ordered that the petitioner is liable to pay the amount as per short assessment bill vide order dated 31-12-2002. Aggrieved by the order of CGRF, the appellant filed this petition to this Authority.

Argument of the Appellant.

Barely a month after the common facilities including the KSEBL Consumer No. 1156242022516 was handed over by the builder to the Skyline Grace Apartment Association, an inspection carried out by APTS wing of KSEBL on 18-06-2022 which revealed the following discrepancies.

- 1) Wrong application of multiplication factors faster reportedly from date of initial charging of power on 26-09-2017.
- 2) Malfunctioning of one Current Transformer (CT) reportedly for one year and 230 days.

Based on above inspection, a copy of site Mahazar jointly signed by AE(APTS-Kottayam), Sub Engineer (KSEBL-Pala) and Apartment Manager was received by us.

We issued letter dated 20th June 2022 to KSEBL, Pala making it clear that the entire fault of wrong billing is due to KSEBL and hence no short assessment bill shall be issued to us. In case issued, it shall be challenged in appropriate forums.

We attended a meeting with KSEBL-Pala Officials on 28/06/2022 in which KSEBL -Pala expressed their inability to avoid short assessment bill. We notified to them that there were some overbillings during the period 08/08/ 2020 to 28/10/2020 details of which were given in our letter dated 30th June 2022.

Based on the APTS inspection findings, a short assessment bill No:5624220700334 (under, regulation 134 of the Supply Code), dated 01-07-2022 for Rs. 12,06,931/- (Rupees Twelve Lakhs Six thousand Nine Hundred and Thirty-One only) was served on us by Assistant Engineer. KSEBL, Pala. Net amount payable against short assessment bill is only Rs.11,48,500/- after adjusting Rs. 5 8,431/- from the advance amount available with KSEBL.

Common Electricity bill is to be shared by 78 Flat owners/tenants. Association has taken over the common facilities from Builder only in May 2022. Date of ownership of the flats are different, some owners sold the flats, many tenants changed during the under-billing period. In view of the difficulties in recovering this huge amount of under billed amount for past period spanning five years, we approached the CGRF-Southern Region (hereinafter referred to as CGRF) with Petition OP No:48/2022 to consider this case as a time barred case and waive the bill.

In the meantime, we studied the Kerala Electricity Supply Code 2014 thoroughly. We also studied various judgments on similar disputes by CGRF, Electricity Ombudsman, District Consumer Disputes Redressal Forum and Honourable Courts.

Realizing that we may not get a complete waiver of the bill, we had agreed for settling the issue amicably with following solution.

1. Withdrawal of short assessment Bill No: 5624220700334 amounting to Rs. 12,06,931 as it is as per clause 134 of supply Code which is not applicable in this case.
2. Issue fresh demand notice as per clause 152 as the anomalies are clearly attributed to licensee only which are detected at our premises. As per clause 152(3) the period of limitation for realisation of electricity charges is twelve or twenty-four months as the case may be. We believe the period should be twelve months prior to date of detection of anomaly (20/06/2022)

Actual date of occurrence could not be clearly established without any doubt. Period of occurrence of calculation wrong CT ratio is taken as the date of initial charging on 26-09-2017.

Similarly, the date of occurrence of non-functioning of one CT meter as the date of fitment of new energy meter as old energy meter has gone to scrap consequent to flooding of Electrical room. The date of initial charging and subsequent charging after shifting of Electrical room was certified by Inspectorate and KSEB Officials. They would not have given clearance with such serious anomalies.

We had agreed for above solution during hearing held on 29th Sept, 2022.

We also supported our case with a Judgment of Kottayam District Consumer Redressal Forum (Case No: CC/57//2019. Sree Gokulam Highway Tower Apartment Owner's Welfare Association vs KSEB -Nattakom Sub-division, Kottayam).

Same was given it in writing along with copy of Judgment of exactly similar case which was handed over to Mr. M. Sabu Member-Ill of the Forum in presence Chairman and other members.

The CGRF without adjudicating on the matter of whether the bill issued under regulation 134 was good in law, confirmed the bill and directed that KSEBL grant us 12 interest free instalments to remit the same.

Aggrieved by the order of the CGRF dated 26-12-2022 in Petition OP No.48/2022 received by us on 07-01 -2020, this Appeal Petition is being filed
Appeal

01) The Meter and the Transformer are both located in the same room before and after the relocation after the floods of 2020.

02) The ATPS conducted the inspection 5 years after the installation, but hardly one month after the handing over of the Electrical connection of the Owners Association by the builder thereby leaving open a disputed question of law as to who should bear the liability, if any.

03) According to the version of KSEBL recorded in page 3 of the order of the CGRF the Current Transformer (CT) malfunctioned for 1 year and 230 days prior to the date of inspection by the ATPS. This would indicate that the malfunction started only 3 days after the inspection and commissioning of the new Electrical Room by the KSEBL.

Arguments of the Respondent

On noticing the above factual positions during the detailed inspection conducted by the APTS wing of KSEB Ltd. On 18.06.2022, a detailed site mahassar was prepared by Sri. Manoj K, Sub Engineer. Electrical Section Pala.

Following the inspection, the energy meter with serial number SI.NO - 1188855 was tested at TMR. Angamaly and the detailed test report is attached herewith, marked as Exhibit D2. The detailed test report D2) clearly reveals that the current of the 'R phase' is missing for 1 year and 230 days and percentage of error on account of the same is 31.526.

Therefore, it is clearly established that the premises remained undercharged for 1 year and 230 days (as per test report) on account of missing of R phase CT current.

The Current Transformer installed in the premises with effect from 26.09.2017 with actual CT ratio of 40 remains in the premises from the above date without being changed. Therefore, escaped demand on account of erroneous application of multiplication factor 20 instead of actual multiplication factor 40 is to be ascertained with effect from 26.09.2017.

As per Regulation 134(1) of Kerala State Electricity Supply Code 2014, "If the Licensee establish 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 30 days shall be given to the consumer for making the payment of the bill".

In accordance with the Regulation 134(1) of Kerala State Electricity Supply Code 2014. the exhibit D3, bill dated 01.07.2022 marked and enclosed herewith for Rs. 12,06.931 (Rupees Twelve Lakhs Six Thousand Nine Hundred and Thirty One Only) was issued to the consumer on 01.07.2022. The detailed calculation statement of bill is attached. It is most humbly submitted before the Honourable Forum that in Civil Appeal No. 7235 of 2009 before Honourable Supreme Court of India against M/s. Prem Cottex vs Uttar Haryana Bijii Vitran Nigam dated 05.10.2021 and Civil Appeal No. 1673 of 2020 before Honourable Supreme Court of India against M/s. AjmerVydyut Vitran Nigam Limited dated 18.02.2020, as per judgment, copies enclosed herewith. It is categorically asserted the right of the licensee to rectify short billing on detection of mistakes resulted.

It is humbly submitted before the Honourable Forum that the undercharging of the premises on account of the findings of the inspections stands clearly established. The Exhibit D3. bill issued to the petitioner is intended to rectify the undercharging of the premises due to escaped demand and only charges

for the energy actually consumed by the consumer is demanded. Apart from this, suitable instalment schemes (interest free) are allowable for the appellant for remittance of dues on request.

As a responsible licensee, it is the bounden responsibility of KSEB Ltd. to conduct review and inspection and ascertain the escaped demand in the system to extend possible. The undercharging on account of escaped demand has to be billed and realized from the consumers who have actually consumed the same. Otherwise, the same will be booked under transmission loss and ultimately reflect in the tariff petitions of the licensee for realization from other innocent consumers. Therefore, in public interest as well as on account of principles of natural justice, it is humbly prayed that KSEB Ltd. may be permitted to realize the bill from the appellant.

The finding of Honourable CGRF, Kottarakkara in the order dated 26.12.2022 in OP No. 48/2022 is under sustainable grounds and ought to be implemented in toto. As per Regulation 152(1) and (2) of Kerala Electricity Supply Code 2014, this licensee is empowered to realize the short collected energy charges in the case of the anomalies of applying wrong multiplication factor and missing of R phase consumption in the. energy meter.

The Hon'ble C.G.R.F. Kottarakkara have rightly pointed out the settled positions asserted by the Hon'ble Apex Court as detailed below

"As regarding the period of limitation of two years, it is pertinent to mention the judgment pronounced by the Hon'ble Supreme Court in Civil Appeal No. 1672 of 2020 (Arising out of SLP (Civil) No. 5190 of 2019) Assistant Engineer (DI) Ajmer Vydyut Vitran Nigam Limited vs I] Rahmatullah Khan asserted that Section 56(2) does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand"

The petitioner is liable to remit the supplementary demand for Rs. 12,06,931/- raised as per the rules and regulations in force and as well as the above landmark order passed by the Hon'ble Apex Court.

The grounds upon which the demand is sustainable and beyond doubt. The appellant is not entitled to raise any fresh grounds other than those raised in the petition filed before Honourable C.G.R.F. Kottarakkara.

On the basis of the above, it is most humbly prayed before this Hon'ble State Electricity Ombudsman that the appeal filed may be dismissed as the same is filed without any merit and to avoid payment of legitimate dues on account of energy actually consumed in the premises.

Counter argument of the Appellant against the version of Respondent

Grounds

1) The Meter, CT and multiplication factor till the date of inspection was the same as that from the date of initial commissioning. Other than a mere assertion on behalf of KSEB, no documents which have to mandatorily maintained by KSEB under regulation 109(11),(12),(13) & (14) and regulation 113(6) & (7) were placed before the CGRF. If the original of the meter particular sheet and the periodic test reports are placed before this. Ombudsman it would be helpful to determine the period of which the anomaly existed. This is not a new ground but a consequence of a stand taken by KSEB without filing the relevant documents to fortify the stand. If KSEB fails to produce the relevant records it is humbly submitted that principle on "SuppressioVeri" should apply.

2) The Hon Apex Court's decision in Civil Appeal No. 1672/2020 in the matter of Assistant Engineer. Aimer Vidvut Vrtharan Ltd & another Vs. Rahmathulla Khan (2020 W SCC 650)

The 'following extract of the facts that were adjudicated by the Hon Apex Court has been clearly stated in para 11 of CA/7235/2009 "Prem Cottex Vs Uttar Haryana Bijii Vitran Nigam Ltd"(Exhibit-3)

"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".

As clearly stated in the judgement the Hon Supreme Court only decided on whether a demand could be raised AFTER a period of 2 years. The Hon Supreme Court DID NOT decide on whether the demand could be raised for MORE than a period of 2 years, which is the limitation under Regulation 152(3) of the Supply Code.

The facts admitted by KSEB in page 1 & 2 are as follows. The following anomalies were detected in the ATPS inspection

- 1) Wrong application of multiplication factor
- 2) Faulty meter

In page 4 KSEB has contended that regulation 152(1) & (2) empowers it to issue the impugned bill. Without stating the relevant regulation in page 3 it has informed that interest free instalment schemes are available for the remittances, which is virtually regulation 152(4).

Regulation 152 of the Kerala Electricity Supply Code, 2014 is reproduced for your ready reference KSEB accepts that even though the APTS report shows the anomalies fall under regulation 152, and regulation 152(1),(2) &(4) would be applicable. KSEB has not listed the reason why regulation 152f3) would not be applicable.

KSEB has stated in page 2 that it had the meter tested and the report thereof is attached. This would indicate that the procedure under regulation 115 was followed. Consequently, it would follow that limitation under regulation 115(9) would be applicable for issuing the bill.

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It is submitted that a regulation governing a specific anomaly would override general regulation. Regulation 134 is a general regulation. Regulation 152 is specific whereas regulation 115 would be even more specific relating to a anomaly that may have been envisaged in regulation 152.

It is therefore submitted that though the anomaly of multiplication factor would be governed by regulation 152. However the meter having been found faulty after having been tested as per procedure specified in regulation 115, consequently billing would be as specified in regulation 115(9) for that anomaly.

"It shall be the responsibility of the licensee to maintain the meter and keep it in good working condition at all times".

KSEB has stated by sworn affidavit as to where such anomalies are buried in the accounts submitted to the KSERC. However, the statement is factually wrong on the following facts. Even for the current year ending 31-03-23 KSEB has obtained tariff orders on 25-06-2022, based on these figures already having been booked as transmission losses

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- 1) For the period for which KSEB has raised the impugned bill the consumption if any has already been booked as a transmission loss and tariff realised in subsequent years
- 2) The increased tariff because of this has been borne even by us.
- 3) KSEB by its own admission has given the benefit of regulation to certain consumers on its own accord and not as a consequence of a direction of by the authority. In those cases, it was buried the same under the head of transmission loss.

I would also like to draw the attention of this Hon Ombudsman to his very latest

order dated 25-01-2023 in Appeal Petition No: P/091/2022 (Exhibit 16) wherein it has upheld the validity and applicability of regulation 152(3). In a consumer friendly, initiative this Hon Ombudsman had enlarged the period of interest free instalments from 12 as contemplated in regulation 152(4) to 24 in its present. I would like to draw the attention to the fact that KSEB has NOT challenged the applicability of regulation 152(3), but has in fact supported the applicability of the regulation in the above cited matter.

It would therefore be amply clear that the DOCTRINE OF ESTOPPEL would bar KSEB from stating that regulation 152(3) is NULL and VOID.

Analysis and Findings

The hearing of the appeal petition was conducted in the Office of the Electricity Ombudsman, DH Road-Foreshore Road Junction near Gandhi Square, Ernakulam South at 11.30 AM on 10-03-2023. Sri Kuriakose T. Kuriakose, Sri Prince Mathew attended from the appellant side and Sri Rajan K.R., Assistant Executive Engineer, Electrical Sub Division, KSEB, Pala attended as Respondent.

On verifying examining the appeal petition, the arguments filed 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 conclusion leading to the decision thereof.

The service connection with Consumer No. 1156242022516 is for the common facilities of Skyline Grace Apartment at Pala. The connection load is 89 kW and the date of connection was 26-09-2017. Transformer and Electrical System along with meter was shifted from basement floor to first floor of the apartment complex because of the flood occurred during 2018 & 2019 and also avoid to damager of this electrical system and disruption of power during the flood. The common facilities handed over to Apartment Owner's Association on 20-05-2022. APTS of the licensee conducted inspection of the premises on 18-06-2022 and found these anomalies on 20-05-2022.

- 1) The R phase CT was damaged and there is no current reading for R phase and hence the reading was 31.526% lower than the actual. This was happened around 1 year and 230 days before the inspection.
- 2) The multiplication factor used for billing was 20 instead of 40. The current transformer used is in the ratio of 200/5 and hence the actual MF is 40. The CT installed in the premises on 26-09-2017 and this mistake is regularly happened in the billing since 09/2017.

Section 109 of Kerala State Electricity Supply Code 2014 deals with the supply and Installation of meters and circuit breakers. In the Section Subsection (11) to 14 clearly spell out procedure of licensee while installing the meter. A meter data sheet with all particulars are to be prepared and to be signed by the authorised representative of the licensee and consumer or his authorised representative. Then a copy of the same is to be handed over to the consumer with proper acknowledgement. Whenever repair, faults replacements etc happened the data sheet is to be updated. This regulation is not at all complied with and of this data could have been available, the wrong application of MF would not arised.

The Kerala State Electricity Supply Code 2014 Section 113 states about the testing of the meters and Subsection (6) of Section 113 specify that the licensee shall conduct periodical inspection or testing of both of the meters of LT, 3 phase once in every three years. In this case, it is very clear that the meters were not inspected for the last five years. If the section is complied with the mistake of billing would have been identified and corrections would have been made accordingly.

The Section 152 of the Supply Code 2014 is about anomalies attributable to the Licensee which are detected at the premises of the consumer. Section 152 (1) Anomalies attributable to the Licensee which are detected 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 in accuracies in metering shall not attract provisions of Section 126 of the Act. Section 152 (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 also that the realisation of electricity charges short collected shall be limited for a maximum of twenty four months even if the period during which such anomaly persisted is found to be more than 24 months.

This Section is only applicable for the case of incorrect multiplication factor and not the Section 134 as mentioned by the respondent. This Section is very clear that if the wrong multiplication factor applied period is of more than 24 months, the short assessment is limited to 24 months only.

In the case of wrong CT connection or damage or change of one phase, the Section 134 should be applicable. Section 134 (1) "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 in such cases at least 30 days, shall be given to the consumer making payment of the bill". As per the meter data the R phase CT was damaged for a period of 1 year 230 days and under charged amount during the period is to be payable by the appellant.

Hence in the case in hand the apartment complex is having 78 flats and common infrastructure charges are met by all the owners and collected by the flat owner's association. Over these years so many flat owners changed their ownership by selling the flat or otherwise. The occupants were also changed. Collecting these charges for the last 5 years never be possible due to this situation.

Here it is very pertinent to refer the order of Hon'ble Supreme Court in the case of No. 7235/2009 between M/s Prem Cottex and Uttar Haryana Bijli Vitran Nigam Ltd., by which the Court viewed about the limitation period. Also in the case No. 1672/2020 between Assistant Engineer, Ajmer Vydyut Vitran Nigam Ltd. and Rahamatullah Khan alias Rahamatullah. This is about Section 56 (2) of the Indian Electricity Act, 2003. Hence the Apex Court is clearly spelt about when the amount become first due and the limitation period is applicable from the date of first due. The date of first due is when the licensee realises the mistake and issue the bill. Both the cases the limitation period which is about raising the demand after the expiry of two years after the occurrence of mistake. This is not spelt out whether the

demand could be raised for a period more than two years. Then the Section 152(3) is only applied here.

The respondent in the statement of facts it is stated that “The under charging on account of escaped demand has to be billed and realised from the consumers who have actually consumed the same. Otherwise, the same will be booked under transmission loss and ultimately reflect in the tariff petitions of the licensee for realisation from other innocent consumers”. The argument of the appellant that the tariff fixation exercise has happened at different times for that last 5 years and accordingly these amounts would have been realised and this is to be considered. As such the argument of the respondent not sustainable.

There is a serious lapse happened from the licensee. The concerned official who has energised the service connection has not properly checked the details of CT and hence this heavy loss have happened to the licensee. Further, if the periodical inspection would have conducted as per regulation also this would have been get reduced. The meter reader also not checking whether the meter is reading properly. Hence one phase current was not available more than 1½ years and has not been notified by the meter reader.

Decision

From the analysis done and the conclusion arrived which are detailed above, the following decisions are arrived.

1. The short assessed amount due to the damage of R phase of CT for a period of 1 year and 230 days is payable by the appellant.
2. The short assessed amount arrived due to wrong application of CT multiplication factor is limited to 24 months.
3. The licensee may revise the short assessment demand accordingly.
4. The Order of CGRF is modified accordingly.
5. The licensee may identify that officials who is responsible for these mistakes and take necessary action accordingly and also device a mechanism to ensure that these mistakes are not repeated in future.
6. No order of cost.

ELECTRICITY OMBUDSMAN

No. P/004/2023/ _____ dated _____

Delivered to:

1. Sri. Kuriakose. T. Kuriakose, President, Skyline Grace, Apartment Owner's Association, Pala, Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Pala, Kottayam Association, Pala, Kottayam

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.