

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/044/2023
(Present A. Chandrakumaran Nair)
Dated: November-13-2023**

Appellant : Sri. Salim M.M., The Secretary,
MES M.K. Mackar Pillay
College for Advanced Studies,
Edathala North P.O., Aluva,
Ernakulam- 683561.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Kizhakkambalam, Ernakulam.

ORDER

Background of the case

The appellant Shri. Salim D.M. is the Secretary of MES, which is running an educational institution at Edathala Ernakulam in the name M.K. Mackar Pillay College for Advanced Studies. This is a self financial institution and is consumer to the licensee (KSEBL) under the tariff LT VI F. The consumer was billing under wrong tariff LT VI A for a period from 09/2009 to 07/2017. During this period the Kerala State Electricity Regulatory Commission has changed the tariff of self financing institution three times. The wrong tariff application was detected by the Regional Audit office during the audit conducted on 28/10/2022 and accordingly the short assessment bill issued to the consumer on 01/03/2023 for an amount of Rs. 4,41,060/-. The appellant has challenged the bill before the CGRF Central Zone and CGRF issued the order on completing the proceedings dated 04/08/2023. Aggrieved by the decision of CGRF, this appeal petition is filed to this authority.

Arguments of the Appellant

1. The appellant/complainant is conducting an educational institution by name MES M.K Mackar Pillay College of Advanced Studies, Edathala North P.O., Via Aluva, Ernakulam with consumer No:115750004149 under LTVI tariff. The above said educational institution was established in the year 2005 and electricity connection was granted to the complainant under LT VI A tariff.

It is submitted that on 1/3/2023 the first respondent has issued a demand cum disconnection notice to the complainant demanding an exorbitant amount of Rs 466191 as electricity charges including an amount of a Rs 441060 as arrears alleging misclassification of tariff under self-financing educational institution. Accordingly, arrears of bill were calculated for the period 9/2009 to 7/2017. The complainant had remitted the regular current charges till this date. Immediately on receipt of the demand cum disconnection notice, the complainant had submitted a representation requesting to furnish the copy of the records pertaining to the issuance of the bill, so as to enable the complainant to raise objection in the matter. But the respondents so far not furnished any report relating to the issuance of the impugned bill. However, furnished a copy of the statement of misclassification of tariff.

2. Aggrieved by the demand notice, the appellant have approached CGRF, Central Region by preferring Complaint. The appellant has raised specific grounds with reference to the illegal demand made by the respondents contrary to the provisions contained in Kerala Electricity Supply Code and Electricity Act.

The respondents filed statement of facts and contended that the impugned bill was issued on the basis of an internal audit conducted by the Regional Audit Officer of the licensee on 28/10/2022 and admitted the fact that timely tariff changes were not made, which resulted in the issuance of demand notice on 1/2/2023 on the basis of a tariff order issued up to the year 2017.the licensee also admitted the fact that the appellant was informed the misclassification of tariff for the first time on 1/2/2023..Though the CGRF found that there was a mistake on the part of the officials of the licensee not adhering the Tariff Orders, but declined to interfere with the impugned bill and held that the appellant is liable to pay the shot assessment bill .Hence this Appeal on the following among other

3. The change of tariff was not intimated to the appellant or issued any prior notice intimating the same

In the matter of issuance of impugned demand notice, the respondents has not followed the provisions contained in Regulation 97 of the Kerala Electricity Supply Code, 2014.

As per Regulation 97 of the Code, which deals with suo moto reclassification of consumer category .The board is bound to inform the proposal of reclassification through notice and to provide 30 days to file objections,if any and thereafter considering the reply of the consumer ,may reclassify appropriately.

In this context it is relevant to note that as per Regulation 97(5) the arrears of excess charges shall be determined based on the actual period of reclassification or a period of 12 months whichever is lesser. Here the appellant came to know the misclassification of tariff only on the receipt of the demand notice issued by the respondent and the Board has so far not issued any communication with regard to the misclassification of tariff or the exact period of reclassification.In the above circumstances there is no justification in issuing the impugned demand notice from the period 9/2009 to 7/2017 Which is legally impermissible.

4. Issuance of Short Assessment bill for misclassification of tariff is not as per the provisions of Supply code 2014.

There is no Regulation in the Supply Code authorizing the Board to issue demand notice alleging misclassification of tariff No notice was served to the complainant till the date of issuance of the impugned bill. As can be seen from the impugned demand notice the period of misclassification of tariff was for the period 9/2009 to 7/2017 is arbitrary and illegal and the same is liable to be set aside. The CGRF has not considered the above aspect in the impugned order.

5. The impugned demand notice doesn't disclose the basis on which the same was issued

The appellant does not know how the board arrived at a huge sum nearly 441060 as short assessment arrears of bill. With consultation with experts, it is known that the methodology adopted by the board for calculation of arrears was done without any statutory backing and intended to grab money from the consumer.It is relevant to note that the basis of issuance of demand notice was not disclosed to the appellant at the time issuance of the same and no opportunity was granted to the appellant to raise objections in the matter.

6. The imposition of demand is barred by limitation under Section 56(2) of the Electricity Act 2003 and therefore legally not recoverable.

In the instant case, the demand was for the period 9/2009 to 7/2017 and the impugned notice was served only on 1/3/2023 .As can be seen from the facts and circumstances of the case, no prior notice was also issued to the complainant with regard top the alleged mis classification of tariff. Therefore Sec 56(2) is squarely applicable in the instant case and the demand notice is liable to be set aside.

7. The impugned demand is in violation of Regulation 136 of Reg.136 of the supply code 2014

Regulation 136 deals with the recovery of arrears and its limitation. Sub clause 1 of Regulation 136 clearly states that the licensee shall been entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due. In the case on hand the arrears was for the period 9/2009 to 7/2017 and the same esame is hit by section 56(2) of the Electricity Act, 2003.In the instant case,the demand is raised for the first time only on 1/3/2023 and limitation period has to be calculated from 9/2007 therefore the same is liable to be set aside.

8. The action of the first respondent is in violation of principles of natural justice.

The respondent has not furnished the copy of the proceedings which culminated in the issuance of impugned demand notice and no opportunity was granted to the complainant to raise the objection in the matter..

The finding of CGRF,regarding the applicability of Regulation 152 is not applicable in the facts and circumstances of the complaint.The said Regulation is applicable in cases where the the anomalies detected on the basis of inspection at the premises and in such cases the period of short assessment should be limited to 24 months.

The CGRF has considered the matter in a pre-judicial manner.In this context it is pointed out that as can be seen from the statement of facts submitted by the respondents there is no whisper about the various contentions mentioned in the impugned order..Further at the time of hearing the matter,the respondents were given an opportunity to submit additional statement of facts and the Chairperson has assured the counsel for Appellant to give an opportunity of further hearing on the same. However without giving an opportunity of hearing the complaint was disposed in a hurry bury manner.

9. The finding of the CGRF regarding the publication of tariff order and objection to the same are untenable and it is the responsibility of the licensee to implement the tariff orders timely and the consumers cannot be made liable for the dereliction of duty occurred on the part of KSEBL officials and they cannot be penalized after the lapse of years.

It is relevant to note that the CGRF has not considered any of the grounds raised by the appellant in the impugned order and there is no whisper about the various legal aspects mentioned in the complaint as well as the argument note submitted by the appellant. In the instant case, the attempt of the licensee is to obtain undue enrichment and the same is without following the procedure established by law and the impugned bill was issued without following the statutory regulations.

10. Hence in the interest of justice it is most humbly requested that this Honourable Forum may be pleased to allow this appeal set aside the Against the order dated 4/8/2023 in CGRF-CR/O.P No:17/2023-24 of CGRF, Central Region, Kalamassery and sets aside the impugned demand notice and all further proceedings therein.

Arguments of the Respondent

1. The appellant is a Self-Financing Educational Institution with an electrical connection under LT IV F tariff under the jurisdiction of the 2nd respondent. KSEBL issued a short assessment bill on 01/02/2023 for an amount of Rs.465974/- as arrears dues to the misclassification of tariff for the period from 09/2009 to 07/2017. The appellant challenged the bill before the Hon'ble CGRF Centre by filing complaint- OP No.17/2023-24. The forum dismissed the complaint on 04/08/2023.

It is submitted that the short assessment bill was issued upon an internal audit conducted by Regional Audit Office team of the licensee on 28/10/2022 and the anomalies brought to the licensee on that time only. The consumer had been billing under LT VI A tariff from the period of 09/2009 to 07/2017, during this time period three times tariff changed as per the order of the Kerala State Electricity Regulatory Commission (KSERC). The tariff changes are implemented on the basis of the tariff revision order of the KSERC from time to time.

2. The regulation 134 to 136 of the Supply Code provides for the under charged bill/short assessment bill and permit the licensee to recover the amount so undercharged from the consumer by issuing a bill. The limitation period clause in 36(3) is not applicable in the case of the appellant. The Hon'ble Supreme Court of India vide judgment dated

05/10/2021 in Civil Appeal No.7235 of 2009 M/S PREM COTTEX Versus UTTAR HARYANA BIJLI VITRAN NIGAM LTD. & ORS. held that Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the benefit of the section 56(2) is not applicable to case of the appellant.

3. Tariff order of the Regulatory Commission which published through Govt Gazette is a Public notice and is an announcement made by a government or a public authority that is published in a newspaper, on the Internet or other media. A public notice may be issued to inform the public about a change in the law and regulations, Hence the argument of the appellant in para. No.1 lack merit and individual notice on revision of tariff by regulatory commission is not warranted as per law.

The regulation 152 of the Supply Code, 2014 allows the licensee to recover the short-collected amount from the consumer under the normal tariff rate applicable to in the case of anomalies attributable to the licensee which are detected at the premises of the consumer. Hence the argument of the consumer in para.2 that issuance of short assessment bill for misclassification of tariff is not as per the provisions of supply code 2014 is legally not sustainable.

4. It has shown that the short assessment bill issued for the period from 09/2009 to 07/2017 and also for incorrect application of tariff, hence allegation in para.3 is denied. A short assessment bill and detailed calculation sheet has given to the consumer, the calculation sheet in detail explained the period of assessment, revised tariff rate, period for which the short assessment arrived, fixed charge, energy charge etc.

It is submitted that the respondent not created any kind of arbitrariness, illegality, or other legal infirmities in the short assessment bill/order passed.

5. As regarding limitation period as per the section 56(2), the Hon'ble High Court of Kerala in Union Bank of India v. The Deputy Chief Engineer and Ors. WP (C) No. 20553 OF 2014 order dated the 11th day of January 2023, the Kerala High Court recently observed that Electricity Board's claim for additional amount on the basis of alleged usage of electricity is not barred by law of limitation when the violation is a continuous and

recurring one. Clause 56(2) of the Electricity Act 2003 is a non-obstinate clause to the effect that no sum due from any consumer under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. *Therefore, the limitation of two years prescribed under the said provision will not apply to the case on hand, being a continuous one. Typical is the provision contained under Regulation 136 of the Kerala Electricity Supply Code, 2014. This is in addition to the factors provided under Section 126 (5) of the Act 2003.*

6. *The Hon'ble Supreme Court considered the tariff applicable to the self-financing educational institutions in detail in Civil Appeal No.8350 of 2009 and vide order dated 20/02/2020 upheld the tariff order of the KSERC that fixed higher tariff for the Self-Financing Educational Institution.*

The Hon'ble CGRF Centre forum vide its order dated 04/08/2023 held that the consumer is liable to pay the short assessment bill amount so the appeal may be dismissed and may be upheld the short assessment bill issued by the respondents.

Counter Arguments of the Appellant

1. The change of tariff was not intimated to the appellant or issued any prior notice intimating the same

In the matter of issuance of impugned demand notice, the respondents has not followed the provisions contained in Regulation 97 of the Kerala Electricity Supply Code, 2014. As per Regulation 97 of the Code, which deals with suo moto reclassification of consumer category .The board is bound to inform the proposal of reclassification through notice and to provide 30 days to file objections, if any and thereafter considering the reply of the consumer, may reclassify appropriately.

In this context it is relevant to note that as per Regulation 97(5) the arrears of excess charges shall be determined based on the actual period of reclassification or a period of 12 months whichever is lesser. Here the appellant came to know the misclassification of tariff only on the receipt of the demand notice issued by the respondent and the Board has so far not issued any communication with regard to the misclassification of tariff or the exact period of reclassification. In the above circumstances there is no justification in issuing the impugned demand notice from the period 9/2009 to 7/2017, which is legally impermissible.

2. Issuance of Short Assessment bill for misclassification of tariff is not as per the provisions of Supply code, 2014.

There is no Regulation in the Supply Code authorising the Board to issue demand notice alleging misclassification of tariff on the basis of Audit Inspection Report. Appellant was not furnished with a complete copy of the Audit Report. No notice was served to the complainant, till the date of issuance of the impugned bill. As can be seen from the impugned demand notice, the period of misclassification of tariff was for the period 9/2009 to 7/2017 is arbitrary and illegal and the same is liable to be set aside. The CGRF has not considered the above aspect in the impugned order.

3. The impugned demand notice does not disclose the basis on which the same was issued

The appellant does not know how the board arrived at a huge sum nearly 441060 as short assessment arrears of bill. With consultation with experts, it is known that the methodology adopted by the board for calculation of arrears was done without any statutory backing and intended to grab money from the consumer and to protect the Board Officials who are responsible for the loss. It is relevant to note that the basis of issuance of demand notice was not disclosed to the appellant at the time of issuance of the same and no opportunity was granted to the appellant to raise objections in the matter.

4. The imposition of demand is barred by limitation under Section 56(2) of the Electricity Act 2003 and therefore legally not recoverable.

In the instant case, the demand was for the period 9/2009 to 7/2017 and the impugned notice was served only on 1/3/2023. As can be seen from the facts and circumstances of the case, no prior notice was also issued to the complainant with regard to the alleged misclassification of tariff. Therefore Sec 56(2) is squarely applicable in the instant case and the demand notice is liable to be set aside.

5. The impugned demand is in violation of Regulation 136 of Reg. 136 of the supply code 2014

Regulation 136 deals with the recovery of arrear and its limitation. Sub clause 1 of Regulation 136 clearly states that the licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due. In the case on hand the arrears were for the period 9/2009 to 7/2017 and the

same is hit by section 56(2) of the Electricity Act, 2003. In the instant case, the demand is raised for the first time only on 1/3/2023 and limitation period has to be calculated from 9/2007 therefore the same is liable to be set aside.

6. The action of the first respondent is in violation of principles of natural justice. The respondent has not furnished the copy of the proceedings which culminated in the issuance of impugned demand notice and no opportunity was granted to the complainant to raise the objection in the matter.
7. Applicability of Regulation 152 of Supply Code: The finding of CGRF, regarding the applicability of Regulation 152 is not applicable in the facts and circumstances of the complaint. The said Regulation is applicable in cases where the anomalies detected on the basis of inspection at the premises and in such cases the period of short assessment should be limited to 24 months.

The CGRF has considered the matter in a pre judicial manner. In this context it is pointed out that as can be seen from the statement of facts submitted by the respondents there is no whisper about the various contentions mentioned in the impugned order. Further at the time of hearing the matter, the respondents were given an opportunity to submit additional statement of facts and the Chairperson has assured the counsel for Appellant to give an opportunity of further hearing on the same. However without giving an opportunity of hearing the complaint was disposed in a hurry bury manner.

The finding of the CGRF regarding the publication of tariff order and objection to the same are untenable and it is the responsibility of the licensee to implement the tariff orders timely and the consumers cannot be made liable for the dereliction of duty occurred on the part of KSEBL officials and they cannot be penalized after the lapse of years.

It is relevant to note that the CGRF has not considered any of the grounds raised by the appellant in the impugned order and there is no whisper about the various legal aspects mentioned in the complaint as well as the argument note submitted by the appellant. In the instant case, the attempt of the licensee is to obtain undue enrichment and the same is without following the procedure established by the law and the impugned bill was issued not in-compliance with the statutory Regulations.

8. It is pointed out that the decision relied by the Board in the statement filed by the KSEB in the above appeal has no application in the facts

and circumstance of the instant case. In Union Bank of India V/S The Deputy Chief Engineer & Others (W.P 9 c) No:20553/2014), the issue considered by the Honble High Court pertains to a proceedings under 126 of Electricity Act and also the claim for additional amount on the ground of limitation.

In the case on hand the issue involved is entirely different and the same is based on misclassification of tariff and therefore the above mentioned judgment has no application in the facts of the case. Copy of the judgment in W.P (c) No;20553/2014 of Hon' ble High court of Kerala is produced herewith.

9. It is further submitted that the Hon'ble Apex Court in Civil appeal No:1672/2020 has considered a similar issue and it was held that the licensee did not to take recourse to the coercive measure of disconnection of electricity supply for the recovery of additional demand..It was further observed that the period of limitation would commence from the date of discovery of mistake and is barred from disconnection of supply of electricity under sub sec 2 of Sec 56 of the Act.

In the instant case, the Audit Inspection was conducted on 28/10/2022 and the demand cum disconnection notice was issued on 1/2/2023 for the period 9/2009 to 7/2017..In this context it is pointed out that there is no provision either in the Electricity Act or in the Kerala Electricity Supply Code, 2014 which empowers the Board to issue demand notices claiming electricity charges on different grounds. The consumer has nothing to do with the internal audit of the Board, since it is an internal administrative work. No reliance can be given on such reports and consequential demand to the consumers.

Hence in the interest of justice it is most humbly requested that this Honourable Forum may be pleased to allow this appeal set aside the Against the order dated 4/8/2023 in CGRF-CR/O.P No:17/2023-24 of CGRF, Central Region, Kalamassery and set aside the impugned demand notice and all further proceedings therein.

Analysis and findings

The hearing of the appeal petition was conducted on 31/10/2023 at 11:30 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant Sri. Salim M.M., The Secretary, MES M.K. Mackar Pillay College for Advanced Studies, Edathala North P.O., Aluva, Ernakulam, Advocate Sri. Mansoor B.H. and the respondent Sri. Sunil Kumar P.U., AEE, Electrical Sub Division, Kerala State Electricity Board Ltd., Kizhakkambalam.

The consumer of the licensee is a self financing institution and the appellant is the secretary of the institution. All the educational institutions were billed under tariff LT VI A prior to 09/2009. The Kerala Electricity Regulatory Commission (KSERC) has changed the tariff of Self financing institution to LT VII A since 09/2009 and again changed to LT VIII with effect from 06/2013 and then to LT VI F effective from 10/2014. The prevailing tariff of the self financing institution is LT VI F.

The officials of the licensee was billing the consumer in the wrong tariff which is LT VI A. The KSERC issued three tariff change and the licensee has issued circulars based on the tariff determination at the respective time. The officials of the licensee were not bothered about this and this resulted to a huge financial loss to the licensee.

On 28/10/2022, the RAU have conducted an audit and find out this anomaly and short assessment amount was calculated and bill was issued to the consumer on 01/02/2023 for Rs. 4,41,060/-. The short assessment was calculated for a period from 09/2009 to 07/2017 which is for 7 years and 11 months. The question is whether this short assessment bill is sustainable as per regulation/law?

The Section 134 of the Supply Code deals with under charged bills.

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

The Section 136 of the Supply Code is about the recovery of arrears and its limitations.

136(3) *“No such sum due from any customer, 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”.*

The appellant version is that as per Section 97 of the Supply Code the consumer would have issued prior notice intimating the tariff change.

Section 97(1) *“If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category”.*

97(2) “The consumer shall be informed of the proposed reclassification through a notice period of thirty days to file objections, if any”.

97(3) “The licensee after due consideration of the reply to the consumer, if any, may reclassify the consumer appropriately”.

97(4) “Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be suitably adjusted”.

97(5) “if the actual period of wrong classification cannot be ascertained reasonably, the period shall 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:

Provided that in the case of reclassification consequent to change of the purpose of supply by the consumer without due authorization, the license may examine each case and initiate proceedings under Section 126 of the Act if found necessary”.

Here in this case in hand, the reclassification is not Suo motu by the licensee, it is based on the direction of the KSERC as per the tariff determination exercise entrusted to KSERC according to the Electricity Act. However, as per the above Section the arrear or excess charge are to be determined for the actual period of wrong classification.

The tariff determination is detailed exercised carried out by the KSERC as per the Section 86 of the Electricity Act- 2003 after conducting public hearing etc. The approved tariff is published through the Govt. Gazette in time for the awareness of the stake holders and public. The appropriate and official media to publish the regulations is the Government Gazette. When this is published in Government Gazette, no separate intimation is required for any consumer regarding the tariff change etc. The detailed calculation regarding the short assessment would have been given to the consumer. Then the Section 97 is not applicable in this case.

In this case the time limitation as per Section 56(2) of the Electricity Act 2003 and Section 136 of Supply Code 2014 is applicable or not?

Section 56(2) “Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

The Section 56(2) of the Electricity Act 2003 and 136(3) of Supply Code 2014 were clearly specified that the limitation period of two years is applicable from the date when such sum became first due. When the amount become first due? This has been clearly explained by the Hon'ble Supreme Court of India in Civil appeal no. 7235 of 2009 and Civil appeal no. 1672 of 2020.

The relevant paragraphs of the Civil appeal 7235 of 2009 are;

Para 11 *“In Rahamathullah 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 the 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 Rahamathullah 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 52(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 bonafides 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 13 *“Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(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 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".

"The Section 17(1) (c) of the Limitation Act- 1963, provide that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to reign until the plaintiff had discovered the mistake or could within reasonable diligence have discovered it".

According to the decision of a Supreme Court in the Civil appeal of M/s Prem Cottex Vs. M/s Uttar Haryana Bijli Vitaran Nigam Limited and as per the law of limitation the amount has become first due only when the mistake is detected. Here in this case the mistake is detected on 28/10/2022 and demand was raised on 01/03/2023. This is well within the limitation period and hence the argument of the appellant is not having any merit.

In view of the above the short assessment bill raised by the licensee is sustainable and accordingly the appellant is liable to pay the demand. However, there was a considerable delay occurred from the officials of the licensee in detecting the mistake. Another important factor is to be considered is that the officials changed the tariff with effect from 08/2017, even then they are purposefully not worked out the amount recoverable from 9/2009 onwards. The tariff change applied on 08/2017 was actually effective from 10/2014 as per the order of KSERC. The financial loss suffered by the licensee is due to the inaction of official and the loss suffered is to be recovered from the erred officials.

Decision

Verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the demand raised by the licensee for the tariff change.

2. The licensee has to give detailed calculation of amount arrived to the appellant.
3. The licensee shall grant 12 monthly installments for remitting the payment.
4. No interest is to be charged.
5. The official responsible for the delay in applying the tariff change is to be identified and suitable action is to be taken.
6. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/044/2023/_____ dated: 13/11/2023.

Delivered to:

1. Sri. Salim M.M., The Secretary, MES M.K. Mackar Pillay College for Advanced Studies, Edathala North P.O., Aluva, Ernakulam- 683561.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Kizhakkambalam, Ernakulam.

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, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503.