

STATE ELECTRICITY OMBUDSMAN

THANATH BUILDING, CLUB JUNCTION, POOKKATTUPADY ROAD,
EDAPPALLY TOLL, KOCHI-682 024.

WWW.keralaeo.org E-mail:ombudsman.electricity@gmail.com

Phone: 04842575488 Mob: +91 9567414885

REPRESENTATION NO: P/176/2010

(Present: T.P.VIVEKANANDAN)

Appellant : Sri. Sankaranarayanan T.B
Managing Partner, Monarch Industries,
Kanayam P.O., SHORNUR- 679125

Respondent : Assistant Executive Engineer.
Electrical Sub-Division, KSEB, SHORNUR.

ORDER

The Appellant is a consumer of KSEB and is seeking to quash the Order of Hon: CGRF, declaring the Electricity Bill in dispute as valid and is liable to pay, upon a petition filed by him before CGRF, Northern region, Kozhikode. His main contention is that a bill raised after the expiry of two years is time barred and consequently the bill served on him in Jan:2010 for an amount due in March 2007 is wag and irrelevant and hence not maintainable before law.

Background of the case:-

The Appellant is having an Electric Service connection under Industrial tariff with consumer No 5155 of Electrical Section, Shornur. He was served with a short assessment bill for Rs3017/- in Jan: 2010, being the dues pertaining to the period from 11/2006 to 2/2007, as his Meter was reported to be faulty during that time. The assessment was made based on the average consumption prior to Meter faulty period.

Argument of the Appellant:-

The conclusion and Order of CGRF as the bill for Electricity charges become due only when it is raised is against the Electricity Act and Natural Justice, as any demand /bill raised after an indefinite period is binding on the consumer. If it is so, any bill raised at any time by the Licensee is valued and hence is against the Electricity Act and Regulations made there under. As per Electricity Act 2003, the demand/bill for Electricity charges is to be raised by the next billing date and within the period of 2 years from the date the amount is due. In our case the amount is due to the Licensee on March 2007. The bill demanding the payment is raised on 6.1.2010 and that date is after a period of 2 years and 9 months. The conclusion of CGRF that 'the bill become due only after it is raised' is against the Ele. Act and regulations as any bill raised after an indefinite period is binding to consumer is wag and irrelevant. Therefore the conclusion of CGRF may be cancelled as the disputed bill is time barred and this will meet the end of justice.

Argument of the Respondent:-

The Power Meter of the consumer was faulty during the period from 11/2006 to 2/2007 and was replaced on 27.2.2007. No user average for the Power meter consumption was charged during the faulty period. Only Fixed charge (FC 17KWXR45=Rs765) and current charge of Light meter consumption was charged. As per the findings of audit party, a short assessment bill amounting to Rs 3017/-was

issued to the consumer on 06.01.2010 taking the average power meter consumption prior to meter faulty period.

The bill issued is not an arrear bill but only a short assessment bill and hence no interest was charged for the period from 11/2006 to bill date. The Regulation 24(5) of Supply Code permits the Licensee to recover the amount under charged from the consumer by issuing a bill if the licensee establishes that it has under charged the consumer. No time limit is specified for this. It is evident from the reading and calculation register that the consumer was under charged. The Appellant does not dispute this fact. The contention that the bill is time barred is not true. As per Section 56 (2) of Ele. Act 2003 and Regulation 18(8) of supply code, no sum due from the consumer shall be recoverable after a period of 2 years from the date when such sum became first due. In this case the amount became first due only on 6.1.2010 after the bill has been sent and as such the period of two years has not exceeded. The Hon: High Court of Bombay in its judgment on the case 3784/2007 has clearly stated that the word due in this context of section 56(2) must mean due and payable after a valid bill has been sent to the consumer. Hence the bill is payable by the consumer.

Findings:-

The main contention of this case is to decide on the point 'when the electricity charges become due for payment' i.e. the date from which the Electricity charges are 'liable to pay' by the consumer, which is also termed as the 'due date'. This is an important date as far as both consumer and Licensee is concerned. This is because after a period of 2 years from the 'due date' the bills are time barred and hence the consumer is not liable to pay the amount even if it is a legitimate claim otherwise. Therefore it becomes a boon to the consumer and a loss to the Licensee sometimes. For an upright and bonafide consumer, he need not worry of Notices of long pending arrears after a period of 2 years. In the case of Licensee, he should be more vigilant and smart in preferring the bills in time, other wise he has to suffer the loss for the omissions and laxities occurred on his part.

The consumer does not dispute the short assessment bill raised by the respondent as a bogus claim. His only contention is that it is time barred and hence invalid. He further argues that if this is the case, the Licensee is at liberty to raise a bill at any time and this is against the spirit of the Electricity Act 2003, especially Section 56(2) of the Act and also against Natural Justice. Since this is a delicate issue which can only be interpreted by Learned Judges, I am of the view that, if this issue has been dealt with, analyzed and given a firm opinion by any Hon: Court of Law/ Jurists, we may follow the same till it is reversed by a superior body. As such, I have before me the Judgment in the Petition filed, vide case No: 3784/2007, before the Hon: High Court, Bombay which has dealt the issue in detail and pronounced its considered opinion. In this context I am reproducing the main point spelt by Hon: Judge as follows;

' In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of a bill. Though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him.'.....

Here the Appellant does not question the quantum or method of assessment of the bill raised against him. He is also convinced that he has not paid the Power energy consumption charges earlier. The bills, for Electricity Charges issued during the disputed period of 11/2006 to 2/2007, contained only one part of the Bill i.e. the 'Fixed charges' based on Demand KVA and not the second part namely the power consumption charges as the Meter was faulty. This mistake was found out by the Audit wing of

KSEB and subsequently issued the bill in 1/2010. The consumer's only objection is with respect to time bar limitation.

Decision:-

As the expression 'due date' has been clearly interpreted by eminent Jurists as noted above and is construed as the date of issue of a bill alone, I am of the view that the Hon: CGRF verdict in this case is in order and the appellant is liable to pay the short assessment bill, raised on 6.1.2010 for the period of 11/2006 to 2/2007, as the same is found not time barred

No order on costs. The Appeal petition is concluded and decided as above. Dated the 17th day of May 2011, the Petition is disposed of accordingly.

ELECTRICITY OMBUDSMAN.

NO:P/176/2010/ 864 dated 17.05.2011.

Forwarded to:

- (1).Sri Sankaranarayanan T B,
Managing director, Monarch Industries, Kanayam P O, Shornur – 679125.
- (2).The Assistant Executive Engineer, Electrical Sub-Division, KSEBoard, Shornur.

Copy to:

- 1) The Secretary. Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-695 010.
- 2) The Secretary. KSE Board, VB, Pattom, Thiruvananthapuram-4.
- 3) The Chairperson, CGRF, KSEB, VB, Kozhikode.