

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/295/2012.

(Present T P Vivekanandan)

APPELLANT : The Managing Director,
Hotel Indraprastha, English Church Road,
Palakkad.

RESPONDENT : The Assistant Executive Engineer
Electrical Sub division, KSEB,
Sulthanpet, Palakkad

ORDER.

Background of the case: -

The appellant represents, M/s Hotel Indraprasatha, a star Hotel which was having a Low Tension (3-phase 415 V supply) electric connection with consumer No.6382, under Electrical Section, Sulthanpet, Palakkad. The consumer is running Hotel business and accordingly the applicable tariff was LT-VIIA-commercial. But based on a Govt. policy of giving more facilities to promote Tourism in Kerala, Tourism was given equal status of industry and as such the electricity tariff of those Hotels who got approval, including the appellant, was assigned LT IV- industrial tariff since 6/1987. Later, the Govt. reversed the order and withdrew the concession of low rate industrial tariff granted to Hotels with effect from 15.10.1999, vide GO.(MS) No.537/200/GAO dated 26.09.2000. Accordingly, the appellant's tariff was reclassified by KSEB, to the eligible LT commercial category.

Being aggrieved, the affected consumers including the appellant challenged the said Govt. order (withdrawing the industrial tariff), before the Hon High Court of Kerala vide WP (C) No. 17151 of 2007. Since the Writ petition was decreed in favor of KSEB, the consumer challenged the judgment before the Hon Supreme Court vide SLP No. 11808 (07) and the Court decided that the Govt. order dated 26/9/2000, wherein the tariff concession was restricted, will have only prospective operation i.e. with effect from 26.09.2000 only. Meanwhile, the consumer opted for HT supply (11 KV) as his Power

demand (connected load) has increased to more than 100 kVA and as such, his electric connection was charged under HT-IV commercial category, with effect from 22.10.2003.

Based on 'stay orders', obtained from the Hon High Court and later from the Hon Apex Court, the appellant was remitting the electricity charges for the period 10/2000 to 10/2003, at the industrial tariff rate, instead of the commercial tariff. The party has also given an undertaking to KSEB, agreeing to remit the full arrears (differential charges between the two tariffs) with interest, if the Hon Court's verdict goes against him (the petitioners).

As the Hon Supreme Court's order was in favor of KSEB, the respondent issued a demand notice dated 19.04.2012 to the appellant, demanding payment of arrears of Rs.2, 24,94,133, pertaining to the differential electricity charges for the period, 10/2000 to 10/2003, i.e. difference in the electricity charges between commercial and industrial tariff. This arrear bill contained both the principal amount and surcharge for the delay occurred from 10/2000. Later the surcharge for Rs.1,58,70, 256/- was waived vide letter dated 7.5.2012 of the Assistant Engineer, Sulthanpet and asked the appellant to effect payment of the principal amount of Rs.66,22,877/- only. There upon the consumer filed a complaint before the CGRF, Kozhikode, alleging bar of limitation under Sec. 56(2) of Electricity Act, 2003, which was dismissed, on the ground that it was not maintainable in view of Reg. 22 of the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005 vide order No. OP/2012-13 dated 27th June, 2012. Aggrieved by the order of the CGRF, the Appellant has submitted this appeal petition before this Forum.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition preferred before this Forum.

- (1). It remains trite vide Section 56 (2) of the Electricity Act 2003, that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer 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 electricity. In this case the respondent has slept over their rights for over two years and issued the demand notice dated 19.04.2012, to somehow cover up the lapse. Certainly such a demand for recovery is beyond limitation and hence can not exist.
- (2). In the instant case, the sum demanded from the consumer was never shown as due against them at any time earlier and the electricity supply had not been cut off,

disconnected or disrupted on account of non-payment of any charge for electricity or any sum due for the electricity. The amount which is being demanded by raising the impugned invoices was never demanded earlier and in such a situation, there is no question of a sum being due, against the complainant. The liability to pay electricity charge is created on the date of electricity consumed and not after an invoice is raised.

(3).The Electricity Act came into force on 10.6.2003 and the demand notice has been issued only after the said date. Certain portions of the demanded sum are allegedly due after the commencement of the Act. Being so, the demand for recovery of such amount from the complainant is ipso facto void.

(4). Demand of any amounts under the semblance of escaped demand pertaining to the period of 10/2000 to 10/2003 at this point of time undoubtedly, is a fraud in law. In Ex. Capt.Harish Uppal Vs Union of India & others [1994 Supp.(2) SCC-195], Hon Supreme Court held that parties should pursue right promptly and not sit over their rights. The party could not be permitted to sleep over their rights and choose to avail the remedy after inordinate delay. Similarly the apex court in P.K. Ramachandran Vs State of Kerala [AIR 1998 SC 2276] observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribes and no authorities have any power to extend the period of limitation even on equitable grounds.

(5).The licensee is under some mistaken notion that a vested right has been conferred upon them as if the facet of limitation has no application to them. The object of limitation imposed by the applicable statute cannot be lost sight of. The law of limitation has been enacted extending a valuable right in favor of the party, against whom within the period of limitation no action is brought before any proper Fora, save in exceptional cases where a case for condonation of the delay is made out.

(6). In Rajendra Singh vs Santa Singh [AIR 1973 SC 2573} the Apex Court has held that the object of law of limitation is to prevent disturbance or deprivation of what may have acquired in equity and justice. The aspect of limitation not only intends to create certainty in the proceedings but also maintains discipline in the proceedings so as to provide uniformity amongst the parties. In the matter of limitation, there is no question of giving upper hands creating any discrimination amongst the licensee or any of its officials. Thus, it does not depend upon the whims or convenience of the licensee in taking a decision for making any claims leisurely according to its convenience.

(7). The present case is not as if the bill for the period from October 2000 to October 2003 had not been raised. The bills were raised and duly paid. Now, the claim of the

respondent is as if that those bills raised were not for the amount due but were for something less. Once the consumption for a particular period has been computed and quantified and the bill has been raised, any subsequent demand for the same period would be clearly covered by Section 56 (2) of the Central Act No. XXXVI of 2003 and is recoverable only within two years and not thereafter.

(8).The main point urged were (i) whether irrespective of the provisions of Sect. 56 (2) of the Electricity Act, 2003, a licensee could demand charges for electricity consumption for a period of more than two years preceding the date of first demand of such charges and (ii) whether charges for electricity consumed become due only after a demand bill is issued by the licensee and whether the licensee could issue a demand bill even for the period preceding more than two years from the date of issuance of demand bill notwithstanding Section 56 (2) of the same Act.

(9). Prior to the Electricity Act of 2003, Section 24 of the Indian Electricity Act, 1910 was the provision empowering a licensee to discontinue supply of electricity to consumer including to pay charges. This section has undergone a sea change and the present section 56 of the Act is not a verbatim reproduction of the said old section. One of the significant changes is the introduction of sub-section 2 which starts with a non-obstante clause. It puts a restriction on the right of the licensee to recover any sum due from any consumer 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 is restrained from disconnecting electricity supply. It starts with the use of the word 'shall' in relation to disconnection of electricity and is a complete bar to disconnect such supply if such demands are not recoverable in terms of Section 56 (2) of the same Act. This is a new provision which did not find place in section 24 of the Indian Electricity Act, 1910 and is a provision of limitation for recovery of dues by the licensee. This provision has an overriding effect and clearly prohibits a licensing authority to realize any sum after the period of two years from the date when such sum became first due. The licensee can get rid of this limitation provided the said licensing company in the bills sent to the consumer has continuously shown the said arrears recoverable from him. If no such indication is there in the subsequent bills regarding the arrears recoverable from the consumer, then if two years period expires from the date when such sum became first due, it would not be recoverable being barred by limitation. The Sub-section (2) was incorporated so that a licensee cannot have the luxury of slapping a bill on delayed payment with surcharge at their own sweet

will and then to recover such amount on the pain of disconnection.

(10). The Hon Supreme Court in Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd., [2007 (8) SCC 381] held that a complete machinery has been provided in Sec. 42 (5) and (6) of the said Act for Redressal of grievances of individual consumers and they can only resort to these bodies for redressal of their grievances. Under Reg.7 of the KSERC (CGRF and the Electricity Ombudsman) Regulations, 2005, the CGRF shall take up any type of grievances or complaints as defined in Regulation 2 (1) (f). Regulation 2 (1) (f) clearly provides that complaint includes charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services. It is true, when a consumer approaches the CGRF with a grievance, it is for the Forum to decide the question of jurisdiction also in the first instance, subject to scrutiny of its decision by the higher i.e. the Ombudsman. At any rate, the question of jurisdiction was to be answered favoring the complainant.

Reliefs sought by the appellant: -

- (i). Set aside the order dated 26.6.2012 of the CGRF, Kozhikode.
- (ii). Declare the letter dated 7.5.2012 of Asst. Engineer, Electrical Section, Sulthanpet, KSEB demanding payment of Rs.66,22,877/- on or before 11.5.2012 and disconnection notice dated 14.5.2012, intimating disconnection of service, if the sum is not paid by 05.06.2012, are null and void.
- (iii) To award cost of the complaint and such other reliefs as the Forum may deem fit.

Arguments of the Respondent:-

The Respondent has filed the counter statement against the complaints contained in the Appeal Petition, stating that all the averments in the petition except which are admitted, are false and hence denied by him. The main contentions are as follows;

(1). The appellant, Hotel Indraprastha was a LT consumer with Con. No. 6382 under Electrical Section, Sulthanpet. The consumer was enjoying concession under industrial tariff based on a Govt. order issued for promoting tourism industry. Later, this tariff concession was withdrawn with effect from 15.05.1999, by the Govt. as it revised the guidelines for reimbursement of power tariff subsidy directly to the eligible units in the tourism sector. The affected consumers including the appellant challenged the above order before the Hon High Court of Kerala vide WP © No. 17151 of 2007. The above suit was decreed in favor of KSEB and the parties then challenged the same before the Hon Supreme Court, vide SLP No. 11808 of 2007. The Hon Supreme Court upheld the Govt.order dated 26.09.2000, wherein the tariff concession to tourism was ordered to

be restricted, will have only prospective operation i.e. with effect from 26.09.2000. In pursuant to this order, the consumer is to be billed under the eligible commercial tariff w.e.f. 26.09.2000 to 10/2003.

(2). Meanwhile, Hotel Indraprastha had converted their service connection from LT to HT w.e.f. 10/2003. During the period of 10/2000 to 10/2003, the appellant was remitting the current charges at the industrial tariff instead of the commercial tariff, as per the interim stay orders obtained from the Hon High Court of Kerala.

(3). The averment of the party that the short assessment bill was a shock and surprise is totally false and fraudulent. The appellant has been fully aware of the imminent short assessment bill ever since he refused to pay the current charges under commercial rate i.e. from 5/99 itself. To substantiate this a copy of the undertaking given by the MD of M/s Hotel Indraprastha dated 16.10.1999, is submitted wherein he has agreed to pay to KSEB the difference in rates between commercial and industrial tariff together with interest, in the event of the judgment goes against him. A supplementary agreement to the same effect was made by the party while executing the HT agreement in 10/2003. The present stand taken by the party is clearly violation of the undertaking given by him and is unfair and manipulated for the sake of the case.

(4).The bill issued on 19.04.2012 was for a sum of Rs. 2,24,93,133/- which included the principal amount of Rs.66,22,877/- and interest portion of Rs.1,58,70,256/- levied from 10/2000. The due date of payment was 26.04.2012 and the last date of payment before disconnection was fixed as 11.05.2012. Subsequently, the Legal advisor (KSEB) opined to levy interest, only from the date of raising revised the demand and not from 10/2000. Hence a revised notice was issued to the consumer on 07.05.2012, intimating the withdrawal of the interest portion and asking to remit the principal sum of Rs. 66,22,877/-. Against this demand notice, the appellant filed petition before the CGRF, Kozhikode.

(5). The averment of the consumer that the short assessment bill issued is not proper, correct, legal or sustainable, are false and frivolous, for the following reasons.

(i).The amount of energy charges claimed in the bill was due to Board, prior to coming into force of the Electricity Act, 2003. Since Sec 56 (2) of the Act 2003 would operate prospectively, the above arrear amount could even be recovered by revenue recovery proceedings as no time limit has been prescribed.

(ii).Fifteen clear days notice was issued to the consumer for remitting the arrear bill, apart from the 7 days time which was given, for making payment without surcharge.

(iii).The appellant was fully aware of the amount which was due to KSEB from 05/1999

onwards. He was also fully aware that the dues owing to the Board has risen roughly to Rs.70 lacs by the time he converted his Electric connection from LT to HT in 10/2003.

(6). Even if Sec. 56 (2) of the Act is applied in this case, the averments of the consumer will not stand since the Section 56 (2) has been clearly interpreted by learned judges of various Courts. In case No. 3784/2007, the Hon High Court Bombay has held as;

“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 Sect. 56. A sum cannot be said due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of the bill. Though the liability of a consumer arises or is occasioned by the consumption of the electricity, the payment falls due only upon the service of the bill. Thus for the purpose of subsection (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”.

In this case the short assessment bill was issued on 19.04.2012 and hence the bill cannot be said to be unrecoverable and barred under section 56 (2) of the said Act.

(7). The appellant’s contention that the liability to pay electricity charge is created on the date of electricity is consumed and not after an invoice is raised, is totally false and has come out of pure ignorance.

(8). The contention that the short assessment bill is barred under the law of limitation is also false for the following reasons;

(a). The Hon Supreme Court of India in M/s Swastic Industries Vs Maharashtra State Electricity Board, has held that there is no limitation for making the demand by way of a supplementary bill. It said; ‘the National commission relying upon the judgment of the Bombay High Court Division Bench in M/s Bharat barrel and Drum Manufacturing Co. Ltd. Vs The Municipal Corporation of Greater Bombay & another,(AIR 1978 Bom. 369) have held there is no limitation for making the demand by way of supplementary bill”.

In this case, it was also held that raising supplementary demand by Electricity Board for escaped energy charges (escaped billing) does not amount to deficiency in service.

(ii). The Division Bench of the Hon High Court of Delhi in Municipal Corporation of Delhi Vs Shouri observed the following: “. We find no infirmity in the finding of the learned single judge that the liability to pay may arise when the electricity is consumed by a consumer, nevertheless it becomes due and payable only when the liability is quantified

and a bill raised”.

(iii). The Hon High Court of Delhi in WP (C) 13556/2006, BSES Rajadhani Power Ltd. Vs CGRF and WP (C) 14873/2006 Nalin Bhushan Chandhok vs Rajadhani Power Ltd, has observed as:“ it is well settled that normal law of limitation is not applicable for recovery of electricity dues”.

(iv).The Hon'ble Tribunal for Electricity in Ajmer Vidyut Vitaran Nigam Ltd vs Sisodia Marble & Granites Pvt. Ltd & others held as;

“..... the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected,but the charge would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in section 56 (2) of the Electricity Act 2003 shall start running”.

It can be seen that the appellant's claims were rejected at various Courts of Law including the Hon Supreme Court. The appellant has no more justifiable claims to be entertained. The amount of revenue due to the Board is huge and long pending. The consumer's effort is just to prolong the payment. The appellant is fully aware of the fact that, since 05/99 he is liable to remit the entire amount sooner or later. As the appellant sought permission to remit the bill amount in easy monthly installments of Rs 1,00,000/- each, which underlines the fact that he is fully aware of his liability to pay the arrear bill.

Analysis and Findings: -

The Hearing of the case was done in my chamber at Edappally, Kochi on 14.12.2012, 11.1.2013 and 26.4.2013. The learned Advocate Sri. Shyam Padman, appeared for the appellant and the Board's Advocate Sri. T R Rajan, assisted by the Executive Engineer, Sri Swaminathan and Asst. Exe. Engineer, Sri Premraj, KSEB, Palghat, has appeared for the opposite side. On perusing the Petition, counter statement of the Respondent, the argument notes filed, the documents submitted and considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions thereof.

The hearing done on 14.12.2012 was adjourned as the appellant pleaded that he wants to approach KSEB for a one time settlement. The KSEB reported that though the appellant was asked to submit an application for including the case under one time settlement programme, vide letter dated 26/12/2012 of Dy. Chief Engineer, Electrical

Circle, Palakkad, the appellant failed to respond it. However, the party proceeded with the case filed before this Forum, regularly.

The appellant was enjoying concession in electricity tariff, as per the Policy decision of the Govt. and were accorded 'industrial tariff' instead of the eligible 'commercial tariff' (which bears a higher rate). The Govt. withdrew the electricity tariff concessions given to Hotels on 26.9.2000 and the affected consumers filed petitions, before the Hon High Court and later at the Hon Apex Court, which finally decreed the Govt. order as in order. Thus it is established that the appellant falls under commercial tariff from 10/2000 (date of Govt. order) to 10/2003, (when the party has changed over to HT category from LT). Though the apex court has issued order in 5/2008, the KSEB raised the differential charges bill to the consumer, only in 4/2012, i.e. after a gap of almost four years from the date of the order.

The appellant vehemently argues and opposes the collection of the Bill, emphasizing on Sec. 56(2) of the Act, and relying on various Upper Court orders, related to the subject matter. The appellant has the main argument that the bill issued is barred by limitation under Sec. 56(2) of the Electricity Act, 2003.

After hearing both sides, it is converged to the following issues to be decided as;

The point for decisions are: -

- (1). Whether the case has to be remanded to CGRF as the appellant complains that he lost an opportunity of the lower Forum, the CGRF?
- (2). Whether the short assessment bill (arrear) for the period of 10/2000 to 10/2003, will fall under the Electricity Act, 2003 or under the previous Indian Electricity Act, 1910 and if so whether the bar of limitation is applicable to the bill, in this case?.
- (3). Whether disconnection notice can be issued to HT connection, for the dues pending on the old LT service connection, which was changed over to the said HT connection?

Decisions:-

Point No.(1): - The appellant has the complaint that he lost an opportunity at the lower Forum CGRF, as the Forum dismissed the Petition stating as not maintainable.

Analysis: -

(1.1). The CGRF heard the petition and delivered the judgment on 27.6.2012 holding that, as the Hon High Court and the Hon Supreme Court had already passed orders on the subject matter, it would be inappropriate for the Forum to make a decision on the same. The CGRF was of the view that, Complaint filed by the party is not maintainable under Sec.22 of KSERC (CGRF & Electricity Ombudsman) Regulations 2005, which

restricts the intervention of CGRF, in cases where a decision has already been issued by another Forum or Judicial Authority, on the same matter.

(1.2). The CGRF has heard the parties on 5.6.2012 and pronounced an order, which it considers, is as per Law. As per Reg. 22 (b) of the KSERC (CGRF and Ombudsman) Regulations, 2005, the consumer can approach the Ombudsman, even if the dispute is not decided within the time frame (2 months) fixed and the manner specified in the Regulations. Being so, the appellant's argument that it lost an opportunity at the lower Forum, even if the Forum failed to answer all the questions raised, does not have much significance in this case. Moreover, the CGRF's order stands challenged at the upper Forum (Ombudsman). Any decision of the lower court, if aggrieved, can be challenged at the upper Forum, which is the natural course of action as envisaged in Law. Hence I do not favor the plea of the appellant that the case has to be remanded to CGRF for a fresh hearing.

Point No (2): - Whether the disputed bill issued to the appellant falls under the previous I E Act of 1910 or under the new Electricity Act of 2003 and if so whether the bar of Limitation is applicable in this case?

The crux of the main contention raised by the appellant is that the present demand for differential tariff is barred by limitation under Sec 56(2) of the Electricity Act, 2003. The appellant further contended that the present demand is not a supplementary bill for escaped energy charges (escaped billing), but for already quantified and known amount which fell due as early as on 16.5.2008, when the Apex court delivered the judgment.

Analysis:

(2.1). From the related case judgment of the Hon Supreme Court, reported in 2008(3) KLT 276 SC, (Kusumam Hotels (P) Ltd Vs KSEB in CA No 101 of 2007), it is clear that the KSEB was in the process of raising demand for differential tariff in the year 2000, when the Govt. withdrew the tariff concession issued to Hotels, but was prohibited from doing so, as the affected Hotels (including the appellant) filed petition before the Hon High Court and obtained 'stay' orders against raising the differential charge Bills. As the petition was dismissed, the appellant approached the Hon Apex Court and obtained 'stay' order against preferring the bills in time. Hence, in this case, the preparation of differential charges of electricity (between industrial and commercial tariff rates) bill by KSEB was continuously under challenge at the hands of the appellant.

(2.2). The Hon Apex Court finally decided the issue holding that the demand raised is not barred by limitation and the Board was entitled to recover the amount which fell due

after the date of the Govt. notification. Thus the claim of Board for the differential tariff, for the period of 10/2000 to 10/2003 which was remained un-operative in view of court proceedings and stay orders, revived on 16.05.2008. The appellant argues that the limitation for recovery of the differential tariff charges starts to run from 16.05.2008 and the recovery has to be made within the limitation of two years period.

(2.3). The appellant does not dispute the arrear (differential tariff charges) bill raised by the respondent as a bogus claim. His only contention is that, it is time barred and hence invalid. Since this is a delicate issue, I am of the view that had this issue been dealt with analyzed and given a firm opinion by any Upper Court of Law/Jurists, we may follow the same, till it is reversed by a still superior body or a larger bench of Jurists.

(2.4). As such, I have before me the Judgment in the case filed, before the Hon: High Court, Bombay, vide case No: 3784/ 2007, which has dealt the issue of 'due date' of the Bill (from which date, the limitation of two years start, if the arrears are not shown continuously in the subsequent bills) in detail and pronounced its considered opinion. In this context, the relevant portion of the main point spelt by Hon: Judge is 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 bill. Though the liability of 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'.

(2.5). It has been further clarified by another verdict of the Hon: High Court that;

"Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer"(Brihatmumbai Municipal Corporation Vs Yatish Sharma and others-2007 KHC 3784:2007 (3) KLTSN 11 (Bom)).

(2.6). The Regulation 24(5) of the Electricity Supply Code, 2005, reads as;

"If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the licensee may recover the amount undercharged from the consumer by issuing a Bill."

(2.7). Hence from the above, it is difficult for me to agree with the argument of appellant

that the claim is barred by section 56 (2) of Electricity Act 2003. The period of two years as mentioned in Sec. 56(2) of Electricity Act 2003, would run from the date when such a Bill is raised by Board against the consumer and become due for payment only after that demand has been raised. In the dispute case, the bill was raised in 4/2012 and as such the bar of limitation will not prevail.

In such a situation, I am of the opinion that, even if the bill was raised under Electricity Act 2003, the bar of limitation under Sec. 56(2) will not attract, since the bar will start only from the due date of the bill, which is 4/2012 in the instant case. Hence I conclude that the differential tariff charges bill issued to the appellant is not time barred, even if it falls under the purview of Electricity Act, 2003.

(2.8). Now, referring the said Hon Supreme Court judgment, (Kusumam Hotels (P) Ltd Vs KSEB), filed by the affected consumers, including the appellant, against withdrawing electricity tariff concession, the Court has dealt with three main issues, out of which the 3rd issue is very relevant, in this case.

Issue No.(i): - Whether the Concessions granted to Appellants should not have been withdrawn from an anterior date?

This issue was decided as, the tariff concessions withdrawn shall have the effect prospectively i.e. from the date of Govt. order only.

Issue No.(ii): - The Board could not have directed application of commercial tariff despite the fact that the Hotels are still considered to be an industry?

This plea was dismissed by the Hon Court, as it found 'the State would be entitled to alter, amend or rescind its policy decisions', taken in public interest.

Issue No.(iii): - In view of the provisions in sub section (2) of Sec. 56 of the Electricity Act, 2003, no bill could have been raised after a period of two years?

This is the same issue raised by the appellant here, which has been decided by the Hon Apex court. The Hon Court has specifically dealt the issue whether the Electricity Act, 2003 is applicable here and has answered in negative. The relevant portion is; *"30. We however are not in a position to accept the contention that the bills could not have been issued having regard to sub section (2) of Section 56 of the Act. The appellants herein have incurred liabilities....."*

Whereas the bills are issued only in respect of the dues arising in terms of the Law as was applicable prior to the coming into force of the 2003 Act..... Appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability..... Unless, therefore, the 2003 Act specifically introduced, the bar of limitation as regards

the liability of the consumer incurred prior to coming into force of the said Act. In our opinion having regard to section 6 of the General clause Act, the liability continues...”.

Hence it is conclusively established that only Indian Electricity Act 1910 is applicable in this case before this Forum.

(2.9). Once the apex court has clearly stated that the electricity bills pertain to the period before the introduction of Electricity Act 2003, there is no need to invoke Sec.56(2) of the Electricity Act, 2003 in this case. Hence, it is required to revert to the earlier Act, the Indian Electricity Act, 1910, which was in force till 09.12.2003, (The new Electricity Act, 2003, became applicable in the State of Kerala with effect from 10.12.2003 only), to pursue further on the bar of limitation as regards to the liability of consumer incurred, prior to coming into force of the new Electricity Act, 2003.

(2.10). In the Case of M/s Swastic Industries Vs MSEB, [(1997) 9 SCC 465], the Hon Supreme Court has held that there is no limitation for making the demand by way of supplementary bill and also said that Section 24 of the IE Act, 1910, gives power to Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges.

In another case, The Division Bench of Hon High Court of Delhi in HD Shourie Vs Municipal Corporation of Delhi [AIR 1987 Del 219], has observed as follows;

‘Liability to pay may arise when the electricity is consumed. Nevertheless, it becomes due and payable when the liability is quantified and a bill is raised’.

(2.11). The appellant argues that in the referred judgment, raising of supplementary bill is restricted to escaped charges or escaped billing. He contents that since the bill was already issued in each month and paid by the consumer, there is no room for escaped billing. This is not correct as the consumer was challenging the KSEB through litigation after litigation and was barred by ‘ Court’s stay orders’ against issuing the bill under the eligible tariff (commercial rate) but was forced to raise the monthly bills under a lower tariff (industrial rate). So it is clear that there existed a real and legitimate cause for the preparation of a bill, for the escaped charges or escaped billing by the Licensee, KSEB. This ‘differential charges’ bill can be raised only as a supplementary bill as already a bill has been raised under the lower (industrial) tariff.

(2.12). The appellant argues that the differential tariff already known to both parties but was not realized after the court order and the revised bill becomes due as on the judgment date and it will not come under the cycle of ‘due date’ or ‘late discovered’ principle. At this instant it is relevant to note the Hon High Court order, KLT 1995-167

(OP 8414 of 1990), in which the Division Bench has held that there is no question of limitation in reference to arrears due. The order reads as follows;

“.....14. Another contention raised on behalf of the petitioners is that the claim of the Board is clearly barred by the Limitation Act. The said contention is not sustainable for the reason that the petitioners are bound by the conditions of supply of electrical energy. The claim of the Board is that the petitioners consumption of electricity have not been correctly assessed and they are directed to pay the charges for what they had been consumed. If the petitioners want the electricity supply to be continued as per the terms of the supply act they have to pay their consumption as well as the arrears. In so far as the consumption charges which had been failed to be collected the provisions of the limitation Act will not apply. The relationship between the Petitioners and the Board is governed by the Terms and Conditions of the supply of electrical energy and therefore there is no question of limitation in reference to the arrears due.....”

(2.13). The appellant argues that the said judgment relate to consumption of electricity not correctly assessed and cannot be made applicable where the quantification of energy is well known to both sides. It is true that the quantification of energy (and not the bill amount) is well known to both sides. But a sum cannot be said to be due from the consumer unless and until a bill is raised for the electrical energy consumed, at the appropriate tariff and is served upon the party. Otherwise a disconnection of electric supply would be possible even without the serving of a bill and may lead to chaos.

(2.14). The decision in OP: 5930 of 1985-P of Hon High Court of Kerala, (Balakrishnan VA Vs KSEB), dated 5.8.1987, is an identical case, where the tariff was changed from LT IV- industrial to LT VI-non domestic and the differential charges were claimed. The Hon court held that the party has consumed the electricity with liability for payment of such charges as are due in law and if there is a mistake in categorization or there is an under billing, it is always open to the KSEB to rectify the mistake and to demand the proper charges due from the consumer. Here, it is specifically stated that, even in case of a mistake in categorization of tariff, it is possible to rectify the same and demand the electricity charges due. Being so, the party's argument against it, is not sustainable.

(2.15). Here it is to be noted that, the appellant has given an undertaking to KSEB, that he will remit the differential electricity dues with interest once the dispute is decided by the Govt. The consumer is bound to pay the charge for the electrical energy he has consumed at the applicable tariff rates. Once the Apex court has dismissed the appeal petition pleading to retain in the lower tariff and also decided that the electricity dues

are payable by the consumer, it has to be totally honoured by the petitioner.

(2.16). I feel that since the Appeal Petition was filed by the consumer before the Hon Apex court and the Court has pronounced its verdict and as such, the Order is primarily binding on him to make the electricity charge payment owed by him.

It is concluded that the disputed bill falls under the provisions of the previous Act, Indian Electricity Act, 1910, and for the reasons stated above, the same (differential charges) bill issued by the KSEB is found payable by the consumer and no bar of limitation is attracted, in the instant case.

Point (3): - Whether disconnection notice can be issued to a HT connection, for the dues pending on the old LT service connection, which was changed over to the said HT connection?

3.1). The consumer has taken a LT (3-Phase 415 Volts) electric connection initially as his Power demand (connected load) was less than 100 kVA. While being so, in 10/2003 he was provided with HT supply (11 KV) as his connected load has increased to above 100 kVA. The Conditions of Supply of electrical energy, 1990, which was in vogue at that time, insists that HT supply has to be availed once the consumer's demand is more than 100 kVA. In the instant case under dispute, the consumer, the Licensee and the consumer premises where the electricity is utilized, remain one and the same and only some modification in providing the electrical energy (11 KV instead of 415 Volts) with corresponding changes in electrical apparatus and metering arrangement has occurred. The change over to HT category is compulsory, as per the electricity rules, once the power demand exceeds a certain limit fixed, for maintaining the reliability and for safe handling of electric supply, at higher load demands of the consumer. Hence, in every sense, the HT connection availed by the appellant is a continuation of his previous LT connection, without change of consumer name and the consumers premises, though the Con. No has changed and a new agreement was executed.

3.2). Moreover, the consumer was given notice dated 8.10.2003 by the Dy. Chief Engineer informing the liability outstanding on the LT connection proposed to be changed over to a HT connection and accordingly the party has given an undertaking to KSEB, while executing the HT agreement, that he will pay the dues under dispute of the LT service connection, once it is finally decided by the Govt. Had the HT service connection was a new and independent one, such an undertaking will not arise.

3.3). In short, the HT consumer status of the appellant was caused simply because of the higher load demand (above 100 KVA) and consequently the transformation to HT

status from LT consumer status was made inevitable as per rules. Hence it is sure that the HT connection is only an extension of the LT service connection originally availed by the consumer. Therefore, I am of the view that the disconnection notice can be issued to the HT service connection, for the electricity dues pending on its previous LT service connection, as it is a continuation of the same electric service connection.

Therefore I am convinced that the appellant is bound to pay the differential charges bill for Rs.66,22,877/- vide the demand notice dated 14.05.2012 issued by the KSEB. No interest is payable by the consumer for the bill amount for the appeal pending period before this Authority. The consumer is eligible for, up to 13 (thirteen) installments, if requested for by him and has to pay the whole bill amount or the 1st installment, as the case may be, within 30 days of receipt of this order. The subsequent installments will carry interest as per the interest rate applicable, from the 30th day of this order to the day of payment.

Accordingly, the order dated 26.06.2012 of the CGRF, Kozhikode, is set aside.

Having concluded and decided as above it is ordered accordingly. The Appeal petition filed by the appellant is found having no merits and is dismissed. No order on costs.

Dated the 16th of July, 2013.

Electricity Ombudsman.

Ref. No. P / 295 / 2012 / 1851 //Dated 16.07.2013.

Forwarded to

- 1). The Managing Director,
M/s Hotel Indraprastha, English Curch Road, Palakkad.
- 2). The Assistant Executive Engineer
Electrical Sub division, KSEB, Sulthanpet, Palakkad.

Copy to:

- (1). The Secretary, Kerala state Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vudyuthibhavanam, Gandhi Road, Kozhikode.