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APPEAL PETITION NO.P/099/2015

(Present: Sri. V.V. Sathyarajan)

Dated: 30<sup>th</sup> July 2015

Appellant : Smt. Sonia Rajeev,  
Proprietrix  
M/s Caravan Softies,  
Malankara Centre,  
M.G. Road, Ernakulam

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division,  
College, Ernakulam

**ORDER**

**Background of the case**

The appellant, Smt. Sonia Rajeev, Proprietrix of M/s Caravan Softies is a registered consumer with consumer No. 788 under Electrical Section, College, Ernakulam. On 24-04-2013, the Audit Wing of KSEB Limited verified the records and monthly Meter Reading Register of the appellant and detected that adequate capacitors are not installed in the appellant's premises and directed to charge the appellant 20% extra on Fixed charges and Energy charges for the period from 12/2009 to 06/2012. Accordingly a short assessment bill for Rs. 61,324/- under Regulation 24 (5) was issued to the appellant on 15-05-2013. Aggrieved by this, the appellant approached CGRF by filing complaint No. 94/2014. The Forum in its order dated: 08-01-2015 disposed the case by limiting the period of assessment for 2 years preceding the date of issuance of bill. Not satisfied with the above order, the appellant filed an appeal before this Authority 24-02-2015.

**Arguments of the appellant**

The appellant stated that a three phase service connection under LT IV tariff with consumer No. 788 is registered in the name of Smt. Sonia Rajeev, M/s Caravan Softies for running an ice cream parlour. On 20-04-2013, Regional Audit Officer (RAO) conducted an inspection and verified the records of the appellant as part of the internal audit. During the inspection they found that 20% of extra charge for the Fixed charge and Energy charge portion are not collected during the period from

12/2009 to 06/2012 due to non installation of adequate capacitors in the appellant's premises. Based on the above direction from RAO, a short assessment bill dated 15-05-2013 for Rs. 61,234/- for the period from 12/2009 to 06/2012 was issued to the appellant along with a detailed calculation statement.

Aggrieved by the said demand the appellant challenged that bill before Assistant Engineer, the Deputy Chief Engineer, Electrical Circle, Ernakulam and finally before the CGRF, Ernakulam. The appellant submits that the Forum has arrived at a hasty conclusion without properly evaluating the contentions of the appellant. The said findings is against the interest of appellant, is erroneous, unsustainable in law and facts and is liable to be set aside.

The appellant's contention is that the CGRF ought to have noted that, as per the version of the respondent, the appellant was being billed for non installation of capacitors in the premises and such billing continued up to 2009. Therefore, the appellant was billed only at normal rates till the audit gave direction to revise the bill at penal rates. The impugned bill at penal rate was issued as per the direction of the audit party without any physical inspection of the premises.

Another contention of the appellant is that CGRF ought to have noted that the audit wing had directed billing at penal rates only because of the fact that revenue was reduced from 2009. In fact the billing at penal rate was stopped and billing at normal rates commenced in 2009 only after the installation of required capacitors. As repeatedly submitted before various authorities, the appellant had installed capacitors as per specification in her premises.

The appellant had submitted a representation before the Deputy Chief Engineer who had directed the Assistant Engineer to consider the case of appellant in the light of documents produced by the appellant. But the Assistant Engineer did not appreciate the fact and not absolve the appellant from the penal bill. The appellant also submitted that she had produced documents such as Test Reports of capacitors already installed in the premises and also the Test Report of old capacitors. Thereupon the Assistant Engineer arranged an inspection and found the capacitors and only discrepancy noted was that the number of capacitor as noted in the certificate differed. This itself will amply prove that the appellant had installed capacitors and the same were made available for verification at the time of inspection. A typographical error relating to the serial number of capacitors cannot be a reason to deny justice to the appellant.

The appellant therefore requested to refund the amount already paid towards the short assessment bill with 12% interest. Also requested not to levy surcharge on the demand during the pendency of the proceedings and till the dispute is adjudicated finally.

### **Arguments of the respondent**

The respondent's contention is that as per Schedule of Tariff and Terms and Conditions of Retail Supply by KSEB with effect from 01-12-2007 issued by the KSERC, LT industrial and agricultural consumers who have not installed ISI approved capacitors of recommended value, the rate applicable shall be higher by 20% (both on Fixed and Energy charges) applicable to the respective categories. On 20-04-2013 Regional Audit Officer verified the records and monthly meter reading register of the appellant and found that 20% of extra charges for the Fixed and Energy charge portion are not collected during the period from 12/2009 to 06/2012. In the monthly reading register, it is clearly mentioned by the officer who is taking the meter reading, regarding the non installation of capacitors.

Regulation 24 (5) of Kerala Electricity Supply Code, 2005, enabled that if the licensee establishes that it has undercharged consumer either by review or otherwise, the licensee may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill.

The appellant preferred an objection against the short assessment and argued that adequate capacitors are installed in the premises during the period in dispute i.e. 12/2009 to 06/2012 and they have produced the Test Certificate of those capacitors. The authorized person of the respondent after verifying the certificate and objection filed by the appellant conducted the physical verification in the appellant's premises in the presence of the representative of the appellant. Upon verification it is noted that certificates of capacitors installed in the premises are different from that of the installed capacitors in the premises and serial numbers are also different from the certificates and the installed capacitors. The appellant has not adduced any documentary evidence to prove that the date of purchase or date of installation of capacitors.

The respondent argued that the capacitors are connected only after the receipt of short assessment bill and the appellant has not intimated about the installation of capacitors to the respondent. Further the appellant has already remitted the fine for non installation of capacitors up to 11/2009 and further penalization was not done and this was noticed by the audit party and hence the period of penalization is taken from 12/2009. Due to the above reason the invoice issued to the appellant for non installation of capacitors is legal and the appellant is liable to pay the assessed amount.

The respondent submitted that an amount of Rs. 22,982/- has been remitted by the appellant on 30-08-2014 towards the 50% of the short assessment as per the interim order of the CGRF. The appellant has also remitted 25% of the assessment Rs. 15,361/- as per the direction of Deputy Chief Engineer, Ernakulam. The Hon'ble CGRF, Ernakulam has disposed the case limiting the period of assessment for 2 years preceding the date of issuance of the bill. The respondent contented that the

Hon'ble Forum failed to see that the bill issued for the period from 12/2009 to 06/2012 and therefore the amount become due from the date when the bill is issued. Here the invoice was issued to the appellant on 15-05-2013. The word 'due' in this context must mean due and payable after a valid bill has been issued to the appellant. The Hon'ble Forum was clearly in error in postulating that the claim was barred on the ground that the arrears for consumption became due immediately on the usage of energy. The impugned bill was never demanded earlier and the same cannot be said to be due at any earlier time. Recovery of the amount cannot to be said to be hit by the provisions under Section 56 (2) of Electricity Act, 2003 and the amount of the impugned bill cannot be unrecoverable and barred by limitation of said Act. The above findings of the Hon'ble Forum are **ex facie** contrary to the provisions of Sub Section 2 of Section 56. Hence the respondent requested to dismiss the appeal to the extent to which it relates to the direction indicating the period of short assessment.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 10/07/2015. Advocate Sri Rajesh Vijayendran, was present for the appellant's side and Sri. Emerson P.A., Assistant Executive Engineer, Electrical Sub Division, College, Ernakulam and Sri. E.A. Rajan, Nodal Officer (Litigation), KSEB, Ernakulam represented the respondent's side. Both sides have presented their arguments on the lines as stated above. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The case of the appellant is that the respondent had collected penal charges as 20% extra for the non installation of capacitors regularly till 11/2009 and thereafter collected at normal rates only till the date of audit by the Regional Audit Officer. Further, even without conducting any inspection in the appellant's premises the respondent issued a short assessment bill for Rs. 61,234/- being the 20% extra on fixed and energy charges for the non installation of capacitors for the period from 12/2009 to 06/2012.

The appellant's contention is that they had produced the documents of Test Certificate of capacitors newly installed and old capacitors existed in the appellant's premises. The respondent after inspecting the premises found that serial number printed in the capacitors is differed from that of the Test Certificate furnished by the appellant and challenged the veracity of the Test Certificate. The contention of the appellant is that a typographical error relating to the serial number of capacitors cannot be a reason to deny justice to the appellant. On the other hand the respondent's contention that the appellant failed to produce the details such as date of purchase or date of installation of capacitors etc. is not sustainable for the simple reason that none of the officers of the respondent made any effort to direct the

appellant to produce the details after they found discrepancy in the serial number with that of Test Certificate. In the case in hand, the respondent admits that while conducting inspection they found that the capacitors are installed. If that being so, it is easy for them to find out the make of the capacitors and if there is any doubt they could have asked the appellant the date of installation and to produce evidence for the same. But this was not seen done by the respondent.

If the respondent is fully aware of the non-installation of the capacitors, then the responsibility for discontinuance of penal charges as 20% extra in the bills issued with effect from 12/2009 vested with the respondent only. Further the respondent has not produced a copy of the monthly reading register and audit report for verification so as to prove his arguments. It is also pertinent to note that the penalization has been done till 11/2009 regularly without fail. Hence the respondent has failed to give a convincing reason for his failure to collect the extra charges from the appellant during the period in dispute. No reason is forthcoming from the part of respondent for not collecting 20% extra charges from 12/2009, as was done till 11/2009. So it can be presumed that the contention of the appellant that they had installed the capacitors in the disputed period is found in order.

The respondent found that capacitors were installed in the premises but argued that the installations were carried out after the receipt of the short assessment bill. In the absence of completion report and connected records, it is difficult for this Authority to decide the date of installations of capacitors. However a mistake in the serial number of capacitors installed with that of Test Certificate cannot deny the argument of the appellant that they had installed the capacitors during the disputed period. The contention raised by the respondent that the non installation of capacitors were noted in the reading register and the respondent is aware of the above facts, there is no justification for the non collection of extra charges. Further, the discontinuance of collection of 20% extra charges from 12/2009 onwards is without furnishing any genuine reasons shows some lapses on the part of respondent. It is open to the licensee to take steps to prevent such types of lapses on the part of officers of the respondent in future. For the aforesaid reasons, I accept the contention of the appellant that the capacitors were installed during the disputed period.

The contention of the respondent that they are empowered to recover the amount undercharged from the consumer by issuing short assessment bill as per Regulation 24(5) of Supply Code, 2005 is not applicable in this case. This Regulation is applicable only in the cases where genuine omissions occurred and in this particular case the respondent failed to prove that the appellant was undercharged.

**Decision:**

In the absence of any positive evidence to disbelieve the contentions raised by the appellant that the capacitors were installed in the disputed period, I hold the 20% extra charges for the period from 12/2009 to 06/2012 is arbitrary and hence

unsustainable. The amount already remitted by the appellant in this regard may be refunded with interest within 30 days from the date of receipt of this order.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is found having merits and is allowed. CGRF order dated: 08-01-2015 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

NO.P/099/2015/\_\_\_\_\_ /Dated:\_\_\_\_\_

Forwarded to:

1. Smt. Sonia Rajeev, Proprietrix, M/s Caravan Softies, Malankara Centre, M.G. Road, Ernakulam
2. The Assistant Executive Engineer, KSE Board Ltd., Electrical Sub Division, College, 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.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018.