

**THE STATE ELECTRICITY OMBUDSMAN**

Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024

[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9447576208

Email:ombudsman.electricity@gmail.com

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APPEAL PETITION NO. P/037/2016

(Present: V.V. Sathyarajan)

Dated: 07<sup>th</sup> September 2016

Appellant : Smt. Annie Jose,  
Director,  
M/s Sachi Clay Ltd.,  
Nandhikara,  
Thrissur.

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division,  
Karuvannur,  
Thrissur.

**ORDER****Background of the case:**

The appellant, Smt. Annie Jose, is an industrial consumer having consumer number 2507 under Electrical Section, Parappukara. The appellant was issued a short assessment bill amounting to Rs. 2,26,410.00 for the period from 10/2013 to 11/2014 based on the audit report of the Regional Audit Officer, Irinjalakkuda, alleging that the contract demand of the appellant has exceeded 100 kVA. One time relaxation was given to consumers genuinely requiring a contract demand exceeding 100 kVA for continuing under LT connection, subject to the condition that contract demand declared shall not exceed the present connected load, i.e. load based on which billing was done during November 2012 and that such consumer had connected load above 100 kVA prior to implementation of Supply Code, 2015.

The appellant's registered contract demand was 112 kVA. In the audit it was found that the recorded maximum demand of the appellant during the month of 10/2013 was 113 kVA. Since the eligibility of one time relaxation was lost, the appellant was billed under High Tension category and accordingly the short assessment bill issued. Aggrieved against the bill, the appellant filed petition before the CGRF, Ernakulam vide Petition No. 143/2015-16. The Forum vide order dated 10-05-2016, directed the respondent to limit the period

of assessment for 24 months. Not satisfied with the decision of CGRF, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

The Licensee issued a bill dated 20-01-2016 for Rs. 2,26,410.00. A complaint was filed before CGRF (Central Region), Ernakulam and order was given limiting the period of assessment for 24 months. A new bill was issued by the licensee for an amount of Rs. 1,68,431.00 with a disconnection date 04-06-2016. The appellant argued that the HT billing, instead of LT billing, is illegal as the procedure stated in Rule 101(3) Supply Code, 2014 was not followed. The appellant received notice regarding excess use of electricity only on 11-06-2015 and in this notice it was stated that the recorded maximum demand exceeded in the month of May 2015.

But, the Licensee issued a bill for short assessment for the period from 10/2013 to 11/2014. It is to be noted that when the original bills issued for these periods or in the next bills or thereafter no notice or a chance for hearing was given to the appellant. During these periods or even after the implementation of the Supply Code, 2014, the licensee not cared to give a notice or to hear the appellant according to the procedure established in Supply Code, 2014. The matter was seriously argued and represented before the Consumer Grievance Redressal Forum. But no comments passed regarding these arguments. The Honourable Ombudsman may kindly consider the violation of Rule 101(3) Supply Code, 2014 and may favourably grant the relief sought below.

- a) Issue a stop memo of disconnection of electricity as interim relief.
- b) Issue an order to quash the bill dated 19-05-2016 with Number 01-05-2016-17 for Rs. 1,68,431.00
- c) Issue any other appropriate orders to relieve the burden of the appellant regarding the bill. If the above reliefs are not allowed there will be irreparable loss, pain, and hardship to the appellant.

**Arguments of the respondent:**

The appellant is a LT industrial consumer under the Electrical Section, Parappukkara. The contention of the respondent is that the present registered connected load of the appellant is 105 kW and the contract demand is 100 kVA. The contract demand of the consumer was increased as 112 kVA from September 2013 onwards. During the audit conducted in the Section Office an anomaly was found that the appellant was short assessed for an amount of Rs. 1,81,318.00 for the period from 10/2013 to 8/2014. This anomaly was also found during the months of 9/2014, 10/2014 and 11/2014. In the audit it was found that the recorded maximum demand of the appellant during the month of 10/2013 was 113 kVA. Since the eligibility of one time relaxation was lost,

the appellant was billed under High Tension category and accordingly the short assessment bill for Rs. 2,26,410.00 for the period from 10/2013 to 11/2014 was issued to the appellant.

The respondent has argued that as per the Kerala Electricity Supply Code (Fourth amendment) Regulations, 2008, one time relaxation has been given to consumers genuinely requiring a contract demand exceeding 100 kVA for continuing under LT connection, subject to the condition that contract demand declared shall not exceed the present connected load, i.e. load based on which billing was done during November 2012 and that such consumer had connected load above 100 kVA prior to implementation of Supply Code, 2015 and therefore the appellant is not eligible for additional load in excess of 112 kVA under LT tariff. Since the contract demand of the appellant reads 113 kVA in 10/2013, the appellant is liable to remit current charges in HT tariff in pursuance of the orders issued by KSERC vide order no. 507/CT/2012/KSERC/1142 dated 21-12-2012.

Another contention of the respondent is that the short assessment bill issued not comes under the purview of Section 56 (2) of the Electricity Act 2003 and hence the findings of the CGRF on this aspect in the order issued are not correct. The respondent is eligible to get the short assessed amount of Rs. 2,26,410.00. The appellant was issued another notice since he exceeded the sanctioned contract demand from 5/2015 onwards and accordingly on the basis of the notice the appellant applied for HT category which was allowed.

The short assessment bill issued to the appellant is legal and the appellant is liable to remit the short assessed amount. No interest or fine is included in the amount so calculated. In the light of above submission it is requested that petition of the appellant may be rejected.

### **Analysis and Findings**

The hearing of the case was conducted on 04-08-2016 in my chamber at Edappally, and Advocate Sri K.P. Jose, the Counsel of the appellant appeared for the appellant and Sri Mohanan K.R., Assistant Engineer, Electrical Section, Karuvannur represented for the respondent's side. On examining the petition and argument notes filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The issue raised in the appeal petition is with regard to the change of appellant's LT service connection to HT category with retrospective effect from 10/2013 to 11/2014 and issue of a short assessment bill for Rs 2,26,410.00, alleging that the contract demand has exceeded above 100 kVA. The contention of the respondent is that the registered connected load of the appellant is 105

kW and the contract demand is 100 kVA. But, the respondent argued that the contract demand was increased to 112 kVA from September 2013 onwards and based on the above, the short assessment bill was issued to the appellant. The recorded maximum demand of the appellant from 10/2013 and the consumption recorded are as follows:

Month	Contract	Consumption
Oct-13	113 kVA	6550
Nov-13	105 kVA	9355
Dec-13	108 kVA	9792
Jan-14	98 kVA	(LT Billing)
Feb-14	108 kVA	11300
Mar-14	106 kVA	11800
Apr-14	108 kVA	10115
May-14	109 kVA	10105
Jun-14	115 kVA	9199
Jul-14	116 kVA	9463
Aug-14	127 kVA	9927
Sep-14	120 kVA	8810
Oct-14	102 kVA	6775
Nov-14	109 kVA	12126

**The respondent has decided to implement the Regulation 3 (b) of the Kerala Electricity Supply Code (Fourth amendment), 2008, in which it is stated that all LT consumers existing as on 02-03-2005, the date of implementation of Kerala Electricity Supply Code 2005, shall be permitted to continue as LT after connecting additional load up to a total of 150 kVA irrespective of their existing load below or above 100 kVA. Any subsequent upward revision of contract demand would require conversion to HT.** Accordingly the appellant entered into a supplementary agreement for a contract demand 112 kVA. During the month of 10/2013 the contract demand has exceeded to 113 kVA but Recorded Maximum Demand for the subsequent months was below 112 kVA up to May 2014. From June 2014 onwards the contract demand has exceeded consecutively for the next 3 months.

***As per Clause 4 of the supplementary agreement, the recorded maximum demand for any three consecutive months exceeds the contract as specified in this agreement and the Board and the consumer have not entered into a new agreement for a higher contract demand (which is greater than or equal to the above said Recorded Maximum Demand), the supply to the consumer shall be disconnected without notice.*** In this case, it is pertinent to note that the recorded maximum demand

exceeds more than three consecutive months only with effect from 6/2014, it is not proper to treat the appellant as a deemed HT consumer from 10/2013 to 11/2014 except from 6/2014 onwards.

**As per the tariff order, in the case of Deemed HT consumers, the tariff applicable shall be demand charges of respective HT category and energy charge of respective LT category.** Similarly, the excess demand charges under ToD tariff for HT consumers is as follows: **“Additional demand charges shall be levied if the recorded maximum demand exceeds the contract demand during normal period and peak period, which shall be charged at 50% extra for the excess over the contract demand (i.e., additional demand during normal/peak period x ruling demand charges x 0.5). Additional demand charges during off-peak period shall be levied only if the recorded maximum demand during off peak period is in excess of 130% of the contract demand”.** On verifying the short assessment bill, it is found that the energy charges are seen levied in the respective HT category instead of LT which is found not in accordance with the tariff order and hence cannot be justified.

The CGRF in its order dated 10-05-2016 has observed that the respondent cannot raise a bill after a period of 2 years from the date of occurrence of such issue as per Section 56 (2) of Electricity Act. Hence the question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (4) of the Kerala Electricity Supply Code, 2014. Section 56 (2) Electricity Act 2003, which reads as under;

**“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 became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity”.**

The Apex Court have interpreted this Section in detail in the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha 99) and other and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

**“The period of two years as mentioned in section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of Electrical energy”.** **“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 consumer”.**

Hence from the above, it is difficult for me to agree with the argument of appellant and the observation of the CGRF that the claim is barred by Section 56 (2) of Electricity Act 2003. The period of two years as mentioned in Section 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 disputed case, the bill was raised in 1/2016 and as such the bar of limitation will not prevail. In such a situation, even if the bill was raised under Electricity Act, 2003, the bar of limitation under Section 56(2) will not attract, since the bar will start only from the due date of the bill, which is 1/2016 in the instant case.

During the hearing the respondent has stated that the appellant has submitted application for converting the service connection to HT and issued feasibility certificate for the same. In view of the above discussions it is concluded that the appellant may be considered as a deemed HT consumer with effect from 6/2014 onwards and accordingly the short assessment bill has to be revised as per the existing tariff orders.

### **Decision**

In the above circumstances it is decided to quash the short assessment bill issued for Rs. 1,68,431.00. The respondent is directed to issue revised bill treating the appellant as deemed HT consumer with effect from 06/2014 onwards based on the Schedule of Tariff and Terms and Conditions issued by KSERC. The order of CGRF-CR/Comp/143/2015-16/73 dated 10-05-2016 is hereby set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/037/2016/\_\_\_\_\_ /Dated \_\_\_\_\_

Delivered to:

1. Smt. Annie Jose, Director, M/s Sachi Clay Ltd., Nandhikara, Thrissur.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Karuvannur, Thrissur.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.