

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/076/2016

(Present: V.V. Sathyarajan)

Dated: 18<sup>th</sup> January 2017

Appellant : Sri. Shajahan E.  
K.V. House, R. V. Street,  
Balaramapuram,  
Thiruvananthapuram.

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division,  
Kattakada,  
Thiruvananthapuram.

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

The appellant is representing an industrial consumer named 'Liya Saw Mill and Miniwood Industries', with consumer No. 4208, under the jurisdiction of Electrical Section, Ottasekharamangalam. The grievance of the appellant is that a short assessment bill amounting to Rs. 45,291.00 was issued by the respondent alleging power factor penalty during the period from 10/2013 to 6/2015 as per the report of Regional Audit Officer. According to the respondent, introduction of ToD metering and billing system to all LT industrial consumers those having connected load of 20 kW or above are given an opportunity to declare their contract demand. Such LT industrial consumers are shifted to ToD billing system on the basis of declaring their contract demand.

But ToD billing system was not properly done up to 06/2015 and this was noticed during the audit by the Regional Audit Officer. Non-implementation of ToD billing system has resulted in excess collection of current charge and lesser collection of demand charges. Similarly no power factor penalty was realized nor any incentive given. Hence as per the audit, the appellant was issued short assessment on demand charges, current charges and penalty for power factor compensation. Aggrieved against the short assessment, the appellant filed petition before the CGRF, Kottarakkara which

was dismissed vide order in OP No. 126/2016 dated 23-09-2016. Still aggrieved, the appellant preferred an appeal praying for an exemption to remit the short assessment of Rs. 45,291.00.

**Arguments of the appellant:**

The Appellant is running a saw by name Liya Saw Mill and Mini wood Industries under Electrical Section Ottasekharamangalam with Consumer No. 4208 under IT 1V Tariff. Along with the electricity bill for the month of May 2016 appellant received an additional bill for Rs. 45,291.00 alleging power of factor penalty during the period from 10/2013 to 6/2015 as per the report of Regional Audit officer. The appellant had remitted all the bills issued by the board without any default. On receiving the bill the appellant complained to the Deputy Chief Engineer of Electrical Circle, Kattakada and to the Executive Engineer, Electrical Division, Nedumangad. But no action has been taken.

The respondent never informed this appellant that there was clerical error in the computation of electricity charges for more than 2 years until very recently. It was the computational mistake on part of the board who ought to have calculated the reading according to the TOD meter. Pertinent to mention now that there was a TOD meter installed in the premises and reading was taken on TOD meter basis i.e. on 3 time zone reading as observed by the respected CGRF(south), Kottarakkara. Despite the Board stating the same as "arrears" on its bill the respected CGRF(south), Kottarakkara has failed to appreciate this and has not applied limitation provision as under Reg 136(3) applicable in case of such arrears. The amount became due from 9/2013 and is calculated based on the then Tariff existing. Thus the claim is well out of the limitation as under Reg 136(3) of Kerala Electricity Supply Code.

Relief sought for:

The appellant may be exempted from remitting such huge amount of Rs. 45,291.00 for the error committed by the Board. Furthermore sec 136 (3) (imposes a limitation of 2 years from the date of amount becoming due upon the deduction of such arrear as unless shown continuously as recoverable arrear of charges for electricity supplied. Thus the claim is well out of the limitation as under Reg 136(3) of Kerala Electricity Supply Code, 2014. A sawmill namely J & S Saw Mill (Consumer No. 91), who had similar situation has been exempted by the respondent.

**Arguments of the respondent:**

The appellant having consumer No. 4208 is running a saw mill under the jurisdiction of Electrical Section, Ottasekharamangalam under LT IV industrial tariff. The appellant has not executed an agreement of contract demand under Time of Day billing which was started in September 2013 though the matter

was informed to him from Section Office. It was revealed from the Regional Audit Officer's inspection that there was shortage in demand charge and current charge of the appellant as the appellant was not being billed under ToD tariff. It was also noticed that power factor was in between 0.53 and 0.89. A power factor penalty is chargeable on the consumer, if the power factor is below 0.9. On the above grounds a short assessment bill for Rs. 45291.00 for the period from 10/2013 to 6/2015 was issued to the appellant.

The respondent has stated that the appellant is liable to remit the amount normally which was omitted to bill in due course. But the respondent has expressed their willingness to give sufficient installment facility for the remittance of the bill. The appellant was not directed to remit any fine or interest for the short assessed amount and Regional Audit Officer only calculated 75% of the total load as the contract demand which also gives 25% profit to the appellant in the billed short assessment amount. The CGRF has issued orders to convince the above facts. Hence the respondent requests to reject the plea of the appellant from relieving the liability to remit the short assessed amount.

**Analysis and findings:**

The hearing of the case was conducted on 20-12-2016, in the Court Hall of Regulatory Commission, Vellayambalam, Thiruvananthapuram. Sri. Shajahan E. has presented his arguments during the hearing. Sri. Vijayakumar C.R., Assistant Executive Engineer, Electrical Sub Division, Kattakada represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

On a detailed analysis of the pleadings and the documents produced by both sides it is noted that Kerala State Electricity Regulatory Commission vide order dated 25-07-2012 has directed the KSEB to implement ToD tariff mandatory for LT IV industrial consumers with connected load of 20 kW and above. Accordingly the ruling demand charge, energy charge and the ToD tariff approved by KSEERC for LT IV industrial consumers with a connected load 20 kW and above.

The ToD scheme shall be effective from 01-01-2013 with demand charges per kVA per month is Rs. 100.00 and energy charges at 4.25 Paise per unit. Billing demand in normal and off peak during a month shall be the recorded maximum demand or 75% of the contract demand whichever is higher during normal/off peak period. Billing demand for peak period shall be the recorded maximum demand.

Excess demand charges shall be applicable to the recorded maximum demand in excess of contract demand during normal period and peak period, which shall be charged at 50% extra i.e., excess demand during normal/peak period  $\times$  ruling demand charges  $\times$  0.5. Excess demand charges during off period shall be applicable only if recorded maximum demand during off period is in excess of 130% of the contract demand.

Accordingly, KSEB has been clarified that all LT industrial consumers to be billed under ToD system (those having connected load of 20 kW or above) are to be given opportunity to declare their contract demand. Board has approved the format of simplified supplementary agreement to be executed by such LT industrial consumers being shifted to ToD billing system at the time of declaring their contract demand.

Further, the Recorded Maximum Demand (RMD) in kVA will be the power delivered to the point of supply of the consumer and recorded during the 30 minutes period of maximum use in each time zone in the month. The demand based on which the consumer will be billed for a month (Billing Demand) shall be as per the Tariff Orders in force from time to time.

The consumer shifted to LT ToD metering / maximum demand based tariff shall be allowed to increase or decrease the declared contract demand within six months from the date of change without any charges, in cases where there is no alterations or changes in the installations and where the revised Contract Demand does not exceed the connected load existing prior to this agreement/undertaking.

The consumer also agrees that when the Recorded Maximum Demand (RMD) for any three consecutive months exceeds the contract demand 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. The consumer is also liable to pay the excess charges at a percentage as shown in the tariff notification in force from time to time.

On going through the above directives issued by the Commission for the ToD tariff for LT IV industrial consumers, the consumers who opt for the new system may be allowed to revise upwards or downwards the declared contract demand within six months from the date of option without any conditions or charges. After this the usual terms and conditions shall be applicable for changing the contract demand. Here in this case, the respondent has neither intimated nor allowed an option to the appellant to declare his contract demand. Moreover, KSE Board has issued specific instructions and approved format of supplementary agreement to be executed by LT industrial consumers being shifted to ToD billing system at the time of declaring their contract

demand. The consumer who has 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, there is no material to show that the respondent had given any intimation to the appellant regarding the implementation of ToD metering and billing and the execution of supplementary agreement in the prescribed format for declaring the contract demand. In this background the issuance of short assessment bill on the appellant merely on the audit objection even after a lapse of more than 2 years cannot be legally justified.

In this case, if at all any loss sustained to the licensee it is because of the negligence on the part of responsible officers of the licensee. Hence it is advisable to conduct an enquiry to find out the reason and the person responsible for the issue. There is no justifiable reason for not intimating the appellant regarding the implementation of ToD billing system instead the appellant is mulcted with a short assessment of Rs. 45291.00 for a previous period of more than two years which is arbitrary and unreasonable.

The appellant also contended that the respondent has exempted a similar consumer with consumer No. 91 namely J & S Saw Mill, who was issued for short assessment for Rs. 35,941.00 for the same issue. During the hearing this Authority has directed the respondent to furnish the relevant details pertaining to the cancellation of the short assessment bill issued to a similarly placed consumer (consumer No. 91) of that of appellant. But, the respondent furnished a report as detailed below.

*“The consumer was issued a capacitor penalty bill for Rs. 35,941.00 against the insufficient capacitor of 7 kVAr to the 28 kW connected load”.*

*“On premise verification of the consumer it is found that 13.5 kVAr capacitor is installed and it is sufficient to the existing connected load.”*

On going through the proceedings issued by the Assistant Engineer, Electrical Section, Ottasekharamangalam dated 23-06-2016 it is noted that the short assessment issued to consumer No. 91 for Rs. 35,941.00 has been cancelled. In the absence of any documentary evidence regarding the alleged inspection of the appellant's premises and verification of capacitor details by the Assistant Engineer, this Authority hereby direct the **Executive Engineer, Electrical Division, Nedumangad** to conduct an enquiry and verify the records relating to the issue of short assessment bill to consumer No. 91 and subsequent cancellation of the same.

### **Decision**

In view of the above findings, the short assessment bill issued to the appellant for Rs. 45,291.00 is not sustainable and hence quashed. The order

of CGRF in OP No.126/2016 dated 23-09-2016 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/076/2016/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri. Shajahan E., K.V. House, R. V. Street, Balaramapuram, Thiruvananthapuram.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Kattakada, Thiruvananthapuram.
3. The Executive Engineer, Electrical Division, KSE Board Limited, Nedumangad for compliance.

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, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.