

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/008/2017

(Present: V.V. Sathyarajan)

Dated: 07th April 2017

Appellant : Sri P.K. Thomas,
Perincheril Rubbers,
Industrial Development Plot,
Poovanthuruthu, Kottayam.

Respondent : The Asst. Executive Engineer,
Electrical Sub Division,
KSE Board Limited
Pallom, Kottayam.

ORDER

Background of the case:

The appellant, Sri P.K. Thomas, is an industrial consumer with name and style, 'Perincheril Rubbers', with consumer No. 9167, under the jurisdiction of Electrical Section, Nattakam. The appellant is aggrieved against the short assessment bill issued for an amount of Rs. 14,520.00 for the period from 10/2013 to 09/2014 towards the shortage in demand charges as the appellant was not being billed under ToD tariff. Aggrieved against the bill the appellant filed petition before the CGRF, Kottarakkara which was dismissed vide order OP No. 177/2016 dated 19-12-2016 due to lack of merit. So, the appellant preferred this appeal before this Authority with a request to cancel the impugned bill issued.

Arguments of the appellant:

As per tariff order of Hon'ble Commission, it is mandatory to have ToD metering from 01-01-2013. As per Clause 11 of General conditions, 'ToD tariff shall be applicable to LT IV industrial consumers having connected load of 20 kW and above and IT 1(a) domestic (3 Phase) consumers having monthly consumption of above 500 Watts. The charges and other terms & conditions for ToD tariff is given as Annexure V & F to the schedule. The scheme shall be effective from 01-01-2013. Here the claim starts from 10/2013. If KSEBL have been providing the consumers with proper bill indicating all required parameters like zone wise kWh, zone wise kVA, cumulative kVAh and cumulative kWh the consumer would have understood the magnitude of penalisation towards short collection during the period 2013 to 2014 due to the undercharging on kVA maximum demand and they would have taken corrective measures by executing suitable agreement as per the actual reading and consumption.

Now the consumer has lost the opportunity for the correction and hence this claim is not reasonable. Also, as per Supply Code, 2014 Reg.123, KSEBL is liable to provide the consumer with detailed bill indicating all the 56 details including power factor, zone wise kVA, kWh, cumulative kWh, cumulative kVAh etc. Assistant Engineer has not provided the consumer with the detailed bill which surmounts to non-compliance of the directives. Even though the appellant has pointed out this, the CGRF have released the order without providing as the detailed bill as envisaged in Regulation 123. This is a serious lapse.

In every calculation it is seen that the connected load in kW was multiplied with 0.75 factor and was fixing the maximum demand. The actual consumption was not recorded. Subsequently KSEBL have enhanced the allotted maximum demand from the allotted physically connected load in kW by dividing it with a factor of 0.9. The KSEBL cannot arbitrarily enhance the allotted maximum demand as their own discretion or their will and wish. If the sanction is to be increased they have to inform the consumer in writing and permission is to be obtained. They also have to execute a stamp paper agreement in this regard. Without concurrence and consent of the consumer they cannot charge more and hence the claim is invalid. KSEBL, in case of certain consumers have declared arbitrarily that the meter was faulty for certain periods and they were collecting average charges as per their will and wish. They have not even bothered to inform the consumer the meter is faulty or test the meter in an Accredited Lab and to have the test certificate to confirm that the meter was faulty. The procedure to be adopted, as per Supply Code, 2014 in case of meter faulty was not complied with.

The entire short assessment was done as per the audit report of Regional Audit Officer, Kottayam and not as per the facts. This is evident from the fact that the Assistant Engineer has given the claim with signature and seal stating that the short assessment bill if the demand charge for the billing period as per the audit report of Regional Audit Officer, Kottayam. The entire claim is already time barred because it is older than two years. As the Electricity Act, Section 56(2) '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 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 the electricity'.

Since the consumer is burdened with additional charge by the way of 'short collection in maximum demand' and KSEBL could not be able to produce the detailed bill showing the consumption as per time zone the entire bill may be canceled. It is also barred by limitation.

Relief Sought

1. Direction may be given to the Assistant Engineer not to disconnect the supply till hearing and disposal of the appeal.
2. Direction may be given to the AE to cancel the impugned bill
3. The Hon'ble ombudsman may release any order with which the consumer may be relieved from the harassment of the license

Arguments of the respondent:

The appellant Sri P K Thomas, Consumer No: 9167 is a registered consumer of Electrical Section, Nattakom. The service connection is under LT IV A tariff. It is humbly submitted that in compliance with the order of the Hon'ble Regulatory Commission making ToD metering mandatory for LT IV consumers having connected load of 20 kW and above. KSEB Limited introduced ToD billing system with effect from 10/2013. Consumers coming under such category were well informed through meetings with customers and as a part of the same the appellant consumer also had duly executed the Contract Demand agreement for 64 kVA on 04-11-2013 with KSEB Limited.

It is submitted that the averments made by the appellant concerning the brevity of the bill issued is factual and hence accepted. At the time of introducing the system, the prevailing bill format was continued till introduction of PDA (spot billing machine) generated bills which elaborate every detail. However even during

those initial days, any consumer who desires to obtain a system generated detailed bill could get so on demand. However the contentions of the appellant that KSEB Limited has arbitrarily enhanced the contract demand is false and misleading and hence denied. From the time of induction of ToD billing itself, the contract demand had been 64 kVA upon which the appellant had executed an agreement with KSEB Limited, as submitted earlier. This was never revised during the entire disputed period. It is further submitted that while assessing the current charges for the appellant, fixed charge was erroneously calculated based on connected load in kW instead of contract demand in kVA (i.e. 58 kW instead of 64 kVA).

On inspection of the records pertaining to the period 01-04-2013 to 31-12-2015 by the Regional Audit Officer, Kottayam, this short assessment on the above connection was detected. Subsequently a short assessment bill for Rs. 14,520.00 was issued to Consumer No. 9167 on 15-06-2016, which was later revised as Rs. 21,200.00 to make good the loss sustained by the Board due to undercharged Fixed Charge based on lesser contract demand during 10/13 to 10/2015. Aggrieved by the issuance of short assessment bill the appellant had filed petition before the Hon'ble CGRF, Kottarakkara in O.P. No. 177/2016. The Hon'ble Forum after hearing both sides has disposed the case upholding the action of Kerala State Electricity Board Limited in issuance of the short assessment bill vide order dated 19-01-2016. Not satisfied with the order of the Forum, the consumer has approached this Honourable Ombudsman.

It is humbly submitted that as per Regulation 134 (1) of Supply Code 2014, as licensee, KSEB Limited, if by review or otherwise establish that it has undercharged consumer by issuing a bill. Accordingly the short assessment bill issued to realize the undercharged bill for the above period is justifiable and sustainable. The appellant has obtained only benefits (monetary) during long period of short collection and is liable to pay the short collection amount which includes neither penal rates nor interest for the period. The respondent also submitted that the contention of the appellant that the claim is time bared citing Section 56(2) of the Electricity Act, 2003 is not maintainable. The Apex Court have held interpretation of the Section as follows: "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 the consumer'.

In this case KSEB Limited, subsequent to the audit findings report dated 22-03-2016, has raised the demand on 01-07-2016 and this bar of limitation will be

found applicable. Taking into the consideration the valid grounds upon which the short assessment bill was issued, it is humbly prayed that the Hon'ble Electricity Ombudsman may kindly dismiss the petition and kindly direct the appellant to remit the bill amount. Otherwise the respondents will be put into irreparable losses.

Analysis and findings:

The hearing of the case was conducted on 08-03-2017, in my chamber at Edappally, Kochi. Miss Jesna Jose represented for the appellant's side and Sri Mathew Jacob M, Assistant Executive Engineer, Electrical Sub Division, Pallom 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 Kerala State Electricity Regulatory Commission for LT IV industrial consumers with a connected load of 20 kW and above. The ToD billing 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 x ruling demand charges x 0.5). Excess demand charges during off peak period shall be applicable only if recorded maximum demand during off peak 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 tariff (those having connected load of 20 kW and 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 tariff / 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. 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.

It is a fact that the appellant had submitted supplementary agreement for ToD metering for LT industrial consumers on 04-11-2013 for a contract demand of 64 kVA. But the respondent has not taken any action on this agreement so far. It is the duty of the respondent to execute supplementary agreement with the LT IV industrial consumers and shift them to ToD billing system at the time of declaring their contract demand. However, the respondent has stated that while assessing the current charges of the appellant, fixed charge was erroneously calculated based on connected load in kW instead of contract demand in kVA (i.e. 58 kW instead of 64 kVA) during the above period. This anomaly was detected by the Regional Audit

Officer, Kottayam, and subsequently a short assessment bill was issued on 15-06-2016 for Rs. 14,520.00, which was later revised to Rs. 21,200.00.

The question raised in this case is whether the revised short assessment bill issued on 28-12-2016 alleging wrong calculation of demand charges is in order or not?

Regulation 134(1) of Supply Code is concerned that provision states that **“if the licensee establishes either by review or otherwise, that it has undercharged the consumer, licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill”**. Though the appellant had admitted the fact that he submitted supplementary agreement for ToD metering for LT industrial consumers on 04-11-2013 for a contract demand of 64 kVA, the respondent charged only for 58 kW, I don't find any reason to interfere with the decision taken by the respondent in realizing the actual demand charges. However, if at all any loss sustained to the licensee towards the interest portion, it is only 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.

Regarding the argument raised by the appellant that the entire liability has become time barred and cannot be recovered by law. Section 56 (2) of Electricity Act, 2003 has the relevance, 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 charge for electricity supplied and the licensee shall not cut off the supply of the electricity”**.

It will not be out of place here to refer to the reported decision in *Tata Steel Ltd V/s Jharkhand State Electricity Board* (2008 KHC 7794 AIR 2008 Jha 99), which read as; **“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 Electricity energy”**. In a similar case in *Brihat Mumbai Municipal Corporation V/s Yathish Sharma and others* (2007 KHC 3784: 2007 (3) KLTSN 11 (Bom)), it was held as; **“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 I feel that the Clause 56(2) Limitation of time bar of 2 years will not be applicable here and hence the appellant's argument cannot be accepted.

Decision

In view of the above findings, the revised short assessment issued by the respondent is found in order and the appellant is liable for making the payment. The appeal is disposed of accordingly.

The order of CGRF in OP No. 177/2016 dated 19-12-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/008/2017/ _____ /Dated: _____

Delivered to:

1. Sri P.K. Thomas, Perincheril Rubbers, Industrial Development Plot, Poovanthuruthu, Kottayam.
2. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Limited, Pallom, Kottayam.

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.