

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/022/2017

(Present: A.S. Dasappan)

Dated: 25th May 2017

Appellant : Fr. Prior,
St. Antony's Monastery,
Carmel building,
Aluva, Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Aluva,
Ernakulam

Background of the case:

The appellant represents St Antony's Monastery, Aluva having consumer number 4194 under LT VII A tariff and is under the jurisdiction of Electrical Section, Aluva. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 08-12-2016 directed the appellant to remit an amount of Rs. 27,300/- plus surcharge being the short assessment based on the findings of AG's audit that the fixed charge of three phase was not charged for 78 months. An objection against the demand was filed before Hon'ble CGRF and he not admitted the petition without quoting any valid reason or regulations. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The gist of the appeal petition is furnished below.

The appellant is a consumer having a single phase connection with consumer number 4194 and he is remitting the electricity bills regularly without any default. The respondent has issued a disconnection notice dated 08-12-2016 for Rs. 27,300/- and due to non remittance of the amount, the connection was disconnected.

The bill issued is a short assessment of the fixed charge for the period from 04/2005 to 09/2011. In the bill, the fixed charge for the three phase connection was charged. It is not fair and justifiable to demand the fixed charge of three phase to a single phase connection and hence not

sustainable before law. The appellant further argued that the officials of the respondent or the AG's staff not inspected the premises and confirmed whether connection was three or single phase. The bill was dated 17-06-2012 and the respondent now directed the appellant to remit amount along with surcharge by issuing a disconnection notice dated 08-12-2016. It is contended by the appellant that the action of the respondent to recover the arrears after a period of 4½ years is clear violation of Section 56 (2) of Electricity Act, 2003. The bill issued is not in conformity with the provisions of the Electricity Act, 2003 and the Supply Code 2005 and 2014. The appellant has requested to set aside the bill and to reconnect the connection.

Arguments of the respondent:

The petitioner has availed single phase electric connection under LT VII A tariff category with connected load of 7 kW under Electrical Section Aluva Town. Short assessment bill was issued to the petitioner towards the short assessment of fixed charge for the period from 4/2005 to 9/2011 (78 months), as single phase connection was availed by the consumer even though the connected load exceeded 5kW.

Fixed charges collected as single phase connection

$$= 7\text{kW} \times 50/\text{kW} \times 78 \text{ months} = 27,300.00$$

Fixed charges to be collected as 3 phase connection

$$= 7\text{kW} \times 100/\text{kW} \times 78 \text{ months} = 54,600.00$$

$$\text{Balance to be collected} = 54600 - 27300 = 27,300.00$$

As the connected load exceeded 5 kW (limit of single phase connection) the short assessment bill was issued for the FC as per the direction given vide AG's Audit dated 04-10-2011 of Senior Audit Officer CA party No.5. The connected load has been regularised as 1278 Watts on 07-11-2016.

Analysis and findings:

The hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 16-05-2017. Sri Varghese A.G. nominee of the appellant was present and Smt. Jessy Rose Chacko, Assistant Executive Engineer, Electrical Sub Division, Aluva Town represented for the opposite side. Both sides have presented their arguments on the lines stated above. On examining the Petition of the appellant, the statement of facts filed by the Respondent, the arguments made 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 consumer has approached the CGRF, Ernakulam with the request to set aside the short assessment bill dated 17-6-2012 for Rs. 27,300/- plus surcharge issued for the fixed charge for a period of 78 months. The appellant has stated that his petition was not admitted by the CGRF without quoting any provisions or valid reasons. The CGRF is duty bound to accept a petition submitted by a consumer and dispose the same considering the merits of the case.

The respondent's version is that the arrear bill was issued on the basis of AG's audit report. But on going through the report, the AG had clarified the reason for non-conversion of the single phase to three phase of a number of consumers since their connected load exceeded 5000 Watts. The tariff assigned to the appellant is VII A. The AG's team had detected that the supply was provided under single phase in spite of the load of the consumers being in excess of 5000 Watts.

As per rules, when the Unauthorized Additional Load is detected, it is the duty of KSEB to issue a provisional assessment for the offence with a notice to the consumer, asking to remove the additional load immediately and report facts or submit papers to regularize the UAL within a reasonable time. The Rule 51 of KSEB Terms and Conditions of Supply, 2005, states that the UAL should be got regularized by the consumer within a period of 3 months on placing application to the Assistant Executive Engineer and by paying the required fees like additional security deposit and other charges. In case the consumer neglects the notice, the KSEB can take steps to disconnect the service connection, if the UAL is found detrimental to the KSEB system. The KSEB states that no disconnection steps were initiated as the consumer preferred to enjoy the UAL by remitting the current charges and KSEB admitted it. The respondent has admitted that the connected load has been regularised as 1278 Watts on 07-11-2016. In the bills dated 6-7-2016 and 7-12-2016 issued to the appellant, the connected load is shown as 6500 watts and 1208 watts respectively. During the hearing the appellant deposed that he is still having a single phase connection.

It is pertinent to note that the connected load calculated in 2011 was 7 kW and a back assessment for 78 months was done and bill for the balance of fixed charges only issued on 17-6-2012 and no further action was taken till 08-12-2016. The arrear bill for 78 months pertains from 04/2005 to 09/2011. Since this period, the consumer is enjoying the additional load till 07-11-2016, without removing or regularizing the same. In such cases, it is the responsibility of the respondent to conduct an inspection in the premises, prepare a site mahazar and to take appropriate action against the consumer for the unauthorized additional load. Here occurred serious lapses and negligence on the part of the respondent.

As pointed out by the appellant, it is relevant to examine the application of Section 56(2) of Electricity Act and Regulation 136(3) of the Supply Code, 2014 in the present case. The main contention of the Appellant is based on the Limitation or time bar under Section 56(2) of

Electricity Act, 2003, which implies as; 'The licensee shall not recover any arrears after a period of two years from the date when such sum become first due unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied'. Hence *the point is; 'when will the electricity charges become due for payment i.e. date from which the electricity charges are 'liable to pay' by the consumer, which is also termed as the 'due date'.* This 'due date' is an important date as far as both consumer and KSEB (Licensee) is concerned.

The Judgment in a petition filed before the Hon High Court, Bombay, vide case No: 3784/2007, has dealt with the 'due date' issue in detail and pronounced its considered opinion. The same judgment is referred in this context and is reproduced herewith the relevant portion 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 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'.*

Based on the above judgment, the period of two years as covered in Sec. 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the said case, it has been further clarified by Hon: High Court that; "Amount of charges would become due and payable only with 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)).

Regulation 136 (3) of Supply Code reads as:

(3) No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.

As such, the period of two years would run from the date when such a bill is raised by the Board and have become due for payment only after that demand has been raised. Hence, the bar of limitation under Section 56(2) and Regulation 136(3) is admissible in this case, as the disputed bill was seen raised only on 17-06-2012 and such sum has not been shown continuously as recoverable arrears of charges up to 08-12-2016 in all the subsequent bills issued by the respondent. Further there is no provision to

collect the fixed charges relates to a three phase connection from the consumer of a single phase connection

Decision

In view of the above findings the short assessment bill dated 17-06-2012 for Rs. 27,300/- is hereby quashed.

Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/022/2017/ _____ /Dated: _____

Delivered to:

1. Fr. Prior, St. Antony's Monastery, Carmel building, Aluva, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Aluva, 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-4.
3. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.