

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/005/2017
(Present: A.S. Dasappan)
Dated: 29th May 2017

Appellant : Prof: G. Raveendran Nair,
General Manager (Operations),
Mata Amritanandamayi Math,
AIMS, Ponekkara P.O.,
Edappally,
Kochi- 682041.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Pandalam,
Kollam

ORDER

Background of the case:

The appellant is running an institution called Amrita Vidyalayam at Kurampala, Pandalam, Pathanamthitta District and having a 3 phase electrical connection vide consumer no : 1146142015447 (LT 6F tariff) under Electrical Section, Pandalam with a sanctioned connected load of 10 Kilowatts. On 25-08-2009 the Division Squad with the officials of the Electrical Section, Pandalam inspected the premises of the school and found that the equipments are connected in excess to the connected load already granted. The respondent issued provisional bill assessment for an amount of Rs. 2,73,162/- being short remittance for alleged unauthorised load of 40 kW, dated 28-09-2009 as envisaged 126 of the Electricity Act 2003. The assessing officer after hearing has finalised provisional assessment for an amount of Rs. 1,19,202/- in the final assessment bill dated 25-11-2009. Aggrieved by the assessment bill issued by the respondent, the appellant filed a petition before the Honourable High Court of Kerala under WP(C) 34744/2009 praying to restrain the Assistant Engineer from initiating the penal charge and consequential

proceeding for disconnection of the electric supply. The Hon'ble Court disposed the WP(C) 34744/2009 on 04-06-2015 by directing the consumer to file the complaint before the Kerala State Appellate Authority within one month. Pursuant to the judgment in the writ petition, the appellant filed a petition before the Appellate Authority. The Appellate Authority had ordered to set aside the final assessment issued by the respondent in order no. DB/ES/UAL/PRDG/01 dated 9/11/2009 and also directed the respondent to issue revised assessment under LTVI A tariff for the unauthorised additional load of 19 kW. As per the order of the Appellate Authority, the respondent revised the bill to Rs. 15,597/- being the balance amount to be paid by the appellant.

Thereafter the respondent had issued a bill amounting to Rs. 1,79,940/- towards fixed charge for the unauthorised load connected from 12/2009 (19 kW), from 10/2010 (25 kW) and from 9/2015 (54 kW). Aggrieved to this short assessment bill, the appellant had filed a petition before the CGRF, South, Kottarakkara. The CGRF has dismissed the petition on finding that the bill dated 28-04-2016 for Rs.1,79,940/- is in order and directed the appellant to remit the amount within one month from date of receipt of the order. Aggrieved by the decision of CGRF, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

The following are the main contentions of the appellant in his appeal petition.

The appellant has preferred a detailed objection in which the appellant has specifically contended that provisional assessment is not in conformity to the provisions of the Supply Code 2005. It is specifically contended that the number of computers stated in the site mahazar is wrong. The actual number of computers installed in the appellants premise is only 53. In the mahazar its wattage of each computer is calculated as 250 Watts and wattage of monitor is 300 Watts, wattage of printer is 450 Watts. It was also contended that the provisional assessment is issued adopting LT VII A tariff which is against the decision of the Honourable Court in 2009 KLT 1022. It is also pertinent to note that as per Section 77 (5) (C) Annexure 7 of Kerala Supply Code, 2014, the maximum load of the computer is 100 Watts. As such the appellant liability if any (without admitting) must be limited to the above said provisions of the code.

The appellant submitted the application with completion report with all necessary documents for regularise the additional load of 24 kW.

The respondent has issued a letter dated 26-09-2009, in which it has been stated by the respondent that the total load detected by the Division level Anti Power Theft Squad was 40 kW. It was also directed to furnish reasons for applying to regularise only 24 kW vide application. The respondent insisted to the consumer to apply for regularise the unauthorised additional load of 40 kW.

Actually the respondent cannot insist the consumer to apply for specific connected load and cannot indefinitely delay the application of the consumer. The regularisations of the additional load were not done only due to the negligence of the duty of the respondent.

The Honourable Kerala State Electricity Appellate Authority issued the order in appeal No. 344/2015 on 03-02-2016 holding that the unauthorised additional load was only 18182 Watts (19 kW) and the respondent was directed to issue revised assessment under LT VI A tariff within 15 days.

As per the order of the Appellate Authority, respondent re-assessed the bills by considering the unauthorised additional load is 19 kW and revised the bill and issued to the customer. It is noted that the respondent claimed that a balance amount of Rs. 15,597.00 is to be refunded to the respondent. The calculation of the respondent was wrong and the appellant made it clear by their letter. Actually the amount refunded to the appellant is Rs. 71,910/-. But so far the respondent did not refund the amount of Rs. 71,910/-. This is contempt of verdict of Honourable Appellate Authority.

The respondent informed the appellant that a huge sum of Rs. 1,79,940/- is to be remitted by the consumer as a pending arrears from 2009 onwards. This contains the fixed charges from 12/2009 onwards for 19 kW load, fixed charges from 10/2010 onwards for 25 kW load and fixed charges from 9/2015 onwards for 54 kW.

The appellant has specifically contended that the bill amounting to Rs. 1,79,940/- is not sustainable in law. As per IE Act 2003 section 56 Clause (2) "No sum due from any consumer shall be recovered after period of two years unless such sum has been shown continuously as recoverable as arrear charges". In the supply code 2014, regulation 136 Clause (3) also stated that as "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 of when such became first due unless sum has been shown continuously as recoverable arrear of charges of electricity supplied". So the respondent restricted to claim any amount after two years unless such amounts has been shown regularly in the regular bill, no such amount had been in any bills. Hence the appellant is not bound to pay any such became arrears.

The respondent has issued a letter dated 17-06-2016, in which it has been stated by the respondent that the penal charge imposed up on the consumer is genuine and if it is not remitted within 15 days of the letter, the disconnection procedure might be implemented up on the appellant. Also the respondent stated that the appellant should have to remit an amount of Rs. 19,750/- as additional ECSC for regularise the additional load of 50 kW as per the appellant application dated 03-09-2015.

The appellant had submitted the application with completion report for regularise the additional load of 55 kW. As per the respondent letter dated 09-03-2015, the consumer has deposited an amount of Rs. 3,13,700/- (Rupees Three Lakhs Thirteen Thousand Seven Hundred only) vide DD No. 987062 dated 19-03-2015 and receipt No: 2129905 dated 20-01-2015. This work pertains for installing a 100 kVA transformer and other allied works to the appellant premises, for regularise additional load of 64 kW. But after completion of the deposit work the respondent did not do any action to regularise the additional load. It could be seen that this is the clear violation of the respondent and the noncompliance of the rules and regulations of the Kerala Electricity Supply Code, 2014 vide under Section 86, which causes many hardships and financial losses to the consumer. The appellant prays to Honourable Ombudsman that punish the respondent for violating regulation 153 (15) of the supply code 2014, by invoking under Section 142 of the IE Act 2003.

It could be seen that the verdict of the Honourable Appellate Authority has not been complied with by the respondent. This is against the decision of Honourable Appellate Authority. Moreover that the respondent raised another amount of Rs. 1,79,940/- as the arrear bills during the period of 2009 onwards. Not only that the respondent had proceeded to disconnect the supply to the consumer premises and the respondent did not regularise the additional load even remitted the OYEC amount of Rs. 3,13,700/- and finally the case was heard before the Honourable CGRF Forum, the verdict has issued as shown below.

1. The appellant shall remit the additional bill issued for Rs. 1,79,940/- on 28-04-2016 within one month from date of receipt of this order.
2. The respondent is directed to allow suitable instalments to the appellant without interest if he desires.
3. The respondent shall take necessary actions to regularize the additional load in the premises of the appellant.
4. No order as to cost.

Arguments of the respondent:

The respondent has put forward the following contentions in his statement of facts filed by him.

The Consumer No.15447 of Electrical Section Pandalam is an unaided institution functioning at Kurampala, Pandalam under the name 'Amritha Vidyalayam'. The present tariff is VI F (previously LT VII-A tariff). The registered connected load of the premises at the time of service connection was 10 kW. It is true that the party has filed objections against the provisional assessment consequent on detection of Unauthorized Additional Load at the premises, which was duly considered and disposed of by the Assessing Officer complying the time-lines stipulated and affording reasonable opportunity of hearing to this Appellant/Consumer. Later, this Appellant had filed WP(C) No: 34744/2009 before the Honourable High Court of Kerala, and finally the matter was referred to the Statutory Appellate Authority under Section 127 of the Electricity Act 2003. Conclusively, the point of dispute requiring decision of the said authority was twofold Viz., 1) whether the usage of the Unauthorised Additional Load detected at the premises could be reckoned as unauthorized use of electricity? and 2) Whether the assessment issued under LT VI A is legally sustainable or not? After going through the facts and circumstances, the Appellate Authority unequivocally held that the Appellant had used additional load without permission from the respondent and the existence of unauthorised additional load should be reckoned as Unauthorised Use of Electricity attracting assessment under Section 126 of the Electricity Act 2003. Thus, reworking the capacities of Computer and peripherals in use at the premises, the Authority directed this respondent to revise the assessment under LT VIA tariff for an unauthorised additional load of 19kW within 15 days.

Accordingly, the impugned final assessment was revised to Rs. 75,198/- (Rupees Seventy Five Thousand One Hundred and Ninety Eight Only) on 20-02-2016, and adjusting the interim remittances by this Consumer/Appellant, he was directed to remit the balance amount thereof of Rs. 15,597/- (Rupees Fifteen Thousand Five Hundred and Ninety Seven Only). Admittedly, when the dispute over the assessment pursuant to the detection of the Unauthorized Additional Load in use was pending disposal before the Honourable High Court of Kerala and in turn before the Statutory Appellate Authority under Section 127 of the Electricity Act, 2003, this Consumer/Appellant has submitted completion reports at different point of time, that too for varied quantum of loads, seeking enhancement of contracted load at the premises. Whereas further course of action therein kept in abeyance, pending disposal of the dispute over the existence of Unauthorised Additional Load before the Honourable High Court of Kerala/Statutory Appellate Authority.

There was instance that, when this Consumer/Appellant had filed an application for power requirement to the tune of 61 kW on 24-01-2014, an Administrative Sanction for an amount of Rs: 3,28,000/- (Rupees Three Lakhs Twenty Eight Thousand only) towards installation of a 100KVA Transformer was accorded, and a demand notice was also served on him accordingly. But this Consumer/Appellant did not turn up for the remittance of the same.

Finally on the basis of revised requirement for Power Allocation to the tune of 64 kW from this Consumer/Appellant on 10-01-2015, a Transformer of 100 kVA capacity was installed at their premises on 03-09-2015, subject to the remittance of the estimated cost of Rs: 3,08,700/- (Rupees Three Lakhs Eight Thousand and Seven Hundred only) by him. Pursuant, a completion report was also filed by this Consumer/Appellant towards regularisation of connected load to the tune of 61kW at the premises. Whereas, prevented by the Regulation 99(4) of the Supply Code 2014, which stipulates that 'the application for enhancement of load shall not be considered if the consumer is in arrears of payment of the dues payable to the licensee', this Licensee was not in a position to process the respective application.

In compliance of the orders of the Honourable Appellate Authority, the impugned invoice was revised to the impugned penal assessment against UAL in use at the premises was revised to Rs. 75,198/- (Rupees Seventy Five Thousand One Hundred and Ninety Eight Only) on 20-02-2016, and adjusting the interim remittances by this Consumer/Appellant, he was directed to remit the balance amount thereof of Rs. 15,597/- (Rupees Fifteen Thousand Five Hundred and Ninety Seven Only). The respective assessment was in conformity with the Tariff and Rate prevailing. The Consumer/ Appellant has no reason to impugn the accuracy of revised assessment, as the same was in line with the orders of the Appellate Authority as well as on par with rates and tariff prevailing.

Pursuant to the final disposal of the appeal/dispute over existence of UAL at the premises by the Appellant Authority, the application for regularisation/enhancement of the load was processed and connected load at the premises to the tune of 54 kW was regularised on 28-04-2016. Subsequently an invoice for realisation of undercharged amount for the period from 12/2009 to 04/2016 on account Fixed Charge for their continued use of Unauthorised Additional Load at the premises till regularisation, at normal rates prevailed then, amounting to Rs: 1,79,940/- (Rupees One Lakh Seventy Nine Thousand Nine Hundred and Forty Only) was served on this Consumer/Appellant. As per the Regulation 134 of the Kerala Electricity Supply Code, 2014, on under charged bills and over charged bills stipulates that (1) 'If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill. Here-

in this case, a surprise inspection at the premises evidenced use of Unauthorised Use of additional load at the premises. Whereas prevented by the fact that the dispute over the findings of inspection and consequential assessment under Section 126 of the Electricity Act 2003 were under challenge before the Hon'ble High Court of Kerala and in turn before the Hon'ble Kerala State Electricity Appellate Authority (under Section 127 of the Act), fixed charge for the continued use of Unauthorised Load the premises was not levied from the consumer/Appellant, pending disposal of the issue by the appropriate Forum.

Now on final disposal of the issue over existence and use of Unauthorised Additional Load at the premises, this Respondent organisation / Licensee has resorted to make good the amount undercharged pertaining to the Fixed Charge portion, that too on the basis of the total load in use at the premises disclosed by this Consumer/Appellant in their Completion Reports furnished to this Licensee time to time. As the regularisation of the Unauthorised Additional Load at the premises had not been done, pending decision over the dispute before the Honourable High Court of Kerala and in turn before the Appellate Authority, it was resorted to realise the amount undercharged at normal rate alone. No penalty or interest was levied in the invoice in question amounting to Rs. 1,79,940/- (Rupees One Lakh Seventy Nine Thousand Nine Hundred and Forty Only).

When the Section 56(2) of The Electricity Act, 2003 as well as Regulation 136 of the Kerala Electricity Supply Code, 2014 is in no way exhaustively applicable to this instant case, this Consumer/Appellant has no reason to attribute that the assessment made after two years of the alleged period is not sustainable as per the law. As per the settled position of law by the Honourable High Court of Kerala in WP (C) No: 90/2009 [2009 (2) KLT], "the word 'due' should bear the meaning that it is upon issuance of the bill that the amount become due. From this ruling it is clear that a bill becomes due only when it is demanded". Herein an invoice amounting to Rs. 1,79,940/- (Rupees One Lakh Seventy Nine Thousand Nine Hundred and Forty Only) accompanied with a detailed calculation statement substantiating the calculation and mode of arrival of the amount due, was served on the Consumer from Electrical Section, Pandalam on 28-04-2016, that too towards recovery of the under charged amount from the Consumer. Thus this claim could not be attributed as time barred. The amount of charges would become due and payable only with the submission of the bill and not earlier. It is the bill which stipulates the period within which the charges are to be paid. Reasonably it is the bill for the actual amount undercharged during the period in question. The scheme of the Section 56(2) is that the amount becomes due when the bill is issued, thus it would also become applicable from the date of service of the bill.

The Appellant is liable to pay Rs. 23,550/- as additional estimate cost for service connection for enhancement of connected load of LT 3 phase weather

proof service connection with a maximum load of 10 kW in to the range of 50 kVA – 100 kVA (previously of Rs. 19,750/-) which is the rate approved by Kerala State Electricity Board Ltd.

As stipulated under regulation 99 (4) of the Kerala Electricity Supply Code, 2014 - the application for enhancement of load should not be considered if the consumer is in arrears of payment of the dues payable to the licensee. Thus, this Licensee was unable to regularise the additional load at the premises then, pending decision of the dispute over the assessment consequent on detection of Unauthorised Additional Load, No violation of codes could be attributed to. Furthermore as the original assessment against the usage of UAL at the premises was when the Supply Code 2005 in force and strictly on the basis of Clause 51(1) therein read with Clause 50 (5) & (6), there is no reason to evaluate the issue on the basis of any subsequent regulations.

As the provision for statutory appeal against the assessment under Section 126 of the Electricity Act 2003 solely vests with the Appellate Authority constituted under Section 127 of the Act and this Consumer/ Appellant has exhausted such provision for such a statutory appeal, it is unbecoming on the part of him to bring the same dispute again before another Forum.

As this Consumer has no point to deny continued use of Unauthorised Additional Load at the premises, they are bound to pay Fixed Charge for the respective additional load also, (as they were paying only the Fixed Charge for the Contracted load alone during the period wherein the dispute was pending before the Court/Forum). This invoice was also put under challenge before the Honourable Consumer Grievance Redressal Forum (South) in OP. 132/2016, which was decided in favour of this respondent.

Here in this case undercharging of the respective consumer over a period in question is evident, the action of this Licensee/ Appellant in issuing an invoice in question towards realization of the amount actually undercharged over the respective period is valid and perfectly in order. The consumer is legitimately bound to pay for the actual consumption which he had made for the period.

The Consumer himself is having no dispute over the continuance of the additional load at the premises and consumption of energy through the respective load over the period. Therefore be the Consumer is liable to pay Fixed Charge for the continued use of UAL at the premises.

A Supplementary demand made on the Consumer for short charged amount will not attract bar on limitation under Section 56(2) of the Electricity Act. A mile stone judgment of the High Court of Kerala in WA (C) 2011/2012 contains the settled position that the question of normal period of limitation is not applicable, both towards electricity and water charges.

Analysis and findings:

The hearing of the case was conducted on 15-05-2017 in the Court Hall of CGRF (South), Kottarakkara. Sri G. Raveendran Nair, represented the appellant's side and Sri G. Suresh Babu, Assistant Engineer, Electrical Section, Pandalam represented for the respondent's side. On examining the petition, the counter of the respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant has filed this petition seeking the following reliefs;

- i. To quash the short assessment bill for Rs. 1,79,940/- issued to him by the respondent.
- ii. To declare that there is no unauthorized connected load in the premises as alleged.
- iii. To direct the respondent to regularize the additional load as applied by the appellant.
- iv. To punish the respondent for violating regulation by invoking power under Section 142 of the Electricity Act, 2003.
- v. To direct the respondent to comply the order of the Appellate Authority.

It is contended by the appellant that in pursuance of the order of the Appellate Authority, respondent re-assessed the bills by considering the unauthorised additional load as 19 kW and revised the bill and issued a bill for Rs. 15,597/-. According to the appellant, the reassessment and calculation of unauthorised load 19 kW done by the respondent was wrong and actually an amount of Rs. 71,910/- has to be refunded to the appellant. But the respondent's version on this subject matter is that as the provision for statutory appeal against the assessment under Section 126 of the Electricity Act, 2003 solely vests with the Appellate Authority constituted under Section 127 of the Act and this appellant has exhausted such provision for such a statutory appeal, it is unbecoming on the part of him to bring the same dispute again before another Forum.

The Appellate Authority has already examined the following questions in the petition filed by the appellant 1) whether the usage of the Unauthorised Additional Load detected at the premises could be reckoned as unauthorized use of electricity? and 2) Whether the assessment issued under LT VI A is legally sustainable or not? and ordered to revise the assessment under LT VI A tariff for the unauthorised additional load of 19 kW. The respondent had revised the bill accordingly. If the appellant has any objections on the

calculation, he has the right to approach the Appellate Authority itself with a review petition or higher officials of the licensee to rectify the anomaly, if any, in the calculation. This Authority has no jurisdiction to entertain a subject matter already disposed by the Appellate Authority.

The appellant's contention is that he had submitted the application with completion report for regularise the additional load of 55 kW and deposited an amount of Rs. 3,13,700/- (Rupees Three Lakh Thirteen Thousand Seven Hundred only) vide DD No. 987062 dated 19-03-2015 and receipt No: 2129905 dated 20-01-2015. This work pertains for installing a 100 kVA transformer and other allied works to the appellant premises, for regularise additional load of 64 kW. The respondent had not taken any action to regularise the additional load. This is the clear violation of the rules and regulations of the Kerala Electricity Supply Code, 2014 vide under Section 86, which causes many hardships and financial losses to the consumer. Hence the submission of the appellant is to punish the respondent for violation of the regulation 153(3) by invoking Section 142 of Electricity Act, 2003. The powers and duties of State Electricity Ombudsman are described in the KSERC (CGRF and Electricity Ombudsman) Regulations, 2005. As per the said regulations, no power has been vested with the Electricity Ombudsman to take disciplinary action or to punish the officers of licensees.

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'. The contention raised by the appellant is that the bill amounting to Rs. 1,79,940/- is not sustainable in law since the respondent restricted to claim any amount after two years unless such amounts has been shown regularly in the regular bill, no such amount had been in any bills. Hence the appellant is not bound to pay any such became arrears. 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 Section 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)). 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) is not admissible in this case, as the disputed bill was seen raised only on 28-04-2016.

The following facts are revealed on going through the records that the appellant was issued short assessment bill for Rs.1,79,940/- towards fixed charge for the unauthorised load of 19 kW connected from 12/2009, 25 kW connected from 10/2010 and 54 kW connected from 09/2015. This short assessment bill is seen issued on 28-4-2016 and the period covered is 5 years and 10 months. On 25-08-2009, an inspection was conducted by the Division Squad in the premises of the appellant, detected 40 kW of unauthorised additional load, over and above the contracted connected load of 10 kW. The consumer was provisionally assessed under Section 126 of Electricity Act, 2003 and issued a penal bill for Rs. 2,73,162/-, which was reduced to Rs. 1,19,202/- in the final order. The appellate Authority disposed an appeal petition by fixing the connected additional load as 19 kW and directed to revise the impugned final assessment bill under Section 126. Thus final assessment was revised to Rs. 75,198/- for a period of 12 months and after adjusting remittances made, the appellant was directed to remit the balance amount of Rs. 15,597/-. Since the appellant has objections about the calculation, he has not remitted the amount and the matter is still in dispute.

It is contended by the respondent that on final disposal of the issue over existence and use of Unauthorised Additional Load at the premises, the Respondent has demanded the amount undercharged pertaining to the Fixed Charge portion only, that too on the basis of the total load in use at the premises disclosed by the Appellant in their Completion Reports furnished to the Licensee time to time. As the regularisation of the Unauthorised Additional

Load at the premises had not been done, pending decision over the dispute before the Honourable High Court of Kerala and in turn before the Appellate Authority, it was resorted to realise the amount undercharged at normal rate alone.

The respondent contended that the appellant was not penalized under Section 126 of Electricity Act, 2003, but only the fixed charge was assessed. In this matter, it is pertinent to note that the short assessment bill for Rs 1,79,940/- from 12/2009 to 04/2016 was issued on 28-04-2016. Hence the action under Section 126 of the Electricity Act, 2003 is not necessitated in this case, at the time where Regulation 153 (15) of the Kerala State Electricity Supply Code 2014 was in force. It is relevant to point out a similar issue considered by the Hon'ble Kerala State Electricity Regulatory Commission in the order dated 31-05-2016 in OP No.06/2016 and it was analyzed by the Commission as follows:

“.....the Honorable Supreme Court had come to the conclusion in the judgment in Seetharam Mills Case that, the consumption of electricity in excess of the sanctioned load would fall within the ambit of “unauthorized use” of electricity in terms of Section 126 of the Electricity Act,2003. On examination of the judgment it can be seen that, the Honorable Supreme Court had come to the said conclusion not only based on the statutory provisions of the Electricity Act, but also based on the relevant terms and conditions of the Orissa Regulations and of the agreement executed between the parties. Besides being violation of Regulations 82 and 106 of the Orissa Regulations and the terms of the agreement between the licensee and the consumer, the case of excess load over the sanctioned load would also fall under explanation (b) (iv) to Section 126 of the Electricity Act, 2003, since such excess load would change the category of consumer from medium industry to large industry. Use of electricity which was supplied for medium industry, by a large industry would amount to use of electricity for a purpose other than for which it was authorized. It was under these circumstances the Hon'ble Supreme Court held that, consumption of excess load would fall under explanations (b)(iv) to Section 126 besides it being in violation of the terms of the agreement and the regulations in force. As per the said explanation unauthorized use of electricity means the usage of electricity for the purpose other than for which the supply electricity was authorized. In the decided case, due to the consumption of excess load, the category of the consumer has been changed from LT /HT industrial (medium) supply to large industries as per Regulation 80(9) & (10) of the Orissa Regulations. As per Regulation 80(9) the purpose of the supply of power is to promote industrial production with a contract demand in between 22 kVA and 110 kVA where power is generally utilized as motive force. But as per Regulation 86(10) the purpose of the supply of power is to promote industrial production with a contract demand in between 110 kVA and 2500 kVA where power is substantially utilized as motive force for industrial production. From the above it is clear that, the purpose of categorization is

different in the two cases. Thus the tariffs for the supply of power for different purposes are different. In such cases if the consumption exceeds the sanctioned load, it would definitely change the purpose of supply and would fall under explanation (b)(iv) to Section 126 of the Electricity Act, 2003. Therefore the findings of the Hon'ble Supreme Court in Seetharam Mills Case have application only in similar cases and it depends up on the Regulations and the terms and conditions of agreement which existed at that time in Orissa."

"In the judgment, the Hon'ble Supreme Court had also held that the regulations framed in exercise of powers of subordinate legislation or the terms and conditions imposed in furtherance of statutory provisions have been held to be valid and enforceable. More over the Commission has issued the regulation after considering the suggestions and objections of all stakeholders including the licensees. Further the licensees in the State are following the regulations as such from 01.04.2014 onwards. It is also pertinent to note that, as per clause 10 of the agreement for supply of energy (LT) (Annexure 12 to Supply Code) and Clause 20 of the agreement for supply of energy (HT& EHT), it is mutually agreed between the consumer and the licensee, that the Kerala Electricity Supply Code, 2014 is binding on them. Thus, if only a consumer consumes excess energy contrary to the provisions in the Supply Code, it can be termed as unauthorized use of electricity. In view of the facts and circumstances and the settled legal positions as explained above, only when the consumer commits breach of the terms and conditions of the agreement, the regulations and of the statutory provisions by consuming electricity in excess of the sanctioned load, such consumer is liable to be proceeded under Section 126 of the Act 2003. In the decision reported in Seetharam Mills case, it can be seen beyond any doubt that consumer had violated the terms and conditions of the agreement and relevant provisions of the conditions of Orissa Regulations by consuming excess load over the sanctioned load, which would also fall under explanation (b)(iv) to Section 126 of the Act 2003.

Here in the case at hand, the petitioner has not violated any provisions of the Supply Code, 2014 and hence he is not liable to be proceeded under Section 126 of the Electricity Act, 2003."

"23. Sub regulation 15 of Regulation 153 of the Kerala Electricity Supply Code, 2014 provides as follows;

"Unauthorized additional load in the same premises and under same tariff shall not be reckoned as unauthorized use of electricity".

It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act. The mahazar admits the fact that the unauthorized load was used by the consumer under the very same premises

under the very same tariff for which supply was sanctioned to the consumer. Therefore in view of the sub-regulation 15 of regulation 153 of the Supply Code, 2014 the impugned use of electricity by the petitioner in the very same premises for the purpose as authorized by the licensee without involving any tariff change and loss of revenue does not amount to unauthorized use of Electricity and hence no penalty can be imposed on the consumer in the present case”.

Considering the above principles, the same norms are applicable in the present case of the appellant.

The Clause 8 (1) to (10) of the Electricity Supply Code, 2005, specifies a time frame for providing supply of electricity. Under sub clause 8 (3) (c), if the work involved the installation of 11/0.4 KV (Sub Station) alone, the Licensee has to complete the works and release connection within 2 months after receipt of required amount from the applicant. In this case at hand, it is stated that the Licensee has failed to release the connection within two months. The relevant clause of the Supply Code 2014 read as under:

99. Enhancement of connected load or contract demand.-

(1) Consumer shall apply to the licensee for enhancement of contract demand in case of consumers under demand based tariff and of connected load in the case of others, in the form specified in Annexure - 11 to the Code and the licensee shall process the application form in accordance with the relevant provisions of the Code.

(2) For site inspection as well as issuance and payment of demand note for the estimated cost of work if any, both the licensee and the applicant shall follow, mutatis mutandis the procedure and timelines as laid down in regulations 77 to 83 of the Code.

(3) The licensee shall give a written intimation along with the demand note to the consumer which shall include the following:-

- (a) whether the additional power can be supplied at the existing supply voltage or at a higher voltage;*
- (b) addition or alteration, if any, required to be made to the distribution system and the expenditure to be borne by the consumer, on that account;*
- (c) amount of additional security deposit and expenditure for alteration of service line and apparatus, if any, to be deposited in advance by the consumer;*
- (d) change in classification of the consumer and applicability of tariff, if required; and*
- (e) any other information relevant to the issue.*

(4) The application for enhancement of load shall not be considered if the consumer is in arrears of payment of the dues payable to the licensee.

(5) If the enhancement of load is feasible, the consumer shall:-

(a) pay additional security deposit, expenditure for alteration of service line and apparatus, if any, required to be made, and the cost to be borne by the consumer for modification for distribution system if any, within fifteen days of receipt of the demand note; and

(b) execute a supplementary agreement;

(6) If the consumer pays the required charges and executes a supplementary agreement, the licensee shall execute the work of modification of the distribution system, service line or meter and other apparatus within the time line specified under regulation 85, mutatis mutandis, and sanction the additional contract demand or connected load.

(7) The licensee shall issue order on the application for the enhancement of load within thirty days from the date of its receipt and intimate the applicant whether or not the enhancement of load is sanctioned.

(8) If the licensee does not intimate its decision on the application for the enhancement of load within the above period, sanction for enhancement of load or contract demand, as the case may be, shall be deemed to have been granted with effect from the thirty first day of the date of submission of the application by the consumer

The procedure to be followed in cases of detection of UAL is detailed under clause 51 of KSEB T &C of Supply, 2005, which reads; “Where a LT consumer exceeds the connected load and/or resorts to UAL and if the connected load exceeds 100 KVA the UAL shall be disconnected by the consumer within 24 hours of detection of the unauthorized load by the Board’s officers or take action to regularize the UAL. If he fails to disconnect the UAL within the time stipulated, the power supply to the premise shall be disconnected after the expiry of 24 hrs.....”.

Further, clause 51 (4) says “In case of Low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding UAL, the procedure stated in clause 50 (1) shall be applicable. The UAL should be got regularized by the consumer within a period of 3 months on application to the Asst. Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Asst. Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in

clause 50 (1) shall be paid till the date of payment of additional security deposit”. This clause clearly specifies the steps or procedure to be followed after detection of UAL in the premises of the consumer. It is clear that the Licensee can raise the penal bills against the consumer, for the UAL connected, till the time the UAL is removed or regularized. This was the procedure followed till the date of the Kerala Electricity supply Code 2014 came in force i.e., 01-04-2014. It is pertinent to note that the respondent had not taken any action as detailed above. But in this case the appellant refuted the allegation of connecting the additional load of 25 kW connected from 10/2010 and 54 kW connected from 9/2015 in his premises.

The relevant clauses of the Supply Code 2014 read as under:

153. Estimation and regularization of unauthorised additional load.-

“(1) If it is detected, on inspection, that additional load in excess of the sanctioned load has been connected to the system without due sanction from the licensee, further action shall be taken in accordance with the following sub regulations.

(2) The difference between the total connected load in the premises of the consumer at the time of inspection and the sanctioned load of the consumer shall be reckoned as unauthorised additional load.

(3) Connected load shall be determined as per the following clauses:-

(a) the rated capacities of all energy consuming devices and apparatus which can be simultaneously used, excluding stand-by load if any, in the premises of the consumer and found connected to the system shall be considered for estimating the total load of the consumer;

(b) while estimating the total load of a consumer, the loads of the following equipment and apparatus shall not be taken into account:-

- i. standby equipment of consumers, when they are operated through a change over switch;*
- ii. Firefighting equipment;*
- iii. Uninterrupted power supply equipment (UPS), switch mode power supply system (SMPS), transformer, voltage stabilizer, inverter, rectifier and measuring devices:*

Provided that the rated capacities of the equipment and apparatus connected to the UPS or SMPS or voltage stabilizer or inverter or rectifier shall be considered for computation of the connected load.”

“(c) The licensee may, suo motu or on application from the consumer, regularize such additional load mentioned in clause (a) and clause (b) above.”

“(5) When the load in excess of sanctioned load exceeds the limit as provided in sub regulation (4) above, the entire load in excess of the sanctioned load shall be treated as unauthorised additional load, if express sanction or deemed sanction under clause (c) of sub regulation (4) has not been obtained for it.”

“(7) If it is found that any additional load has been connected without due authorization from the licensee or in violation of any of the provisions of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations, 2010, as amended from time to time, the licensee shall direct the consumer to disconnect forthwith such additional load and the consumer shall comply with such direction, failing which the supply of electricity to the consumer shall be disconnected by the licensee.”

(15) Unauthorised additional load in the same premises and under same tariff shall not be reckoned as ‘unauthorised use of electricity’.”

Though the Division Squad conducted inspection in the premises of appellant in 8/2009, the respondent had not verified the connected load of the appellant and convinced the appellant’s connected load in the premises in later periods, and they failed to produce any documentary evidence to substantiate their argument of additional connected load. In order to prove the allegation of unauthorised additional load, the respondent has relied the Completion Reports furnished by the appellant to the Licensee time to time. **The detail of the load furnished in the application is the installation completion report of their total load requirement.** In the absence of documentary evidence to prove that the appellant’s connected load exceeded the sanctioned load, it is not fair to charge the appellant for such a long period. The physical verification was conducted by the Division Squad only on 25-08-2009 and detected the connected load as 40 kW and thereafter no physical verification was conducted by the respondent and taken any action as specified in the rules and provisions. Considering the above facts, it cannot be established that the appellant connected load additionally and used energy. On the above grounds, this Authority feels that the contention of the appellant is sustainable as discussed earlier. Since those aspects were not considered by the CGRF while disposing the petition, this Authority is of the opinion that realization of the short assessment for from 12/2009 to 04/2016 cannot be justified and hence liable to be quashed.

Decision

In view of the above discussions, the issuance of short assessment for an amount of Rs 1,79,940/- is illegal and not sustainable and hence it is hereby quashed. The respondent is directed to regularise the load of the appellant after inspection within a period of 30 days from the date of receipt of this order and report compliance.

The order of CGRF in OP No. 132/2016 dated 19-12-2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/005/2017/_____ /Dated:_____

Delivered to:

1. Prof: G. Raveendran Nair, General Manager (Operations), Mata Amritanandamayi Math, AIMS, Ponekkara P.O., Edappally, Kochi-682041.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pandalam, Kollam

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.