

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 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/014/2018
(Present: A.S. Dasappan)
Dated: 08th May 2018

Appellant : Smt. C.R. Vijayalekshmi Amma
Murugappa Body Builders,
Krishna Bhavan, Neeleswaram P.O.,
Kottarakkara, Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited, Kottarakkara,
Kollam

ORDER

Background of the Case

The appellant is a consumer of electricity having Consumer No. 25124 under Electrical Section, Kottarakkara West, in LT IV A tariff, for the industrial purpose of body building of motor vehicles. The appellant was served a short assessment bill dated 01-08-2017, for Rs.11,213/- by the licensee, pursuant to an audit report. Aggrieved by the said bill the consumer approached the CGRF, Kottarakkara by filing a complaint, numbered as No: 538/2017. The Forum after hearing dismissed the petition in order No. OP/538/2017/dated 03-02-2018. Still aggrieved, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the appellant:

The appellant has adduced the following averments in her appeal petition.

1. The appellant has been remitting the entire regular bills without any default.
2. While so, she received an arrear bill dated 01-08-2017 for Rs. 11,213/- alleging the loss sustained to the KSEB.
3. As the appellant has been remitting the entire bills without any default and did not cause any loss to the KSEB, she approached the KSEB officials. Then a copy

of the calculation statement showing a figure of Rs. 11,213/- prepared by the audit wing of the KSEB was handed over.

4. On perusal of the calculation statement it is seen that the same is prepared by the audit wing and there is no direction to realize the amount from the consumer. If any loss is sustained to the KSEB because of the fault of the officials of the KSEB, the same is to be realized from them. The appellant is not responsible.

5. On a perusal of the statement it is seen that it includes the demand charges from 3/2014 to 3/2016. The same is demanded by the bill dated 01-08-2017. So the same is barred by limitation under Section 56 (2) of the Electricity Act, 2003. Under the above section, only arrears for a back period of two years can be realized. So the appellant is liable to pay the demand charges for the back period of two years i.e. from 8/2015 to 8/2017. But in the statement only arrears for the period up to 3/2016 is demanded. So the only amount payable by the appellant is the demand charges from 8/2015 to 3/2016.

6. Being aggrieved by the illegal demand the appellant submitted a complaint to the CGRF, Kottarakkara, specifically pleading that arrear demand beyond the back period of two years is unsustainable.

7. The specific contention of the appellant regarding the limitation of two years was not examined or answered by the CGRF at all.

8. It is submitted that a part of the impugned demand is barred by limitation under section 56(2) of the Act. The above Section is having overriding effect, because of the non-obstante clause. Hence the order of the CGRF is per-se illegal and unsustainable. The petitioner during hearing fairly agreed to pay the demand raised within the limitation period of two years. But the same has not been considered by the CGRF. To justify the demand the CGRF relied on 134(1) of the Supply Code 2014. But Reg. 134 is subject to the limitation under Section 56(2) of the Act.

9. If there is any fault on the part of the officials of the KSEB in raising the bills in time the appellant is not responsible and the loss on account of this is to be realized from the persons responsible.

The appellant has requested to pass an order setting aside the order of the CGRF and directing the KSEB to revise the impugned bill under Section 56(2) of the Act, for the arrears due within a back period of two years.

Arguments of the respondent:

The contentions of the respondent are the following.

The service connection was effected on 19-04-2008 with an initial load of 8259 watts. Later the consumer had applied for further enhancement of load of

14742 watts and was sanctioned on 29-09-2010. Final enhancement of load had been done during, 05/2012 for 65365 watts. On 03/2013 the appellant executed an agreement declaring her contract demand as 40 kVA.

The consumer was aggrieved against issuing a short assessment bill amounting to Rs. 11,213/- being the short assessment on account of Contract Demand charges. The OP vide No. 538/2017 filed by the appellant before the Consumer Grievance Redressal Forum (South) was dismissed in its order dated 03-02-2018.

The bill was issued based on the security of the records of high consuming consumers. On scrutiny of the billing records it is noticed that there occurred a short assessment of Rs. 11,213/- towards the fixed charges for contract demand. On 03/2013, the appellant executed an agreement declaring her contract demand as 40 kVA.

Month	RMD1	RMD2	RMD3	Billing Demand (Rs. 100 per kVA)	Demand charge required	Demand charge collected	Balance to collect
03-2014	0.94	0	0	38	3800	3000	800
04-2014	1	0	0	40	4000	3000	1000
05-2014	1	0	0	40	4000	3000	1000
06-2014	0.51			30	3000	3000	0
07-2014	0.64			30	3000	3000	0
08-2014	0.71			30	3000	3000	0
Month	RMD1	RMD2	RMD3	Billing Demand (Rs. 125 per kVA)	Demand charge required	Demand charge collected	Balance to collect
09-2014	0.91	0.29	0.01	37	4625	3375	1250
10-2014	0.9	0		36	4500	3750	750
11-2014	0.84	0.07	0	34	4250	3750	500
12-2014	0.87	0.08	0	35	4375	3750	625
01-2015	0.84	0.84	0.89	36	4500	3750	750
02-2015	0.78	0	0	32	4000	3750	250
03-2015	0.81	0.82	0.83	34	4250	3750	500
04-2015	0.79	0	0	32	4000	3750	250
05-2015	0.88	0.65	0.36	36	4500	3750	750
06-2015	0.87	0.08	0.08	35	4375	3750	625
07-2015	0.84	0	0	34	4250	3750	500
08-2015	0.87	0	0	35	4375	3750	625
09-2015	0.81	0	0	33	4125	3750	375
10-2015	0.82	0	0	33	4125	3750	375
03-2016	0.85	0.83	0.88	36	4500	3750	750
					Total Rs.		11675

As per regulation 134 of Kerala Electricity Supply Code 2014,

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.

The bill issued, to the consumer is for short assessment made in normal rate for the tariff applicable. The Kerala State Electricity Board is empowered by Regulation 134(1) of the Kerala State Electricity Supply Code 2014, to recover from the consumer, the amount under charged by issuing bills. Hence the bill issued to the consumer is in order. The bill was raised only on 01-08-2017 and hence the cause of action will start to run only after 01-08-2017.

The Hon'ble High Court of Bombay vide Judgment (Birhanmumbai Municipal Corporation V/s Yatish Sharma and Others-2007 KHC 3784:2007 (3) KLTSN II (Bom) has clarified the meaning due from the date of issuance of the bill. The Hon'ble High Court, Bombay in case no. 3784/2007 has held that the above position as follows:

'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'.

The undercharged bill amounting to Rs. 11,213/- was served on the appellant on 01-08-2017 and hence not struck by limitation as held in the above judgment. It was detected that there occurred a short assessment of Rs. 11,213/- towards the fixed charges for contract demand.

Moreover the Kerala State Electricity Ombudsman vide its order dated 11-12-2012 in P/236/2011 has reproduced the above portion of the judgment and issued orders accordingly.

The argument of the appellant that the claim is barred by section 56(2) of Electricity Act, 2003 would not stand since a catena of decision has established beyond doubt that 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 the Board against consumption of electrical energy and have become due for payment' only after that demand has been raised.

In this case the bill is seen raised in 01-08-2017, and became due thereafter and time period of two years start from 01-08-2017 only and hence the Complainant's argument is not maintainable. Further, it is not an arrear, but it is a short assessment of Rs. 11,213/- towards the fixed charges for contract demand.

The same position has been reiterated by the Division Bench of Hon'ble High Court of Kerala in Thangal Kunju Musaliyar College of Engineering v/s KSEB (2013(2) KLT SN 96(C No.122) (DB). Further the amount demanded in the bill in dispute is not an arrear but it is the charge of escaped energy used by the consumer through which he had made profit. The consumer is bound to pay the charges for the electricity he has actually consumed.

Further it is worth noticed that the Hon'ble High Court of Kerala vide its judgment dated 09-02-2012 in WA 211/2012 m WPC 34768/2011, has pointed that the question of normal period of limitation is not applicable both towards electricity and water charges. Hence the limitation clause under Section 56(2) of the Act is not relevant in this complaint.

Thus there is no limitation in issuing the Bill. The appellant has no cause of action and no relief is allowable. Hence the appellant is liable to pay the amount.

Analysis and Findings: -

The hearing of the case was done on 11-04-2018 , in the Conference Hall, Vydhyuthi Bhavanam, Alappuzha and the appellant was represented by Sri. Krishna Kumar S, and the respondent by the Assistant Executive Engineer of Kottarakkara Sub Division, Sri. G. Soni and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes 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 final decisions thereof.

The appellant was served with a short assessment bill for Rs.11213 /- on the basis of

1). For the fixed charges short collected from the consumer for the period from March 2014 to March 2016 which was not properly billed, resulting in revenue loss to tune of Rs.11,213/- to the Board. The appellant was being billed under ToD tariff. The appellant's contract demand is 40 KVA. As per the agreement executed between the consumer and the Licensee, the billing demand shall be Recorded Maximum Demand (RMD) or 75% of the contract demand whichever is higher. But the respondent had billed the appellant based on the contract

demand even though RMD was higher than the contract demand. Hence the appellant was issued a short assessment bill based on the RMD.

The short assessment bill for Rs. 11,213/-/- was done on the basis that the actual fixed charge to be collected was not billed from 3/14 to 3/16, as it was wrongly billed for contract demand instead of RMD.

The appellant's main contention depends on the clause of limitation bar under Section 56(2) of the Electricity Act 2003. According to the appellant, the judgments relied on by the respondent is not applicable since the demand has been for the due amount from the appellant from time to time and any arrears thereof shall be limited to two years, and also for the reason that the respondent did not carry over the short assessment made in the subsequent regular bills. But this argument of the appellant is not acceptable and cannot be relied upon as the statement is not supported by citing any specific case judgments.

Whether the claim of the KSE Board Ltd is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (2) of the Kerala Electricity Supply Code, 2014.

Section 56 (2) Electricity Act 2003, which reads as under; "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 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 ".

It will not be out of place here to refer to the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha 99) and other and Birhanmumbai 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. Till after the issue and receipt of the bill the respondents have no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent".

Hence this point of argument of the appellant is not acceptable since the bill was raised only on 01-08-2017 which became first due in and therefore shall

be recoverable. Hence, there is no case of violation of Section 56(2) of Electricity Act 2003.

Considering this aspect, the CGRF has ordered that the bill issued to the consumer is legal and sustainable. Hence the decision of the CGRF is found justifiable.

Decision

As per the analysis done and conclusions arrived at, I decide as follows.

The decision of CGRF, Kottarakkara is upheld. The consumer shall be provided up to 5 (five) installments, if requested by her, for paying the bill. The appellant is given 30 days time, for making the payment (due date for payment) in full or the 1st installment, from the date of this order. The subsequent installments will bear interest as per rules. No interest is payable by the consumer for the appeal pending period before the CGRF and this Authority and up to 30th day of this order. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/014/2018/ _____ /Dated: _____

Delivered to:

1. Smt. C.R. Vijayalekshmi Amma, Murugappa Body Builders, Krishna Bhavan, Kottarakkara, Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Kottarakkara, 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.