

THE STATE ELECTRICITY OMBUDSMAN  
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana  
Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9539913269  
Email:ombudsman.electricity@gmail.com

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APPEAL PETITION No. P/039/2018  
(Present: A.S. Dasappan)  
Dated: 21<sup>st</sup> August 2018

Appellant : Smt. K. S. Seena  
Parambikudy House,  
Mini Civil Station Road,  
Perumbavoor,  
Ernakulam

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

### **ORDER**

#### **Background of the case:**

The appellant, Smt. K.S. Seena is a three phase commercial consumer with consumer number 1155834026726 under LT VII A tariff of Electrical Section, Perumbavoor. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the letter dated 17-02-2017 directed the appellant to remit an amount of Rs. 13,400/- being the short assessment of fixed charge for the period from 01/2012 to 09/2016 based on the findings in the Regional Audit Report. Against the short assessment bill, the appellant had approached the CGRF, Ernakulam by filing a petition in No. 128/2017-18. The Forum dismissed the petition vide order dated 31-05-2018. Aggrieved against this, the appellant has submitted the appeal petition before this Authority.

#### **Arguments of the appellant:**

The appellant had received an additional bill towards the short assessment for fixed charges for 2 kW for the period from 01/2012 to 09/2016 on the basis of audit report dated 17/02/2017 which amounts

to Rs 13,400/- vide letter No EB/RAO/Audit/ 2016-17/dated 17-02-2017. The claim and allegations raised in the said notice are without any basis or any reasons.

The energy meter in the premises was never faulty and no inspection was conducted in the premises to find out the excess load if any connected by the respondent. The appellant had remitted the payment against all bills issued by the respondent then and there.

As per Regulation 136 (3), of Supply Code 2014, no such sum due from any consumer, on account of default in payment shall be recoverable after a period of 2 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.

Here in this case, the respondent admitted the fact that the connected load of appellant 5393W was wrongly entered in the system as 3280W. So the appellant cannot be made liable for the payment as there is no mistake on the part of appellant.

**Arguments of the respondent:**

As per the audit report on 31.10.2016 by the RAO wing it is observed that in service connection register connected load of the consumer is 5393 Watts instead it was wrongly entered in system as 3280 Watts. Fixed charge of 2 kW for the period from 01/2012 to 09/2016 was short assessed and a short assessment bill of Rs. 13,400/- issued to the consumer.

Aggrieved by this the consumer has filed a complaint before the Consumer Grievance Redressal Forum, (Central Region). The Forum viewed that this case is coming under regulation 134(1) of Kerala Electricity Supply Code 2014 (undercharged amount), the Licensee can realize the amount and hence the petitioner is liable to pay the amount. So the Forum dismissed the case.

As per the regulation 134(l) 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. Regulation 134(1) of Electricity Supply Code 2014 allows the licensee to recover the amount short assessed from the consumer. This demand is not a penalization but is only the demand for the electricity charge as per tariff order 2014.

**Analysis and Findings: -**

The Hearing of the case was conducted on 27-07-2018 in the Office of the State Electricity Ombudsman, Edappally, Kochi 24. Sri Baiju, Advocate represented the appellant and argued the case on the lines stated above. Sri T.K. Moni, Assistant Engineer in charge of Electrical Sub Division, Perumbavoor has represented for the respondent's side.

On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

As argued by the appellant, it is found that the impugned short assessment bill which was prepared on the basis of the audit report and the audit report was prepared not as per facts. The appellant's contention is that no site mahazar prepared for the billing of short assessment. The appellant states that entire claim is already time barred as per the Regulation 136 (3) of Supply Code, 2014 since it is older than two years. In this case, the short assessment bills became due only after realization of a mistake. Amounts of the short assessment bills were never issued earlier and the same cannot be said to be "due" at any earlier time. In short, the word "due" in Section 56(2) of the Electricity Act and the Regulation 136 (3) of Supply Code, 2014 means the amount due and payable after a valid bill has been served on the consumer. In this case the short assessment bill was issued on 17/02/2017 and hence the amount of the impugned bill cannot be said to be unrecoverable and barred under Section 56(2) of the said Indian Electricity Act, 2003. In an identical case, reported as, 2009(1) KHC 945 of Hon High Court of Kerala in W P (C) No. 90 of 2009 (1), Sunderdas P Vs KSEB, it was decided as follows; "...The scheme of Section 56(2) is that the amount becomes due when the bill is issued". Hence the above argument of the appellant regarding limitation is not admitted.

Refuting the above contentions, the respondent has averred that under charging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) is applicable.

In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board then in the case of undercharging, the Board shall have a right to demand an additional amount and in the case of overcharges, the consumer shall have the right to get refund of the excess amount provided at that time such claims were not barred by limitation under the law then in force.

The audit party's observation is based on the service connection register in which it was noted the connected load as 5393 watts. The appellant was charged fixed charge of 3280 watts with effect from the date of service connection. On going through the service connection form, in the first page, the connected load is shown as 3280 watts. In the second page of the Form, it is entered as 5393 watts after making some rewritings and striking of some entries by the Electrical Supervisor. These entries are not seen authenticated by an officer of the licensee after inspecting the premises. Since receiving the audit report also, no officer from the KSEBL inspected the premises and not prepared a site mahazar regarding the load connected in the premises. Moreover, if the respondent had to inspect the premises soon after the receipt of the audit report, it can be easily detected the actual connected load and to avoid the loss if any occurred to the licensee.

On going through the consumption pattern of the appellant for the period from 01/2012, it is found that it never exceeded 601 units bimonthly till 12/2015. Anyhow a part of the loss sustained to KSEBL has to be compensated by the appellant in compliance with the provisions of Regulation 152 (3) of the Supply Code, 2014. The respondent shall inspect the premises of the appellant and prepare a site mahazar regarding the connected load in the premises. He shall charge the fixed charge for the connected load accordingly for a period of 24 months as agreed by the appellant himself.

### **Decision**

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 13,400/- issued to the appellant. The respondent is directed to revise the bill by limiting the period for 24 months for the fixed charge of the present connected load after conducting an inspection in the premises of the appellant.

The appellant is also eligible for installments, if requested for, and the respondent shall issue the same. The consumer shall pay the whole amount or the 1st installment within 30 days of the revised bill date. The subsequent installments will bear interest from 30th day of the bill issued to the day of payment. No interest or surcharge is payable by the consumer for the Petition and Appeal pending period before the CGRF and this Authority up to 30<sup>th</sup> day of the revised bill date.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed as ordered and stands disposed of as such. The order of CGRF in OP No. 128/2017-18 dated 31-05-2018 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/039/2018/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Smt. K. S. Seenal, Parambikudy House, Mini Civil Station Road, Perumbavoor, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Perumbavoor, 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.