

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/008/2019
(Present: A.S. Dasappan)
Dated: 28th March 2019

Appellant : Smt. Laila Sasikumar
M/S Saino Polymers Pvt. Ltd.,
Vandipetta, Thiruvaniyoor,
Puthencruz, Ernakulam

Respondent : 1. The Deputy Chief Engineer
Electrical Circle, KSEBL,
Ernakulam

2. The Special Officer (Revenue)
Vydhyuthi Bhavanam, KSEBL,
Pattom, Thiruvananthapuram

ORDER

Background of the Case:

The appellant is a HT 1 A industrial consumer having consumer number LCN 12/4472 under Electrical Section, Thiruvaniyoor. The appellant was received monthly bill dated 04-06-2018 amounting to Rs. 3,22,745/- which also includes an 'undisputed arrear amount' of Rs.1,49,592/-. The appellant had submitted an objection against the bill and requested to provide the details of arrear amount. The Special Officer (Revenue), in his letter dated 04-07-2018, has given clarification to the objection as follows. The appellant's monthly bill dated 04-08-2014 for the month of 07/2014 was for Rs.271269/-. The last date for payment was 13-08-2014 and the appellant defaulted payment. So a disconnection notice dated 14-08-2014 issued to the appellant to the appellant demanding Rs.118079/- instead of Rs. 3,62,179/- (monthly bill amount Rs. 2,71,269/- + ACD Rs. 90,910/-). The appellant remitted Rs. 118079/- on 25-08-2014. An amount of Rs. 3600/- had been kept as advance in the account of the appellant during the month of 02/2014. Hence a short remittance of Rs. 149590/- (Rs. 2,71,269/- minus Rs. 1,18,079 + Rs. 3,600/-) noticed while reconciling the accounts of the consumer.

Aggrieved by the monthly bills dated 04-06-2018 and 03-07-2018, the appellant approached the CGRF with a complaint dated 26-07-2018 requesting to cancel the demand of arrear amount of Rs.,1,96,346.67 (Rs. 1,49,592/-with interest at 18% from 13-08-2014 to 09-07-2018). The CGRF, Ernakulam has dismissed the Petition on finding that the licensee is entitled to recover the undercharged amount, vide its order No. OP 41/2018-19 dated 17-01-2019. Aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition before this Authority.

Arguments of the appellant:

The appellant is having an electric connection under HT I(A), Industrial tariff. She is paying electricity bill without any objection regularly and there is no dues till the date.

But in the monthly bill dated 04.06.2018 KSEBL have charged Rs. 1,49,592/- as 'Undisputed Arrear Amount' which is not a part of the monthly bill. Against which the appellant has submitted an objection dated 16.06.2018, and requested to provide with the details of Undisputed Arrear Amount'. The respondent has given an old letter dated 14.08.2014, for remitting Rs. 1,18,079/-. In that letter the calculation mistake has done from KSEBL side and they claim the balance bill amount in this regard.

On 04.07.2018, the Special Officer (Revenue) have given a letter stating "As per our accounts;, the remittance made against demand for 07/2014 of Rs. 2,71,269 (Bill dtd 04/08/14) was only Rs.1,18,079/-. It is found that an error occurred in the disconnection notice issued dtd 14/08/2014 demanding the monthly bill 07/14 and the ACD (Rs. 2,71,269/- + ACD Rs. 90,910/-) amounting Rs. 1,18,079/- instead of Rs. 3,62,179/-. Thus short remittance of Rs.1,49,592/- is noticed while reconciling the accounts of the consumer". The appellant was received a letter from the Special Officer [Revenue), requesting to remit Rs.1,18,079/- towards the arrears of current charges. This claim was not disputed at that time and the appellant had paid Rs.1,18,079/- on 25.08.2014. On remitting Rs. 1,18,079/-, payment entire liability and responsibility till 25.08.2014 is over. This payment cannot be considered as a part payment of current bill because the appellant complied with the requirement and claim of Rs. 1,18,079/- of SOR/KSEBL.

The appellant had not remitted the monthly bill dated 04.08.2014, within due date of 13.08.2014. The respondent issued a disconnection notice dated 14.08.2014. In the disconnection notice shows the pending due towards current charge as Rs. 1,18,079/-. The appellant is only liable to pay the current bill as per KSEBL bill/notices. The appellant already paid the current bill on 25.08.2014, as per the KSEBL last notice. In the

next monthly bill dated 09.12.2014, there is no sign for the pending amount or dues.

After 4 years KSEBL suddenly raise Rs. 1,49,592/- as 'Undisputed Arrear Amount' in the regular monthly bill dated 04.06.2018. This is not fair and just to claim arrear charge Rs. 1,96,346.67/- (Rs. 1,49,592/- and interest at 18 from 13/08/14 to 09/07/2018), because it is already barred by limitation. The claim is older than two years.

The KSEBL not showed the amount of Rs. 1,49,592/- continuously as arrears in the regular monthly bills. The entire claim is already time barred because, as per Sec. 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'.

The KSEBL says that they have claimed the arrear amount as per the clause 134 (1). They didn't consider the Supply Code 2014, Reg.136 [3] 'No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two year from the date when such sum became first due unless such sum has been shown as continuously as recoverable arrear of charges for electricity supplied'. Hence the claim of KSEBL will not stand in the present Act and Supply Code.

KSEBL also referred the High Court Judgment in WP (C) No.34768/2011. In the WP(C) No.34768/2011, the claim is as per Revenue Recovery Act, and the period of the recovery occurred during 2001 & 2002. The Electricity Act has come into force during 2003. As per the Act Kerala State Electricity Regulatory Commission published the Supply Code in 2014. In this case, the demand of SOR is towards August monthly electricity bill and subsequent disconnection notice during 2014. It is true that the electricity charge will become due when first bill raised. Here the bill have been raised during 2014 and if there is an arrear it would have been shown as recoverable arrear or else KSEBL cannot collect the same after two years.

Relief Sought for:

To cancel the arrear amount Rs. 1,96,346.67/-, and direct KSEBL to remove 'Undisputed Arrear Amount' from the regular monthly bill.

Arguments of the respondent:

The averment of the appellant is that the company has been paying its electricity bill regularly without any objection and there is no due till date is not correct. The appellant company had defaulted the payment of monthly electricity bill dated 04-08-2014 for an amount of Rs. 2,71,269/-. In the place of monthly bill dated 04-08-2014 for Rs. 2,71,269/- the consumer had remitted Rs. 1,18,079/- only. An amount of Rs. 3,600/- had kept as advance in the account of the consumer during the month of 2/2014.

Thus an arrear of Rs. 1,49,590/- was short remitted in the monthly bill dated 04-08-2014 [Rs. 2,71,269 - (Rs. 1,18,079+3,600)= Rs. 1,49,590]. The above arrear amount (Rs. 1,49,590/-) was shown "as undisputed arrear amount" in the monthly bill dated 04-06-2018. Since the appellant had failed to remit the bill amount of Rs. 2,71,269/- for the month of August 2014 within the due date of 13-08-2014, the appellant was reminded with a disconnection notice dated 14-08-2014. It is true that some clerical mistake had crept in the disconnection notice dated 14-08-2014. Instead of addition of ACD amount with the current bill, the net amount was shown as Rs. 1,18,079/- wrongly in the disconnection notice and the consumer remitted the said amount without further enquiry. The consumer was well aware about the short remittance in August 2014, since his monthly bills were mostly above 2.25 lakhs from 10/2013 onwards.

It is true that a letter dated 04.07.2018 was served on the consumer demanding to remit the short amount of Rs. 1,49,592/- with interest. The appellant had remitted Rs. 1,18,079/- as arrears of current charge on the basis of letter dated 14-08-2014 and purposefully suppressed the details of monthly bill dated 04-08-2014. The consumer was well aware about the demand notice, bill date, due date and the bill amount. It was clearly specified in the disconnection notice dated 14-08-2014, as due amount during the month of 8/2014 was Rs. 2,71,269/- as shown below:

Details of Dues

8/2014	Rs. 2,71,269/-
Others ACD	@ Rs. 90.910/-
Total	Rs. 1,18.079/-

On realization of the clerical error, a detailed statement with reason was forwarded to the consumer vide letter dated 04-07-2018. The letter

dated 14-08-2014 is not the demand notice, but the disconnection notice served by the Board when the consumer failed to remit the monthly bill. It was specifically mentioned in the letter dated 14-08-2014 that the dues during the month of 8/2014 was Rs. 2,71,269/- and ACD was Rs. 90,910/-. But an arithmetical error had occurred in the letter dated 14-08-2014.

The amount of Rs. 1,18,079/- was received by the Board on the assumption that the remitted amount was as the part payment. It has been clearly mentioned in the overleaf of every demand notice that non receipt of invoice can't be a plea for nonpayment of bills in time. Moreover the consumer could have viewed his monthly bill on Website of KSEB Ltd.

The KSEBL has demanded the balance amount of energy charge, which the consumer consumed during the month of 7/2014 and the same was Rs. 1,49,592/- with interest @ 18 p.a. only vide letter dated 04-07-2018. It was also informed to the consumer vide letter dated 04-07-2018 that the consumer could settle the arrear at a reduced rate of interest by availing One Time Settlement facility. The regulation 134(1) of Kerala Electricity Supply Code 2014 has stated that if the licensee establishes either by review or otherwise that it has under charged the consumer, the licensee may recover the amount so under charged 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. In this circumstance, the CGRF, Ernakulum dismissed the complaint of the appellant vide Order No. CGRF-CR/OP No.41/2018-19/543 dated 17-01-2019 with the following observation.

The amount is the energy charge for the energy consumed by the consumer during the month of 7/2014 and the amount mistakenly collected is Rs. 1,18,079/- instead of Rs. 2,71,269/-. Hence, the impugned bill amount is an undercharged amount. As per the Regulation 134 (1) of the Supply Code 2014, the Licensee is entitled to recover the undercharged amount. Hence, the appellant is liable to pay the amount for the energy consumed.

The revised bill amount would due when "the revised bill is raised and section 56(2) of the Act would not come in the way of recovery of the amount under the revised bills". The claim of the Board is not barred by limitation since the cause of action originated on 04-07-2018 only. Moreover, the Hon'ble High Court of Kerala vide Judgment dated 09-02-2012 in Writ Appeal No.211/2012 in WP(C) No.34768/2011 observed that in case of Kerala Water Authority & KSEB with regard to the Public Revenue, the question of normal period of limitation is not applicable towards electricity.

The consumer is liable to remit the balance amount of Rs. 1,49,592/- with interest @18 from 13-08-2014 till the date of payment. In view of the above facts, the complaint is not legally maintainable.

Analysis and Findings: -

The Hearing of the case was conducted on 15-03-2019, in my chamber at Edappally. Sri. A.R. Sasikumar, Sri. Dinesh K. Kumar and Sri Ashik Sasi represented the appellant's side and Smt. Indu R, Assistant Executive Engineer, Electrical Circle, Ernakulam and Sri. P. Pradeep, Superintendent, O/O the SOR, represented 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.

The respondent had issued the monthly current charge bill amounting to Rs. 2,71,269/- for the energy consumed by the appellant for the month of 07/2014 and the appellant defaulted the payment within the due date of 13-08-2014. A disconnection notice dated 14-08-2014 was served on the appellant with direction to remit an amount of Rs.1,18,079/ instead of the actual amount of Rs. 2,71,269/-, by mistake. Hence the appellant remitted only Rs.118079/- on 25-08-2014. On detecting the error, the respondent demanded the balance amount of energy charge for the energy consumed during 07/2014 in the monthly current charge bill dated 04-06-2018 as the arrear amount for Rs. 1,49,592/-. The appellant objected the demand of arrear amount stating that the claim of the KSEBL is barred by limitation on the following grounds.

The main contention of the appellant is based on Section 56 (2) of Electricity Act 2003 and Clause 136 (3) of Kerala Supply Code 2014 which reads '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.'

Here the disputed arrear amount pertains to the energy consumed for the month of 07/2014. The appellant has not denied the receipt of the monthly bill and not objected the quantity of the energy consumed by him. He has not remitted the bill amount in time. There was serious clerical error happened in demanding the complete energy charges while issuing the disconnection notice. The present arrear amount of Rs. 1,49,592/- was not claimed in the disconnection notice. Hence the respondent had demanded the arrear amount of the energy charges in the bill dated 04-06-2018 only ie., after the lapse of 4 years.

The appellant states that entire claim is already time barred as per the Electricity Act Sec. 56 (2) since it is older than two years. In this case, the short assessment bill became due only after realization of a mistake. Amount of the arrear bill was 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) 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 04-06-2018 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. Hence this point of argument of the appellant cannot be acceptable, since the bill was raised only on 04-06-2018 and therefore shall be recoverable. It is noted that there is serious lapses on the part of the licensee in not taking proper action in time, which reveals lack of proper auditing and supervision on their side. Considering all the above facts this Authority do not agree with the arguments of the appellant that the arrear amount is not payable by the consumer as it being time barred.

As per Clause 134 (1) of 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 and in such cases at least thirty days shall be given to the consumer for making payment of the bill."

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 over charges, 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 consumer is liable to pay the electricity charges for the energy he has consumed and is therefore bound to pay the same within the due date of the bill issued to him. The consumer shall not make advantage of a clerical error happened on the part of the Licensee. In short, in the case of default of payment of electricity charges, the consumer is bound to pay interest for the belated payments made by him.

However, I find total negligence from the side of the officers of the KSEBL in all the said dealings with the appellant. The respondent's lapse or omission should not cause a burden on the appellant. The loss if any,

as surcharge occurred may be realized from the concerned officers of the licensee after fixing responsibility, if the licensee desires so.

Decision:

In view of the above factual position I don't find any reason to interfere with the findings and decision taken by the CGRF, Ernakulam in this case and hence the order of CGRF OP No. 41/2018-19 dated 17-01-2019 is upheld. The appellant is directed to remit the arrear amount of Rs.1,49,592/- within a period of 30 days from the date of this order and the respondent shall collect surcharge after the 30 days for default of payment, if any. As the demand of the arrear was raised on 04-06-2018, there is no question of collecting surcharge from 13-08-2014 from the appellant. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/008/2019/ _____ /Dated: _____

Delivered to:

1. Smt. Laila Sasikumar, M/S Saino Polymers Pvt. Ltd., Vandipetta, Thiruvaniyoor, Puthencruz, Ernakulam
2. The Deputy Chief Engineer, Electrical Circle, KSEBL, Ernakulam
3. The Special Officer (Revenue), Vydhyuthi Bhavanam, KSEBL, Pattom, Thiruvananthapuram

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.