

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/044/2019
(Present: A.S. Dasappan)
Dated: 13th August 2019

Appellant : Sri. Jacob Paul
Pulliattu House,
Pulianmala,
Kattappana

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Kattappana,
Idukki

ORDER

Background of the case:

The appellant has filed this appeal petition against the order of Consumer Grievance Redressal Forum in complaint no. OP 89/18-2019 dated 9/5/2019. The appellant is registered as an industrial consumer under LT 1VA tariff having consumer number 16965 under Electrical Section, Kattappana. The connected load of the consumer was 114 kW up to 12/6/2018. After that the connected load was reduced to 72kW with a contract demand of 80kVA by executing an agreement for reduction of connected load. The appellant was given short assessment of demand charges for the period from 8/2015 to 1/2018 and low voltage surcharge from 5/2017 to 1/2018 and short assessment of a demand charges and energy charges for the period from 1/2013 to 3/2015 amounting to Rs.218006/- and Rs.12939/- respectively. The contract demand is wrongly arrived as 96 kVA instead of 127 kVA for which low voltage surcharge is charged. Aggrieved by the short assessment bills the appellant approached CGRF and the Forum in its order dated 9/5/19 mentioned above upheld the bill for- Rs.2,18,006/- and quashed the bill for Rs. 12,939/-. Aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition before this Authority.

Arguments of the appellant:

The appellant is mulcted with huge amounts by issuing two demand notices dated 15/11/2018 demanding Rs.218006/- and 12,839/- with a heading RAO Inspection Bill vide RAO Audit Report dated 31/05/2018 and RAO Inspection Report for period 2008-2015 respectively. It is further stated that short assessment of demand charges from 8/2015 to 1/2018 and short assessment of demand charge and energy charges for the period 1/2013 to 3/2015 is charged. Certain calculation sheets are also attached with the demand notices which are not self explanatory with certain abbreviations etc. It is further stated in a sheet attached to the demand notices that the contract demand is wrongly arrived as 96 kVA instead of 127 kVA.(No supplementary agreement has seen executed to reduce the contract demand). It is again stated that the consumer who are required to avail supply at HT and above as per the regulation 8 of the Kerala Electricity Supply Code 2014, but availing supply at LT shall pay low voltage surcharge.

It is seen that low voltage surcharge is levied from the appellant relying regulation 8 of Kerala Electricity Supply Code 2014 which came into effect only on 13/2/2014. The appellant has executed agreements as and when required by the licensee. It is the duty of the licensee to get executed the required agreements, as the appellant is having contract demand less than 100 kVA.

The appellant can be treated as deemed HT consumer and the same is permitted by the Kerala State Electricity Regulatory Commission.

The demand notices issued by the licensee are per se violating Regulation 152 of the Kerala Electricity Supply Code, 2014. The appellant moved objections against the demand notices before the Assistant Executive Engineer, but there was no response to the genuine complaint submitted by the consumer. The consumer is unaware of the so called audit report and audit inspection. The licensee ought to have served the copy of the audit report before issuing demand notices.

It is settled in law that the consumer shall not overburdened in the light of audit report. It is the duty of the licensee/ Concerned Officer to give adequate explanation to the audit queries/reports. Without properly answering the audit queries/report mulcting the consumer with huge demands is against provisions of the Supply Code as well as the Electricity Act 2003.

Being aggrieved, the appellant approached CGRF and the Consumer Grievance Redressal Forum cancelled the impugned bill for Rs.12,939/- as the same is issued after a period of five years and as not legally sustainable, but observed that the licensee is entitled to collect the short assessed amount for

the period 8/2015 - 1/2018 as per regulation 134(l) of the Kerala Electricity Supply Code 2014. Hence this appeal on the following;

Opportunity of being heard was denied to the appellant. The appellant is paying regular monthly charges without any fail and the respondents were not found any abnormalities in the premises of the appellant or communicated to the appellant till 15/11/2018. It is seen that low voltage surcharge is levied from the appellant regulation 8 of Supply Code, 2014 which is came into effect only on 13/2/2014. As per Regulation 152(3) proviso 3, realization of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months. The limitation of 2 years dealt in regulation 136 is also applicable to the present case. It is settled in law that the consumer shall not overburdened in the light of audit report.

Nature of relief sought:

Direction to Respondents to withdraw demand notice dated 15-11-2018 for an amount of Rs. 2,18,006/-

Arguments of the respondent:

The appellant was given short assessment bills amounting to Rs.2,18,006/- (the short assessment of demand charges for the period from 8/15 to 1/18 and low voltage surcharge from 5/17 to 1/18) and Rs. 12,939 (the short assessment of demand charges and energy charges for the period from 1/13 to 3/15) on 15/11/2018.

The assessment is not covered under reg (152) as averred by the appellant. Reg (152) of Kerala Electricity Supply Code 2014 is stipulated as follows.

Reg.152:- Anomalies attributable to the licensee which are detected at the premises of the consumer.

2. Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even which there is no change in the purpose of use of electricity by the consumer and inaccuracies of metering shall not attract the provisions of sec 126 or sec 135 of the Act.

3) Provided also that realisation of electricity charges short collected shall be limited for a maximum period of 24 months even if the period during which such anomaly persisted is found to be more than 24 months

The above cited regulation does not pertain to the bills issued on 15/11/2018, as the bills were issued for the undercharged period under Reg 134 of Supply Code 2014. The appellant is hereby misleading the Authority by quoting wrong regulations. The crooks of the appellant was observed by CGRF and upheld the bill for Rs. 2,18,006/-. The short assessment bills were issued as per Audit observation made by Regional Audit Officer Thodupuzha. As per the inspection demand notice dated 15/11/2016 for Rs 2,18,006/- as per rules were issued to appellant. The appellant had been informed about the details of demand notices with all details and in response to the same Appellant had submitted a petition before the Assistant Engineer, Electrical Section office, Kattappana dated 5/12/2018 raising objections against the demand notices and item wise reply for the objections has been issued to him by the Assistant Engineer. The appellant's averment that he wasn't aware of the demand is hereby unveiled.

As averred the bill wasn't issued for abnormalities found in the premises of the appellant but realising the amount undercharged due to oversight. As per clause (3) of the 4th amendment to the Supply Code 2005, LT consumers above 100 kVA, prior to the implementation of the Supply Code 2005, were permitted to operate in LT tariff. But this relaxation was ceased after the introduction of the Supply Code 2014. It is also proposed to impose a LOW VOLTAGE SURCHARGE to the consumers whose connected load above 100 kVA but operating in LT in the Supply Code 2014. The rate of this LOW VOLTAGE SURCHARGE has been published in the Tariff order 21/4/2017. Demand Based Tariff has been compulsorily introduced to all LT industrial consumers with a connected load above 20 kW from 9/2013 and the consumers are directed to execute an agreement with KSEBL on this regard to declare their Contract Demand. But the appellant had not taken any actions to convert to HT nor executed any supplementary agreement on contract demand till 12/6/2018. In such circumstances the demand charges to be assessed based on the connected load and low voltage surcharge were assessed. The connected load of the appellant was 114 kW, the contract demand should be 127 kVA (connected load/0.9). But the billing was done with contract demand 96 kVA instead of 127 kVA up to 6/2018. The billing demand shall be 75% of the Contract Demand or recorded Demand whichever is higher. In this case the bills were issued for 75% of 96 kVA=72 instead of 75% of 127 kVA=95.25. This undercharging was observed by the audit team. Also low voltage surcharge from 5/17 to 1/2018 was assessed as the consumer didn't opt HT tariff. Reg.(8) of the Supply Code deals with the supply voltage for different connected loads for contract demand, pursuant to the above, Reg (9) of the Supply Code deals with LOW VOLTAGE SURCHARGE.

Reg (9) of Kerala Electricity Supply Code 2014 stipulates that '-Consumer availing supply at low voltage lower than the one specified in reg (8) for the respective limits of connected load or contract demand, shall pay the low voltage supply surcharge to the licensee at the rates as approved by the commission from time to time in the tariff order. The low voltage surcharge

came into effect on 16/8/2014 (Gazette Notification dated 6/8/2014). In this case the short assessment for low voltage surcharge is levied from the consumer for the period 5/17 to 1/2018 only without imposing interest.

Reg 136(3) of Kerala Electricity Supply Code 2014 stipulates as follows:-

"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 has been shown continuously as recoverable arrears of charges for electricity supplied " The dictum laid down in Rototex Polyester Vs Administrator, Administration of Dadra & Nagar Haveli (UT), Electricity Department, 2009(5) All.MR 579 that the phrase "sum due" means due and payable after a valid bill has been sent to the consumer is very much applicable in this case as well. Here, the bill becomes first due only on 26/11/2018.

The appellant has not been overburdened by the respondents in the light of audit report as alleged by the appellant. The Board has issued aforesaid short assessment bill by virtue of Reg.(134) of the Kerala Electricity Supply Code 2014.

Analysis and Findings: -

The hearing of the case was conducted on 11-07-2019 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri K.N. Sasindran, Advocate has represented for the appellant and Sri. Tony M. Keeranchira, Assistant Executive Engineer, Electrical Sub Division, Kattappana, has appeared for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during 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 thereof.

The respondent has given short assessment of demand charges to the appellant for the period from 08/2015 to 01/2018 and as per the tariff order dated 18.04.2017, the licensee demanded low voltage surcharge from 5/17 to 1/18 amounting to Rs. 2,18,006/-.

The appellant was served with the short assessment bills based on the audit observations made by the Regional Audit Officer, Thodupuzha. It is revealed from the audit report that the billing of the appellant was done wrongly with contract demand of 96 kVA instead of 127 kVA up to 06/2018. As per the Regulation 3 (b) of the Kerala Electricity Supply Code (Fourth amendment), 2008, in which it is stated that all LT consumers existing as on 02-03-2005, the date of implementation of Kerala Electricity Supply Code 2005, shall be permitted to continue as LT after connecting additional load up to a total of 150 kVA irrespective of their existing load below or above 100 kVA.

Any subsequent upward revision of contract demand would require conversion to HT. In the Supply Code 2014, it is proposed to impose a low voltage surcharge to the consumers whose connected load above 100 kVA but operating in LT tariff. Accordingly the rate of this low voltage surcharge was published in the Tariff Order dated 17-04-2017. The CGRF has observed that the registered connected load of the consumer was 114 kW (127 kVA) and billing was continuing with contract demand of 96 kVA instead of 127 kVA. A supplementary agreement for the contract demand of 96 kVA was executed by the appellant only on 12/6/2018 and hence a revenue loss has been sustained to the licensee in terms of demand charges due to the wrong billing. The billing demand shall be 75% of the contract demand or recorded demand whichever is higher. The low voltage surcharge was assessed only for the period from 5/2017 to 1/2018, since the provision for low voltage surcharge was implemented as per the tariff order dated 17/4/2017 only.

As per the tariff order dated 17-04-2017, the consumers who are required to avail supply at HT and above as per the regulation of the Kerala Electricity Supply Code 2014, but availing supply at LT, shall pay the low voltage surcharge at the prescribed rates. The maximum connected load permissible for low tension three phase category is limited to 100 kVA.

The Supply Code 2014 came in force with effect from 1-4-2014 with specific regulations regarding submitting of applications for reduction/enhancement of connected load, executing supplementary agreement etc.

As per Regulation 9 of the Supply Code 2014, “Consumers availing supply at voltage lower than the one specified in regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff order.”

Regulation 11 of Supply Code 2014 reads as follows:

11. *Limits of connected loads and contract demand for new LT connections.-*
 (1) *The maximum connected load permissible for low tension three phase category shall be limited to 100kVA:*

Provided that a low tension consumer who, as on the date of implementation of the Kerala Electricity Supply Code, 2005, had a sanctioned load exceeding the limit of 100kVA, may be permitted, subject to realisation of low voltage supply surcharge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer.

(2) The maximum contract demand permissible for low tension consumer who avails power under demand based metering shall be 100kVA, irrespective of his connected load.

(3) An applicant occupying multi-storeyed building may be given service connection at low tension on his application, even if his connected load or contract demand is more than 100 kVA, by providing bus ducts or cables of adequate current carrying capacity and complying with the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, provided the developer or builder of the multistoreyed building, installs and maintains at his cost, the transformer station of adequate capacity and associated apparatus including the internal distribution system for this purpose and enhances the capacity of the transformer to meet the load growth if any.

It is pertinent to note that the regulation says realisation of low voltage supply surcharge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer. In this case, there is no upward revision of connected load, but a reduction in the connected load which was effected in 2018.

It is found that the consumer did not comply with Regulation 100 and 103 (2) of the Supply Code 2014 and this is the main cause for the dispute and issuance of short assessment bills. Regulation 100 and 103(2) read as follows:

100. Reduction of connected load or contract demand.-

(1) Any application for reduction of connected load or contract demand shall be accepted only after six months from the date of original energisation for LT connections and only after one year from the date of original energisation for HT or EHT connections.

2) Request for reduction of connected load or contract demand shall be entertained only once in six months thereafter.

(3) The consumer shall apply for reduction of load or contract demand to the licensee specifying the reasons thereof, in the form specified in Annexure - 11 to the Code and the licensee shall process the application form in accordance with relevant provisions of the Code.

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

(5) The licensee shall consider the grounds stated in the application, verify the same during inspection and issue order on the application within a period of fifteen days from the date of completion of inspection and intimate the applicant: Provided that the licensee shall issue a speaking order if the request of the consumer is declined.

(6) If the licensee sanctions the reduction in connected load or contract demand, the meter and service line may be changed if required and the expenditure thereof recovered from the applicant.

(7) The licensee shall issue a demand note to the consumer in writing, under acknowledgment, in accordance with the timeline specified in regulation 81

mutatis mutandis and thereafter both the licensee and applicant shall follow mutatis mutandis the procedure and timelines as laid down in regulation 81 to 83 of the Code.

(8) If the consumer pays the required charges and expenditure for modification of distribution system, service line, meter and other apparatus, the licensee shall execute the work and sanction the reduction in the load within the time limit specified in regulation 85.

(9) If the licensee sanctions the reduction of connected load or contract demand, the same shall be effective from the date of inspection and a written intimation thereof shall be sent to the consumer.

(10) If the application is not decided and order is not issued by the licensee within the above mentioned period of fifteen days from the date of completion of inspection, permission for reduction of connected load or contract demand, as the case may be, shall be deemed to have been granted with effect from the sixteenth day.

(11) Any difference in security deposit arising out of load reduction shall be adjusted in the subsequent two bills of the consumer.

103. Execution of agreement.- (2) The consumer shall execute a supplementary agreement for enhancement or reduction of sanctioned load.

Another question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (4) of the Kerala Electricity Supply Code, 2014. Section 56 (2) Electricity Act 2003, which reads as under;

“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 licensee shall not cut off the supply of the electricity”.

The Apex Court have interpreted this Section in detail in the reported decisions in *Tata Steel Ltd Vs Jharkhand State Electricity Board* (2008 KHC7794 AIR 2008 Jha 99) and other and *Brihanmumbai 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”.

There is serious lapses occurred on the part of respondent in issuing a notice or claiming the low voltage surcharge immediately after implementation of the tariff order dated 17/04/2017. The respondent had taken action to realize the low voltage surcharge only on detection of the fact by the audit party. Similarly the inaccuracy in the billing also occurred due oversight.

Decision

From the conclusions arrived at as detailed above, I decide to quash the short assessment bills amounting to Rs. 2,18,006/- issued to the appellant. The period of short assessment in demand charges is limited for 24 months from 2/2016 to 1/2018. The respondent shall issue a revised bill within a period of 30 days from the date of this order.

It is proper and allowable as per the regulations in the Supply Code and tariff order to issue a bill for low voltage surcharge to the consumers who are required to avail supply at HT, but *had a sanctioned load exceeding the limit of 100kVA*. The appellant has to remit the low voltage surcharge from 05/2017 to 01/2018. The respondent shall allow 12 monthly instalments if the appellant desires so. No surcharge for the instalment amount shall be collected from the appellant.

Having concluded and decided as above it is ordered accordingly. The order of CGRF in OP No. 89/2018-19 dated 09-05-2019 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/044/2019/_____/Dated:_____

Delivered to:

1. Sri. Jacob Paul, Pulliattu House, Pulianmala, Kattapana
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kattappana, Idukki

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 Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.