

**THE STATE ELECTRICITY OMBUDSMAN**

Charangattu Bhavan, Building No.38/2829,  
Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 8714356488  
Email: ombudsman.electricity@gmail.com

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**APPEAL PETITION No. P/019/2022**

**(Present: A. Chandrakumaran Nair)**

**Dated: 20<sup>th</sup> June, 2022**

Appellant : 1) Smt. Saly George,  
Palakkattu House,  
Mangattukavala  
Thodupuzha East P.O.,  
Idukki 685 585

2) Sri. Martin Jose,  
Regional Manager – State Bank of India  
Building No. XXII/227 E2, First Floor,  
Palakkattu Building, Mangattukavala,  
Thodupuzha East P.O., Idukki 685 585

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Thodupuzha East, Idukki Dist.

**ORDER**

**Background of the case:**

The appellant (1) is the owner of the building and consumer to the Licensee with consumer number 1156200023699 which was effected on 04-07-2013 with LT IVC tariff. The appellant (2) is the Resident Manager of State Bank of India, who is the occupant of the building for functioning its branch office. The first appellant rented out this building to second appellant for the functioning of SBI, Muvattupuzha branch as per the rental agreement. The energy meter installed in the premises with CT of ratio 100/5 and hence, the Multiplication Factor is 20. On 28-10-2021, the Ant-Power Theft Squad (APTS) along with Sub Engineer, Electrical Section, Thodupuzha No. II has conducted an inspection in the premises and found that 'R' phase and 'B' phase voltage connected leads were wrongly connected to the meter terminals. APTS checked the accuracy of the

meter by a calibrated standard testing kit and found that the energy consumption was 31.51% less than the actual consumption due to the interchanged voltage terminal connections. A site mahazar was prepared in presence of the appellant (2), who was witnessed the inspection procedure. Licensee has prepared a short assessment bill for Rs.6,65,794/- for a period from the date of connection 04-07-2013 without any interest and issued to the appellant. The appellant approached the Consumer Grievance Redressal Forum (CGRF), Central Region, Ernakulam, disputing the short assessment bill. The Consumer Grievance Redressal Forum ordered that the appellants are bound to pay the short assessment bill issued by the Licensee vide order No. 50/2021-22 dated 24-02-2022.

Aggrieved by the decision of the Forum, the appellants filed the appeal petition to this Authority.

**Arguments of the appellants:**

The first appellant constructed a building bearing Door No. XXII/227 E1 (New No. XXI/941) and leased out the 1st Floor of Building no XXII/ 227 E2, Palakkattu Buildings to the 2nd appellant on 10-12-2013. The respondent has commissioned the electric meter to the building in the year 2013. The whole technical team of the licensee including engineers were present on the spot during the installation and working of the meter. The periodical inspections have been doing by the licensee every year and employees of the licensee taking meter reading every two months. The licensee has been charging inspection fee from the appellants for the same. In none of the previous inspections, the technical team of the licensee or their employees has raised any issues regarding the anomaly, if any, in the working of the meter.

Facts being so, the anti-theft squad of the licensee conducted an inspection of the premises on 28-10-2021 and stated that during the installation of the meter in 2013, the technician/engineers of the licensee had mis-configured the supply to the meter to the poles and due to which the consumption of the units was registered 31.51% lesser than the actual use.

The respondent now demands that an arrears of Rs.6,65,794/- to be paid being the shortfall in the meter reading from 2013 to 2021 and issued a fresh demand notice to the 1st Appellant on 02-03-2022. A site mahazar was also prepared and given to the appellants by the respondent.

Since the act of the respondent amount to unfair trade practice, the appellants filed O.P. 50/2021 before the CGRF, Ernakulam. But, the CGRF without making a speaking order permitted the respondent to realize the bill amount as per order dated 24-02-2022. The respondent is not entitled to issue demand notice dated 02-03-2022 and the appellants are not liable to pay any amount to the respondent. In the above mentioned circumstances, the appellants are approaching the Authority on the following among other.

The impugned order dated 24-02-2022 is not a speaking order and liable to be set aside. As per the decision of the Hon'ble High Court of Kerala reported in 1999 KHC 660, such non speaking orders are liable to be set aside.

Since the licensee had vested with no power as per law to assess the loss or damages due to faulty connection, the licensee has to approach a third-party umpire to assess the loss due to the faulty connection. If the assessment is not made with the help of a third party, the appellants are not bound to pay any amount to the respondent.

The respondent themselves have admitted that the technician/engineers of the licensee have mis-configured the supply to the meter from the pole, due to which the consumption of the units was calculated 31.51% lesser than the actual. Therefore, the respondent can't charge the appellants for the negligent act of the licensee. The above principle is clearly declared by the Hon'ble High Court of Madras in the decision reported in Ahamed. S.A & Another Vs Tamil Nadu Electricity Board (2001 KHC 3591).

Even if the claim of the licensee is genuine, they cannot claim anytime barred dues. The alleged claim for arrears were made only on 01-11-2021 for the dues from 2013 on the basis of the inspection dated 28-10-2021. As per law, they can claim arrears for three years only and the rest is barred. The above position is clearly settled in the decisions reported in 2001 KHC 3591 (Ahamed S.A & Another Vs. Tamil Nadu Electricity Board), 2015 KHC 2211(Assam State Electricity Board, Assam & Another Vs Surana Industries, Assam).

Demand Notice is silent as to the calculation of the arrears and how they reached the conclusion that the licensee had a loss at the rate of 31.51%. No

supporting document or detailed calculation are produced to support the claim. The above act of the licensee amount to unfair trade practice.

The licensee did not examine or opened the meter in the presence of any independent witness. The respondent unilaterally came to the premises of the Appellants, opened the meter and declared that some mistakes were occurred while connecting the meter in the year 2013. The licensee could have taken at least the photographs of the wrongly connected poles prior to the breaking of the seal to prove that the connection was given in an erroneous way by the licensee. Even after finding the so-called defect, the licensee did not do anything to rectify the same even after one month. The above conduct of the licensee would go to show that the alleged faulty connection is nothing but a concocted story to loot money from the Appellants

The licensee till this day have ever conducted a detailed investigation into this with a neutral umpire to verify whether the error in the meter reading was right from the beginning of its installation or whether it became faulty subsequently.

Since the licensee has been conducting annual inspection of the meter and connection regularly since 2013, any anomaly in the connection detected in the year 2021 shall not allow them to make demand for the arrears from 2013.

The Hon'ble High Court of Kerala in the decision reported in 2012 KHC 2614 has held that "in so far as there is no fault on the part of the Appellant, the Appellant cannot be saddled with liability to pay surcharge also till the date of raising of the bill."

#### Relief Sought

1. May be pleased to set aside the order dated 24-02-2022 of the CGRF Ernakulam in O.P. 50/2021.
2. May be pleased to set aside the demand notices dated 01-11-2021 & 02-03-2022 issued by the respondent/licensee.
3. May be pleased to stay all further proceedings in pursuance to the document No. 2 Notice dated 02-03-2002 issued by the respondent till the final disposal of this appeal.

4. May be pleased to order re assessment of the claim made by the licensee with an independent agency.

**Arguments of the respondent:**

The complaint is not maintainable either under-law or on facts for the following reasons. During the APTS inspection on 28/10/2021, it was found that 'R'-phase and 'B'-phase voltage leads were wrongly connected to the Meter terminals and hence the error was tested using a calibrated standard reference meter which revealed an error of 31.51% less than the actual consumption. It is clear that the Licensee has been suffering a huge revenue loss due to the less recording of the consumption by the energy meter. The Licensee has assessed the appellant from 04-07-2013 as per the Regulation 134 of Kerala Electricity Supply Code 2014. Comparison of the pattern of consumption of the appellant from the date of connection up to the date of inspection and the pattern of consumption after rectifying the discrepancy in the voltage terminal connection, would establish that the Licensee was sustaining the loss from 2013 onwards.

The Licensee has sustained loss due to under recording by the meter by 31.51% less than the actual consumption due to interchanged voltage terminals. Hence, the KSE Board Limited has assessed the appellant from 04-07-2013 as per the Regulation 134 of Kerala Electricity Supply Code 2014. Order dated 24-02-2022 of the Hon'ble CGRF-CR in OP No.50/2021-22 is legal and valid in the eye of law.

Regulation 172 of the Supply Code read with Sec.168 of the Act 2003, empowers the licensee with the authority to test the meter installed in the consumer premises. The A.P.T.S is the agency of the licensee authorized for this inspection at the consumer premises. The testing is carried out by authorized officers and all the documents and evidences including digital evidences are preserved. This testing was represented and witnessed by the Regional Manager of SBI, Mangattukavala Branch and after understanding the facts, he has signed in the site mahazar. As per Regulation 116 (2) of the Supply Code, 2014, the licensee can even test the meter at site and no other expert agency is legally required for the purpose. Hence, investigation with a neutral umpire is not required.

Regulation 134 of the Supply Code 2014 empowers the licensee by "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 this case; the KSE Board Limited (the licensee) has sustained loss due to under recording of consumption due to the interchanged connection of 'R' & 'B' terminals to the meter, to the tune of 31.51% less than the actual consumption. Hence KSEB Ltd has the authority to issue such a short assessment bill for the actual undercharged amount without any interest and to recover from the consumer. In this case the undercharged amount is Rs.6,65,794/- The enactment of Electricity Act 2003 repeals all the Acts and Regulations related to electricity supply and related matters. Hence, the principles laid down in 2001KHC 3591 are not applicable in this case.

The Licensee has assessed the appellant from 04-07-2013 as per the Regulation 134 of Kerala Electricity Supply Code 2014. The Hon'ble Supreme Court in its decision; Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Limited Vs Rahmatullakhan in Civil Appeal No.1672 of 2020 dated 18-02-2020 (2020 (4) SCC 650) held that Section 56 (2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56 (2) in the case of a mistake or bona fide error and it was also held that the amount will become due, only when the bill is issued and Section 56 (2) will not be applicable to additional or supplementary bill.

The Demand notice issued to the appellant on 01-11-2021 was for the actual undercharged amount without any interest. The demand notice was issued along with detailed calculation sheet based on the monthly consumptions recorded in the energy meter within the error period. As per the test reports, the energy meter was recording 31.51% less than the actual consumption. Hence the difference between the actual consumption and recorded consumption was arrived, and reassessed the Current Charge and its 10% as Govt. Duty only for the undercharged consumption without any interest, is issued as demand.

All the inspection procedures were done in the presence of the 2nd appellant, represented by the Regional Manager, SBI Thodupuzha, Mangattukavala branch and he has signed in the Site mahazar after

understanding the way in which the terminals are wrongly connected and received a copy of the same. Also, the discrepancies in the terminal connection is evident from the downloaded vector diagram from the meter, which was done in the presence of the representatives of the appellant.

The discrepancies in the voltage connection were corrected on the next working day itself by the KSEB Ltd and the energy meter was retested on the spot on 09-12-2021 by the A.P.T.S Vazhathope unit again and the error was found within the limits as per test report. Also, consumption statements of the consumer from July-2021 to February-2022 are described below. By examining the consumption pattern of the appellant within the error period and after rectifying the errors in connection by the same energy meter which are described in the below table, it is evident that there is huge revenue loss sustained to KSEB Ltd due to the less recording of the consumption by the energy meter.

The downloaded tamper report and vector report are clear technical evidence that show the mistakes in the voltage connections as interchanged 'R' and 'B' phase voltage leads to the meter terminals. Also, Regulation 172 (1) of Kerala Electricity Supply Code 2014 which provides the licensee for inspecting, testing, repairing or altering the electric supply lines, meters, fittings, works and apparatus for the supply of electricity belonging to the distribution licensee. Hence investigation with a neutral umpire is not required.

The Sub Engineers of the concerned electrical section are duty bound to visit the premises of consumer every month for taking meter readings only. The percentage error of 31.51% less can only be ascertained on testing the meter with calibrated standard equipment, which can be done by the authorized agencies having the required facility as done by the APTS. This error detected by the calibrated testing equipment is very close to the theoretical values (33.33% less) in the case of a 3-phase energy meter where potential terminals of any 2 phases are interchanged. This substantiates the huge loss incurred by the KSEB Ltd due to interchange in the connection.

The quoted statement is from the Judgment of the Hon'ble High Court in the case WP No.5614 of 2007. In this case the gist of the judgment is based on the unauthorized use of electricity. But in this case the consumer was

undercharged due to a technical error in connection to the meter terminals. The demand was raised only for consumer's actual consumption of energy.

**Analysis and findings:**

The hearing of the case was conducted on 17-03-2022 at 11-00 AM in the office of the State Electricity Ombudsman, Edappally, Kochi. Smt. V.K. Hema, Advocate attended the hearing for the appellants and Sri. Manoj. M.R., Assistant Executive Engineer, Electrical Subdivision, Thodupuzha (East) attended the hearing from the respondent's side. On examining the appeal petition, the arguments filed by the appellants, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The meter reading was lower than the actual because of the voltage terminals of R & B phases connection was interchanged. The connection and energization have to be done in presence of the concerned officials of the Licensee. It is noted that a serious lapse has happened from the side of the officials of the Licensee. A proper and rugged system is to be evolved by the Licensee to avoid such type of errors and hence, the revenue loss.

As per the Section 113 (6) of Kerala Electricity Supply Code 2014, the Licensee shall conduct periodical inspection or testing or both of the meters as per the following schedule:-

|   |                           |
|---|---------------------------|
| single phase meters                                       | once in every five years  |
| LT 3-phase meters   | once in every three years |
| HT or EHT meters including maximum demand indicator (MDI) | once in every year        |

In this case, it is very clear that the Licensee have not done the periodical inspection or testing as per the above Section.

Section 134(1) of Kerala Electricity Supply Code 2014 states "Under charged bills and over charged bills: - 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.”

This is clearly giving the right of Licensee to recover amount undercharged from the consumer.

Section 56 (2) of Indian Electricity Act 2003 states “(Disconnection of supply in default of payment) - 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.

As per this regulation, 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.

In the case on hand, the amount was first due when the short assessment bill raised. This was clearly spelt out in order of Hon’ble Apex Court in the Civil Appeal 1672/2020 - Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Limited Vs Rahmatullakhan. “This states that Section 56(2) of Indian Electricity Act 2003 did not preclude the Licensee Company from raising an additional or supplementary demand after the expiry of limitation period under Section 56(2) in the case of a mistake or bona fide error.

“As per Section 17 (1)(c) of the Limitation Act 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. In this case, the limitation would commence for the date of discovering of mistake i.e., 28-10-2021”.

The Section 172(1) of Kerala Electricity Supply Code 2014: “permits the Licensee to enter premise of the consumer for the purpose of inspection, testing, repairing or cutting the electric supply lines, meters, fitting, works and apparatus for the supply of electricity belonging to the Licensee. (2) Ascertaining the amount of electricity supplied or the electrical quantity contained in the supply”.

This clearly state that the Licensee is having authority to test the meter and installations for which no permission of the consumer is required.

The Section 172(4) of Kerala Electricity Supply Code 2014 states: “If the officer who inspects the premises of the consumer and the installations therein has detected any illegality or irregularity in the premises of the consumer and if he has reason to believe that such illegality or irregularity comes under Section 135 of the Act or under Section 126 of the Act, he shall immediately inform the officer authorized under Section 135 of the Act or the assessing officer under Section 126 of the Act, as the case may be, about such illegality or irregularity for immediate action.”

The appellant argued that the investigation for assessing the revenue loss shall be made by an independent agency or by a neutral empire. In this case, the meter reading was erroneous and the procedure for assessing the same has been clearly spelt in various Regulations of Kerala Electricity Supply Code 2014, which is seen to be complied with.

The meter along with CT were connected and energize the system on 04-07-2013. The CT's terminal connection of ToD meter would have done wrongly on the day of energization. There is no proof either from appellant or respondent to show that any connection/reconnection done afterwards. As such it is to be noted that the meter was reading wrongly since the date of energization which is 04-07-2013.

**Decision: -**

From the analysis of the arguments and the hearing following decisions are hereby taken: -

- (1) The appellant is liable to pay the short assessment bill amount.
- (2) The respondent shall grant 12 numbers of monthly instalments without interest to pay the short assessment bill by the appellant to the Licensee.

- (3) The Licensee has to device a proper and rugged system to ensure that this type of mistakes are not happened and also to ensure periodical inspection and testing of meters.
- (4) The order of CGRF, Central Region in OP No.50/2021-22 dated 24-02-2022 has been modified to this extent.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/019/2022/ \_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Smt. Saly George, Palakkattu House, Mangattukavala, Thodupuzha East P.O., Idukki 685 585
2. Sri. Martin Jose, Regional Manager – State Bank of India, Building No. XXII/227 E2, First Floor, Palakkattu Building, Mangattukavala, Thodupuzha East P.O., Idukki 685 585
3. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Thodupuzha East, Idukki Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.