

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/034/2023
(Present A. Chandrakumaran Nair)
Dated: September-08-2023**

Appellant : M/s Good Buy Soap and Cosmetics(P)Ltd.,
Industrial Development Area, N.A.D,
Kanjikode, Palakkad.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Kanjikode, Palakkad.

ORDER

Background of the case

Appellant M/s Good Buy Soaps & Cosmetics (P) Ltd. is the consumer of the licensee (KSEB) under the Kanjikode Electrical Section with consumer no. 1165289012972. The connected load is 99.455 kw and contract demand is 95kVA. On inspection of HTMT unit found that the real time clock of the CT meter was defective and thus the meter reading was erroneous. The energy meter was declared faulty. Due to the error in the meter the appellant was under charged during the period Jan/2021 to Aug/2021. A short assessment bill was issued to the appellant for Rs. 2,54,081/- for the said period. The short assessment was calculated taking average of the preceding 6 months for 7/2020 to 12/2020. The appellant filed petition to the CGRF and vide CGRF ORDER dated 12/08/2022, the short assessment bill was quashed and directed the licensee to revise the short assessment as per regulation 125 (1) of Kerala Electricity Supply Code 2014. The licensee filed a review petition and CGRF issued a revised order dated 08/05/2023 stating that the licensee can collect the energy charges for the escaped portion as per regulation 134 of the Supply Code 2014. Aggrieved by the review of order of CGRF, this appeal petition was filed.

Arguments of the Appellant

1. Ours is an industry having LT IV A tariff. On 22.09.2021, HTMT inspection was conducted in our premise, after we intimated KSEBL that our meter having some error. Our meter and CT were installed by KSEBL while starting our plant.

After inspection and confirmation of meter faulty, KSEBL directed us to install new tested meter and we have done the same.

After inspection during September on 08.11.2021, KSEBL, come out with a short assessment bill for Rs.2,54,081/- by considering meter faulty from January 2021 to September 2021.

2. We have filed a petition before CGRF against KSEBL short assessment bill for Rs.2,54,081/- by considering meter faulty from January 2021 to September 2021. CGRF came out with an order on OP NO.118/2021-22 dated 12.08.2022. In the Order CGRF clearly directed KSEBL to “set aside the bill issued to the petitioner dated 08.11.2021 and also ordered to revise the assessment bill as per Regulation 125 (1) of Kerala Electricity Supply Code 2014”. After the release of CGRF order, KSEBL haven't contacted us or provided the revised bill as per CGRF direction. We also lost our opportunity of filing appeal before ombudsman because we were supposed to approach Ombudsman within 30 days of the CGRF order.

We have received a review petition filed by KSEBL along with a covering notice from CGRF Chairperson on 21.01.2023. Against which we have submitted a replay on 15.02.2023. In the replay we categorically stated that Electricity Act 2003, did not permit any kind of representation by Licensee. Only a consumer can approach CGRF and more than that CGRF is an extended arm of licensee. Now we came to know that CGRF have conducted a hearing on 16.03.2023 against review petition filed by KSEBL which is illegal and not maintainable before law.

CGRF couldn't entertain KSEBL review petition, because as per Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) (Fifth Amendment) Regulations, 2011, Reg. 12 (2), *‘An application under clause (1) shall be filed within period of fifteen days from the date of receipt of the order’*.

Provided that the Forum may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period’.

3. In KSEBL review petition we haven't found any addition supportive documents for their arguments and also, they haven't checked our current consumption, or intimated us about that they are going ahead with the Short Assessment notice.

KSEBL have taken 146 days for filing review petition before CGRF instead of 15 days and CGRF have sent the notice without considering this huge gap of the number of days and also the loss of our opportunity. KSEBL reason for the delay is really funny and not admissible because they say that the '*delay in filing this review petition was due to the delay in getting sanction from Head Office which is not purposeful*'. It's the duty of Assistant Executive Engineer to file the review petition on time after serving copy to us. We cannot understand their argument of sanction from Head Office. This also clearly shows that the person who is sanctioning this type of illegal review petition may also be summoned by CGRF. Then only CGRF can decided upon genuity of this long delay. If a consumer says that he was not available in India or Sick etc. even then no forums are accepting the same. A huge machinery like KSEBL having thousands of senior engineers and officers need not required even a one-day time for giving permission if it is mandatory. We don't think that and designated Assistant Executive Engineer any concurrence and concerned for filing a revision within the stipulated time period of 15 days. If it is so then the sanctity of that post and that particular person is in question.

In the review petition, they are claiming that our short assessment is not as per Reg. 125, but as per Reg.134. KSEBL firstly says this case is Meter Faulty then how they cannot consider Reg.125.

4. Also, they are quoting Judgment dated 05.10.2021 of the Hon. Apex Court in Civilis Appeal No.7235/2009 '*if a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand.*' KSEBL already raised a short assessment bill and we have objected the same and CGRF also closed the short assessment bill with a direction to KSEBL to revised the bill as per Reg.125. But KSEBL haven't consider the same at all.

If the testing of meter done in NABL accredited laboratory and meter is found to be faulty, then KSEBL can claim only as per Regulation pertain to Meter Faulty only.

KSEBL also says that the meter data RMD 2 and RMD 3 are recorded and the consumption is zero. If meter is fault, then we cannot relay this reading. KSEBL can only take the average data after verifying the

present bill after changing the meter. When the meter is faulty it cannot consider as undercharged amount. They can collect the average bill amount from consumer if the meter is found faulty. They are only using the energy meter and recording data's, we are not accessed the same, so they have to find out that the meter was faulty. Only after our finding KSEBL get to know that the meter was faulty and now they are claiming about undercharged amount. Which is not fair and justice.

As per Electricity Act 2003, Sec.42 (5) *'Every distribution licensee shall, within six months from the appointed date or date of grant of license, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission'*. The Act clearly shows that this Hon. Consumer Grievance Redressal Forum is for consumer grievances and not for license grievance. Hence Hon. Ombudsman may cancel CGRF Order.

Complying with Electricity Act 2003, Sec. 42 (5) & (6), Kerala State Electricity Regulatory Commission formatted the *"Consumer Grievance Redressal Forum and Electricity Ombudsman, Regulation 2005"*. It is clear that the CGRF and Ombudsman is for Consumer Grievances, not for License Grievances.

KSEBL have never shared a revised bill as per CGRF Order, we also thought that the KSEBL short assessment bill have been cancelled and no need to approach Ombudsman as per Electricity Act 2003 Sec. 42 (6) *'Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission'*.

5. The calculation given by KSEBL is totally wrong. The Act, Rule or Regulation does not permit collection of electricity charge as per thumb rule calculation. It permits only the collection of electricity charge as per the accurate reading of a correct meter which is having error within the specified limit. If the error is suspected the only solution is to collect the average of 3 months when the meter is correct and then apply it to the suspected period.

As per Supply Code Reg.125 (1) *Procedure for billing in the case of defective or damaged meter.* - (1) In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective: Provided that, the average shall be computed from the three billing cycles after the meter

is replaced if required details pertaining to previous billing cycles are not available', hence KSEBL cannot penalize us without proper evidence.

6. As per the CEA Regulation 2006, 2(P) ' *“meter” means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipment such as current Transformer (CT), Voltage Transformer (CVT) necessary for such purpose* '. Here as per KSEBL the fault is in line connecting the current/voltage line which is a part of meter and hence the proceedings for the meter faulty period can only be adapted while claiming the short assessment bill. The KSEBL, declared the meter as faulty for certain periods and they have assessed the full consumption percentage from 01/2021 to 09/2021. The KSEBL have not tested the meter and CT in standard test lab and produced the test certificate.

As per Supply Code Reg.115 (9) *“In case the meter is found to be faulty, revision of bill n the basis of the test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such-revision shall be adjusted in the two subsequent bills”*. The KSEBL have not tested the meter in standard test lab and they are claiming nine months bill revision. MRI data are not downloaded to conclude from which date onwards the meter become faulty.

7. As per Electricity Act Sec.55 (1) *‘No license shall supply electricity, after the expiry date of two years from the appointed date, except through installation of correct meter in accordance with the regulations to be made in this behalf by the Authority*’. It is the liability of the KSEBL to provide correct meter and maintain it correctly.

KSEBL have not provided any supporting documents for the period of assessment and unit consumption in actual and less billed units etc. till now.

A poor consumer cannot be made liable for noncompliance of the directive by the KSEB officials such as,

- a. The Regulation 115(9) which reduces maximum period of back assessment as 6 months, in case of meter faulty even if the meter faulty is more than 6 months.
- b. It is true that Regulation 134(1) permit KSEB to collect the undercharged amount *‘If the KSEB 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 case at least thirty days shall be given to the consumer for making payment of the bill'. But nowhere is it mentioned that KSEBL can have a claim after operational violation of Regulation and non-compliance of directives. KSEBL can collect the payment only in compliance with Regulations 115(9).

8. The Electricity Act 2003 sec. 50 is very clear and specific in assigning the duty and responsibility to specify Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, etc., and hence KSEBL cannot have their own discretion in billing and collection of payment. While issuing a bill it has to be as per all Regulations such as 134(1) which permits licensee to collect the undercharged amount by issuing a bill, Reg. 115(9), which limits the period of assessment as previous 'six months. Here KSEBL can collect the undercharged amount as per Reg.134(1) but should be limited for a period of six months as per Reg.115(9) if the meter found to be faulty after testing.

We have given a replay letter against KSEBL short assessment bill on 19.11.2021, without considering our objection and without conducting hearing KSEBL have again supplied a letter dated 14.02.2022 directing us to remit Rs.2,54,081/- before 02.03.2022.

CGRF released the Order after hearing the KSEBL review petition, in favour to KSEBL. KSEBL raised a notice subjecting '*Non remittance of current charge*' dated 31.05.2023. They are claiming Rs.2,54,081/- towards bill amount dated 16.11.2021 and Rs.68,540/- towards surcharge up to 31.05.2023, totaling Rs.3,22,621/-. It's not fair and just, KSEBL claiming the surcharge while the petition is pending before CGRF.

9. Relief Sought

1. The Hon. Ombudsman may direct KSEBL not to disconnect our supply.
2. Hon. Ombudsman may cancel the CGRF Order NO. CGRF-CR/OP No.76/2020-21
3. The Ombudsman may direct KSEBL to take the average of three or six months when the meter is correct and workout for six months during the suspected period.
4. The Hon. Ombudsman may cancel the impugned bill

5. The Hon. Ombudsman direct KSEBL not to collect any surcharge while the petition is pending.

Arguments of the Respondent

1. It is true that the Appellant is a consumer of this licensee with Consumer No.1165289012972 under Electrical Section, Kanjikode in LT IV A tariff with a connected load of 99455 W and Contract Demand of 95 kVA. On an inspection by the HTMT Unit, Kanjikode, it was found that the date and time of the energy meter showed 8/2011, Time 08:13 whereas the actual date was 22.9.2021, time 11:40, Hence it was found that the real time clock of the CT meter was defective and erroneous. Hence the energy meter was declared faulty. An inspection Report was prepared on site. It was directed immediately to install new tested meter which was complied by the consumer on 9.11.2021.
2. Due to the error in the real time clock of the meter, the Appellant was undercharged during the period from 1/2021 to 8/2021 which was evident from their consumption history. Consumption was shown '0' during the above period even though there was reading in the Maximum Demand. In order to bill the above, a reading of '1' was taken in the PDA machine (the multiplication factor being 30) and bills were issued for the above value of consumption for the 2nd and 3rd time zone. The zero value is due to the error in the real time clock in the CT which will directly affect the consumption recorded in the meter for the respective time zones.
3. It is submitted that the reasons for the failure of the Real Time Clock (RTC) of the TOD meters are numerous. In the case on hand, there is no allegation of tampering of the meter. It can be due to the extremely high voltage also, among other reasons. In any case, the Consumer will be undercharged to that extent for the actual supply of energy which is escaped from billing due to defective meter.

In order to recover the undercharged portion of billing, a short assessment bill was issued to the Appellant on 8.11.2021 for an amount of Rs.2,54,081/- for the period from January 2021 to August 2021.

4. It is further submitted that the average for computation of short assessment cannot be taken during the “no consumption” period

immediately preceding the change of CT. Hence the short assessment was calculated based on the average of the preceding 6 months from 7/2020 to 12/2020. Based on the said average, and as per the test report of HTMT Unit, the short assessment bill was issued. It is submitted that the High-Tension Meter Testing Unit (HTMT Unit) Kanjikode which is under the control of TMR Division, Shoranur are authorised to test meters of HT consumers and those LT consumers where CT meter is installed. Hence the CT meter was tested by an approved authority to conclude that the meter was faulty.

5. The consumption history of the consumer from 7/2020 till date is attached. From the table, it can be verified that in the C2, C3 (time zones), the consumption recorded was zero whereas RMD-2 and RMD-3 were recorded. This is impossible. That is the reason why short assessment was done for the period in which consumption was recorded as '0' (or '1' for billing purpose x MF 30).

In the judgment dated 5.10.2021 of the Honourable Supreme Court of India in Civil Appeal No. 7235/2009, it was ordered that if a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. It was also ordered that the “negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Section 56(1). Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, “no sum due from any consumer under this Section, appearing in section 56(2) of Electricity Act, 2003”.

6. It is submitted that if a consumer is short assessed, the licensee can recover the amount so undercharged as per Regulation 134 of Supply Code 2014 which is reproduced below:

Under charged bills and over charged bills.- (1) 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.

(2) If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount.

(3) The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque.

7. Aggrieved by the short assessment bill, the Appellant herein has filed Petition before the Hon'ble Consumer Grievance Redressal Forum of the KSEBL, Kozhikode by filing OP No. 118/2022-23. The Honourable Forum in its order dated 12.8.2022 directed to revise the short assessment bill as per Regulation 125(1) of the Supply Code 2014. Since there was an apparent error on the face of record as to the Regulation applied, a Review Petition was filed by this Respondent before the Hon'ble CGRF that the dysfunction of Real Time Clock of the CT meter for long period is not coming under "meter faulty" case and the escaped billing due to this error is only "undercharging of the consumer" as defined in Regulation 134 of the Supply Code. This Review Petition was allowed by the Hon'ble CGRF and the short assessment was declared to be in order. All these was done by the Hon'ble CGRF after affording opportunity of hearing to the Appellant herein. The averment of the Appellant that the Hon'ble Forum has no Review jurisdiction is not correct. ~ As per Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) (Fifth Amendment) Regulations, 2011.

"12 A Review. - (1) The Forum may, either on its own motion or an application of any person aggrieved by an order, review its order on the following grounds, namely: -

(i) on the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.

(ii) mistake or error apparent on the face of the record.

(2) An application under clause (1) shall be filed within period of fifteen days from-the date of receipt of the order:

Provided that the Forum may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period. (3) If on a preliminary examination of the application, if the Forum found that there is no sufficient ground for review, it shall reject the application after affording an opportunity of being heard to the applicant.

(4) In cases where the review petition is admitted, the Forum shall dispose of it within a period of 30 days from the date of admission after affording sufficient opportunity to the parties to the application.”

8. It is submitted that the cause for the delay is not defined in the said Regulation. KSEB Limited is a utility in the State of Kerala with its Head Office at Thiruvananthapuram. The officers of the KSEBL are delegated with certain powers to decide the matters within their territorial jurisdiction. For those matters which cannot be decided by the officers, superior officers are delegated with such powers. In the case of a decision by a Judicial/Quasi-Judicial Forum, the authority to decide whether to comply with such decision or to file appeal or review the order, etc., are to be decided by the Law Section in the Head Office which is headed by a legal Advisor who is normally a serving District Judge. The Appellant is not aware of all these formalities but simply blaming that Assistant Executive Engineer is duty bound to file the Review without the concurrence of the Head Office. The Appellant is having the knowledge of a small company in Kanjikode only whereas he is trying to mock the system prevalent in KSEBL which is irrelevant to him. The Appellant is not going to lose anything by a delay in filing the Review. The only Authority to condone the delay in filing a Review is the Honourable Forum which has rightly condoned the delay and admitted the delay and issued an order. The delay in filing the Review was rightly pointed out in the Petition. This Respondent has not resorted to the usual false statements as pointed by the Appellant like “not available in India” or “sick”, etc., which is against ethics.
9. The dispute in this case is regarding the escaped consumption due to dysfunction of Real Time Clock of the CT for a long period. This is not a meter faulty condition. Hence the consumer was undercharged as laid down in Regulation 134 of the Supply Code 2014. Hence it is submitted that is this licensee has discovered later that the consumer has been short billed and hence as laid down in the dictum by the Honourable Apex Court in Civil Appeal No. 7235/2009 Judgment dated 5.10.2021 supra cited, this licensee can certainly raise a demand.

It is further reiterated that in the case on hand the meter is not faulty. There is no recording in C2, C3 time zones even though RMD2 and RMD3 were recorded. This is not due to the fault in the meter but due to the error in the Real Time Clock of the CT. This is evident from the consumption pattern of the Appellant Company from 7/2020. There is

no need to revise the bill on the basis of Regulation 134 and not a meter faulty bill under Regulation 125 so as to apply the subsequent readings after replacement of meter.

10. The averment of the Appellant that the CGRF and Ombudsman Regulations 2005 are only for the redressal of consumer grievances and not for licensee grievances is misleading and false. Indeed, the Petition was filed by the Consumer.

The Honourable Forum, like any other judicial or quasi-judicial body, reaches to a final conclusion only by hearing both the parties and the decision is always judicious. If all the decisions goes in favour of the consumer, as pointed out, there is no need for hearing this Respondent. This Respondent has never filed a petition before the Honourable Forum but a Review of the order issued was filed under Regulation 12A of the aforementioned Regulation to point out the error apparent in the face of record. This was allowed by the Hon'ble Forum.

The method of calculation suggested by the Appellant as the Relief in this Appeal is not legally maintainable. The prayer of the Appellant is to "take average of three or six months when the meter is correct and workout for six months during the suspected period". The Appellant has not pointed out any legal basis for. This calculation.

11. In the light of the above, it is respectfully submitted that the Appeal lacks merits either on law or on facts. The contentions raised by the Appellants are false, frivolous and fabricated. Hence it is prayed that the Appeal may be summarily dismissed and Appellant may be directed to remit the arrears.

Analysis and findings

The hearing of the appeal petition was conducted on 09/08/2023 at 11:30 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant's Sri. Raghu, Sri. Karthik (Good Buy Soap), their nominee Sri. Shaji Sebastian and the respondent Sri. S. Nagarajam, AEE, Electrical Sub Division, Kerala State Electricity Board Ltd., Kanjikode along with the Nodal officer Sri. Vipin N.

The appellant is an industrial consumer at Kanjikode, Palakkad manufacturing Soaps and Cosmetics. The tariff applicable was LT IV A. High Tension Meter Testing (HTMT) unit of Kanjikode conducted an inspection on 22/08/2021 and the meter reading was erroneous.

KSEB

has directed the appellant to install a new tested meter and the same has been done. The Real Time Clock of the CT meter was faulty, by this date and time in the meter displayed was erroneous.

Here the question of the appellant is that the regular meter reading was taken by the officials of licensee. Why this defect was not noticed. After the assessment the licensee arrived the conclusion that the meter was defective from Jan/2021 to Aug/2021. The reading of meter by the licensee is detailed in regulation 110 of the Kerala Electricity Supply Code 2014

110 (1) *“The meter shall regularly be read once in every billing cycle and on special reading occasions”.*

110(2) *“The consumer shall extent all facilities to read the meter, to the licensee or his employee or to the person duly authorised by the licensee for the purpose”.*

110(3) *“The meter shall be read only by an employee of the licensee or by the person duly authorised by the licensee for this purpose”.*

The duly qualified and authorized persons only has to detail for the meter reading. They should have note the condition of the meter and that would have brought to the notice of the consumer so that duration of defective meter reading would have reduced.

Here the appellant has questioned the acceptance of review petition by the CGRF submitted by the licensee. As per 12A of the KSERC (CGRF & Ombudsman) Regulation 2005 the review petition could be filed any of the party aggrieved by the decision. Hence the review petition is maintainable.

However, the review petition would have been filed within 15 days of the receipt of the order. Here the review petition has been filed after 146 days of the order. The CGRF has the power to accept the review petition if sufficient reason to justify the delay has been shown. Here the CGRF accepted the review petition and order has been issued accordingly. The CGRF and Ombudsman for Grievance redressal mechanism has been introduced in the Act 2003 to get the grievance redressal in a time bound manner. The petitioners taking their own time to file the petitions showing the flimsy reasons are not to be encouraged. Then the very purpose of this mechanism is getting defeated. Licensee has to take serious steps to avoid such delays.

Then the regulation 115 (9) of Supply Code 2014 states about the maximum period of billing during the meter fault.

115(9) *“in case the meter is found to be faulty, revision of bill on the basis of the test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in the two subsequent bills”.*

The Section 125 of the Supply Code 2014 describes about the procedure for billing in the case of defective or damaged meter.

Section 125(1) *“In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or report defective:*

Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available:

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.”

Section 125(2) *“Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with correct meter”.*

Here in this case, the short assessment was billed for a period of 8 months. Section 125 (2) specifies that average consumption-based billing shall be levied for a maximum period of two billing cycles during which time the meter is to be replaced. Here this regulation is very clear that if the metre is found defective the billing without meter reading should not be prolonged beyond two billing cycles. Here the meter defect was noticed only after a period of 8 months from the commencement of defect. This Section is not specific about how much period can be billed if the defect has been identified like in the case in hand, as such this Section is not really applicable with this appeal petition.

The Section 134 of Supply Code 2014 spelt about the undercharged and overcharged bill.

134(1) *“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 regulation empowers the licensee to recover the undercharged amount from the consumer if licensee establishes that the consumer was undercharged, and hence licensee can raise the bills.

The Section 152 is for the anomalies attributable to the licensee which are detected at the premises of the consumer.

152(1) *“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 while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.”*

152(2) *“In such cases the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.”*

152(3) *“The amount of electricity charges short collected for the entire period during which such anomalies persisted, maybe realised by the licensee without any interest:*

Provided that, if the period of such short collection due to the anomalies

is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

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.”

152(4) *“The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment”.*

This Section (152) is considered here as this is applicable in cases of inaccuracies in metering. As the Section 125 is not applicable the

relevant Section applicable in 152. This states the amount of electricity charges short collected for the entire period during which such anomalies persisted subject to two conditions

1. It should be limited to 12 months if the period of anomaly cannot be reliably assessed
2. Limited to 24 months if the period could be reliably assessed and if the period was more than 24 months.

Here in this case the period is only 8 months and hence it could be recovered.

The appellant questioned initially the method of calculation of average consumption for the billing during the meter malfunctioning period and later accepted the procedure adopted by the licensee vide letter dated 23/08/2023.

The order of Hon'ble Supreme Court in the Civil appeal No. 7235/2009 is also very relevant to consider in this case. This case was M/s Prem Cotte Vs Uttar Haryana Bijili Vitaran Nigam Ltd. and others and order was pronounced on 05/11/2021. The para (25) of this order

“In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, “no sum due from any consumer under this Section”, appearing in Sub Section (2)”.

Para 11 “In Rahamathullah Khan (supra), three issues arose for the consideration of this court. They were (i) what is the meaning to be ascribed to the term first due in section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of the mistake.”

Para 12 “On the first two issues, this court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that,

therefore, electricity charges would become “first due” only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this court held in Rahamathullah Khan (Supra), that the period of limitation of two years would commence from the date on

which the electricity charges became first due under section 52(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafides error. To come to such a conclusion, this court also referred to section 17(1)(c) of the Limitation Act, 1963 and the decision of this court in Mahabir Kishore & Ors. Vs State of Madhya Pradesh 2.”

This order empowers the licensee to recover the short assessment amount even if detected after any period and limitation period of two years is applicable only when the error or omission has been detected.

On considering the above, the appellant is liable to pay the short assessment bill, however the licensee has to grant instalment facility. The licensee has to issue strict instruction to meter readers to notify such defect in the meter during the meter reading time and action have to take in time to replace meter or rectify the defect.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the short assessment bill raised by the licensee.
2. The licensee shall grant 8 instalments for making the payment.
3. Licensee shall not charge any surcharge for the short-assessed amount.
4. Licensee has to take serious steps to ensure that the filing of necessary documentation such as review petitions etc. in time to get the benefit of time bound grievance redressal mechanism for

the consumers. Necessary disciplinary action is to be taken against the officials who are delaying the submissions.

5. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/034/2023/ dated: 08/09/2023

Delivered to:

1. M/s Good Buy Soap and Cosmetics(P)Ltd., Industrial Development Area, N.A.D, Kanjikode, Palakkad.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Kanjikode, Palakkad.

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, Gandhi Road Kozhikode-673011.