

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/035/2022

(Present: A. Chandrakumaran Nair)

Dated: 20th July, 2022

Appellant : Sri. S. Ramnath,
Chief Executive Officer,
Carnival Techno Park Pvt. Ltd.,
Techno Park Campus,
Thiruvananthapuram Dist. 695581

Respondent : The Chief Executive Officer,
Techno Park Distribution Licensee,
Park Centre, Techno Park Campus,
Thiruvananthapuram Dist.

ORDER

Background of the case:

The appellant is the Chief Executive Officer of M/s. Carnival Techno Park Pvt. Ltd., and M/s. Carnival Techno Park is an HT consumer under the Distribution Licensee, Techno Park, Thiruvananthapuram with Consumer No. 0009E. The HT connection (11 kW) has been provided to the appellant in 10/2009 and the agreement for the connection was signed in 08/2009. The High-Tension facilities in the building including the metering facilities were installed by the appellant as per the approval of Kerala State Electrical Inspectorate. The 11 kV feeder from the 110 kV Substation is connected to a 5 panel (HT panel) board in which one is a spare panel. Two feeders are connected to Transformer 1 & 2, which is general load provided by the Licensee. Two feeders are connected to Transformers 3 & 4. Transformer capacity is 1600 kVA each. The outgoing of these transformers is fed to the load through an LT panel., which is having three incoming breakers and two bus couplers. Two sets of Current Transformers of 100/5 connected to the 11 kV feeders of Transformer 3 & 4. These CTs were connected to a summation CT with ratio (5+5)/5 and the summation CT is connected to the ToD meter for recording the energy consumption.

The Multiplication Factor would have been = $\frac{100}{5} \times \frac{(5+5)}{5} = 40$

On 30-07-2016, an inspection was carried out by the Licensee based on the input received during the energy audit. It is mentioned in the report that a single ToD meter was connected for recording a consumption through two sets of 100/5 CTs and a supporting CT of (5+5)/5.

The electrical charges for the common area utilities like HVAC, Lifts etc. was billed to M/s. Carnival Technopark and for this 2 x 1600 kVA transformers are provided by the appellant. The Multiplication Factor used for billing was 20 prior to conducting energy audit instead of the actual Multiplication Factor of 40. There was an underbilling of Rs.6.80 Crores for a period from October 2009 to June 2016. The Licensee issued the bill to the appellant, aggrieved by this, the appellant approached the Consumer Grievance Redressal Forum (CGRF), Technopark, Thiruvananthapuram of the Licensee and the CGRF ordered vide OP No. 1/2019 dated 18-03-2022 that the appellant is bound to pay the short assessment bill issued by the Licensee.

Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

Arguments of the appellant:

This appellant company M/s Carnival Technopark is provided with an HT electric connection having consumer No. 10009E for electricity supply to operate common facilities within the building. On every designated meter reading date, the officials of the Licensee read the meter and issued bills on designated billing date and these appellant made payments toward the bill on the payment date as required under Regulation 122(1) of Kerala Electricity Supply Code, 2014. No arrear is outstanding against this appellant towards electricity charges.

An agreement for electricity supply was executed in between M/s. Aushim Soft Private Limited (the name of the company, which was the erstwhile consumer) and Technopark Distribution Licensee dated 26-08-2009. Later an agreement for electricity supply was executed in between with this appellant and Technopark Distribution Licensee dated 18-05-2018.

The instant appeal is against the orders of the Consumer Grievance Redressal Forum Techno Park in complaint No OP 1/2009 dated 18-03-2022.

The complaint was against the demand cum disconnection notice issued by the Licensee dated 20-10-2018 for Rs.6,80,01,701.00. This arrear demand was issued for the period from 10/2009 to 07/2016, on the plea that some deficiency occurred from the part of the Licensee in taking the multiplication factor of the summation CT of the metering equipments at the premises, while there is not even a shred of evidence available to prove the claim and while the Licensee is bound to supply electricity only after installation of a correct meter under Section 55 (1) of Electricity Act, 2003.

The Licensee inspected the premises of this consumer No. 10009E on 30-07-2016, a mahasar was prepared, and copy of it was handed over to the CEO of M/s Aushim Soft Pvt Ltd. No independent witness was available at the time of inspection and signature of such independent witnesses were never obtained in the mahasar as required under Clause 173 (9) of Supply Code 2014. Valid reason for not conducting the inspection as required under statutes is also not recorded in the mahasar. Basing this mahasar, which this appellant has never accepted, the Licensee issued a demand dated 07-11-2017 amounting to Rs.6,80,01,701.00.

Two transformers each having 1600 kVA capacity was erected at the premises for supplying electricity to the common area load in the building under HT consumer No.10009E. The licensee provided two separate 11 kV feeders for each transformer. The Licensee called these feeders feeder No. 3&4. The Licensee asked the consumer to provide a ToD meter and six numbers of CTs along with test and calibration certificate of them after testing it in the test facility of KSRBL. Accordingly, the consumer bought a ToD meter L&T make bearing manufactures serial No.08031945, and six CTs of Jyothi Ltd make with manufactures serial No.7/84008, 8401B, 8402B, 8403B, 8298B & 8299B, got them tested and submitted the meter and CTs. The test certificate of them was also submitted annexing it with the service connection draft agreement.

The Licensee suggested for having one common meter for both feeders together, and also suggested and offered to provide themselves the summation CTs required. Hence, the Licensee installed the meter after providing summation CTs. Thereafter the Licensee sealed the meter and CT chamber and commenced electricity supply. The licensee did not create any records of meter and never handed over to the consumer copy of it and never acted as required under

Regulation 109 (11), (12) (13) & (14) of Supply Code, 2014 and for that this appellant is least responsible. The employees of the licensee as well as the employees of the appellant might have been changed since then, the only person who know the facts regarding this connection now is Mr. Sreekumar, then Resident Engineer of M/s Henry and Farad who has erected the electrical installations and allied works for M/s Aushim Soft Pvt. Ltd. and with whom such records may be available with and who may be ready to testify the matter if summoned in evidence.

While so, the licensee issued another demand for Rs.6,80,01,701.00 dated 20-10-2018 referring energy audit conducted by the Licensee. However, the licensee never communicated the energy audit report at any time. Against this demand this appellant filed a statutory objection under Regulation 130 of Supply Code, 2014. The licensee communicated a reply to that objection accompanying test certificate of a meter, three summation CTs and six-line CTs dated 13-11-2017 of Meter Testing and Standards Laboratory under the Department of Electrical Inspectorate, Thiruvananthapuram.

A mahasar dated 30-07-2016 was prepared by the licensee and it was based by the license heavily for issuing demand for Rs.6,80,01,701.00 revealed that the meter was working as two-phase meter other than three phase meter. Under para (2) of mahasar, it is stated that no CT is available in R phase of transformer No. 3 feeder, the serial number of CT in R-phase is 8404 and of Y Phase is 8407 and that on transformer feeder No. 4 feeder, the serial number of CT in R-phase is 8408, Y phase is 8405 and of B Phase is 8403. However, the reference about the summation CT is very limited and the serial numbers are not furnished for the reason only known to the licensee. Under para 2(2) of mahasar, it is stated that, "two sets of metering CTs of both transformers are connected to the HT ToD meter through a summation CT". But there is no reference regarding the serial number and ratio of the summation CTs connected. Also, under para 2(1) it is stated that a single meter is used however, the serial number of the meter is not found written. Also, serial numbers of CTs in mahasar defer with test certificate of line CTs provided at the premises at the event of commencement of electricity supply. It proves beyond doubt that at some point of time the Licensee has changed the CTs. At no point of time the Licensee has a case that, the appellant has tampered or broke open the meter seals or the seals of the CT chamber. The multiplication factor 20 was taken

by the Licensee on their own reasons while the electricity supply was initiated and it may be correct as to the capacity and disposition of CTs and summation CTs at that time. Also, the licensee might have missed in entering the details of CTs and summation CTs changed after commencement of supply in its records also. Therefore, mahasar read with test report makes it clear that at some point of time the Licensee have made changes in CTs, summation CTs etc. Thereby, the claim of the licensee that the multiplication factor is 40 from day one of providing electricity supply is suspicious and in no way substantiated with proof. Therefore, the licensee coming up now with an argument that, the multiplication factor is 40 and not 20 since inception of this electric connection and hence this appellant shall remit the balance amount as arrear electricity charges is inappropriate at any rate and demand dated 20-10-2018 is inappropriate.

The licensee communicated test and calibration certificate of meter, test certificate of three summation CTs and test certificate of six-line CTs after this appellant filing statutory objection against the demand cum disconnection notice. It is revealed that, the same meter tested under test report is there at the premises without change. However, in the test report of summation CTs and line CTs, the consumer number to which these belong to are not recorded. The appellant was not informed of the above test and representative of this appellant was not present during testing. Moreover, in mahasar, it is well stated that, two summation CTs are only provided for this electric connection consumer No.10009E. Then, how the licensee tested three summation CTs claiming that, it were the summation CTs of consumer No.10009E remains a question to be answered by the Licensee. Therefore, it is to be understood that in between the period of 30-07-2016 and 13-11-2017 the licensee have made some changes in the matter of summation CTs. Also, there is no record in evidence to prove that these same summation CTs were there from the very time of providing this electric connection. There is every reason to believe that, test reports are manufactured to substantiate arrear demand issued to this appellant. Thereby, the multiplication factor shown does not have any relevance with the arrear demand for the period from 10/2009 to 07/2016 and it has applicability only with effect from 13-11-2017. Test certificate of summation CTs never substantiate the arrear demand of the licensee which is under dispute under this instant appeal. Among line CTs with manufacturers serial number 07/8401B, 7/8403 B, 7/ 8404B, 7/ 8405 B, 7/8407B & 7/8408B under test

reports, the CTs with number 07/8401B, 7/8403B are the only CTs connected at the premises at the time of providing electric connection as per test report. Thereby it is clear that, the Licensee have changed the other four CTs at their convenience at some point of time after the inspection and preparation of mahasar without informing the appellant and never returned the removed CTs to the appellant which was the property of the appellant as required under statutes. This is also unfair practice by the licensee. Upon the facts on ground above, the licensee have no grounds to issue a demand for Rs.6,80,01,701.00 for the period from 10-2009 to 07-2016 since there is no evidence at hand that the multiplication factor of 20 which the licensee have taken for billing since 10/2009 and up to 07/2016 is wrong and it was 40 from the very first day of electricity supply as claimed by the licensee. The mahasar contradicts all the test reports. It is the binding duty of the licensee to test the meter as required under Regulation 113 and 115 of Supply Code 2014. The licensee has no case that, it has observed the deficiency at the occasion of annual testing, which is required under Regulation 113 (6) of Supply Code, 2014. Therefore, there is no ground at all for the licensee to issue the demand come under dispute. Therefore, the demand dated 20-10-201S for Rs.6,80,01,701.00 is irrational arbitrary and hence, illegal.

Without accepting that this appellant is liable to honour the demand for Rs.6,80,01,701.00 under demand cum disconnection notice and since the Licensee have raised a claim that this demand is issued under Regulation 152 of Supply Code, 2014, this very same regulation nullifies the demand. The regulation is extracted here under.

Regulation 152 of Kerala Electricity Supply Code : “Anomalies attributable to the licensee which are detected at the premises of the consumer” :- (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.

(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 persist.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be 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 twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months.

In this instant case, the date on which the anomaly attributed to the licensee occurred could not be confirmed, if occurred. There is no evidence at hand to suggest or prove that taking multiplication factor 20 from 10/2009 was wrong. Also, there is no direct or indirect evidence to suggest and prove that the anomaly existed until 07/2016. However, there is proof that the multiplication factor is 40 with effect from 13-11-2017 since the comprehensive test of CTs and summation CTs were carried out on that date. Since the period of short collection due to the anomalies have occurred is not known or could not be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months only as per the first proviso under Sub Regulation (3) above. Thereby the demand is illegal.

Also, even if the licensee proves its claim that, anomaly persisted from 10/2009 to 07/2016, which is more than 24 months, then even, realization of electricity charges short collected shall be limited for a maximum period of twenty-four months only as per proviso four under Sub Regulation (3) of the above regulation. On the ground also the demand is illegal.

Above all, there is clear evidence that, the multiplication factor is 40 with effect from 13-11-2017 and it is not at all proved that, the multiplication factor is not 20 before 13-11-2017. Therefore, the licensee is only entitled to bill the appellant using multiplication factor 40 with effect from 13-11-2017.

However, the licensee started charging the appellant from 08/2016 using multiplication factor 40 without any valid ground and evidence. Therefore, the licensee shall refund the amounts collected in between the period of 07/2016 and 13-11-2017.

The respondent has stated that it is entitled to issue demands under Regulation 134 and 152 of supply Code, 2014 at the same time on the alleged reason of wrong application of multiplication factor is not correct. Each Regulation under Supply Code 2014 is created for addressing specific issues. Regulation 134 of Supply Code, 2014 is created only for revising the erroneous bills all ready issued. Regulation 152 of supply Code is for assessing electricity charges escaped-assessment due to anomalies attributed to the licensee at the premises of the consumer such as application of wrong multiplication factor etc. The respondent licensee has made an express and explicit acceptance that it has issued the demand under dispute in this instant appeal under Regulation 152 of Supply Code, 2014 and it can never retract from that. Therefore, the need of the hour is to resolve the dispute as per the provisions under Regulation 152 of Supply Code, 2014.

At no cause under law the consumer is entitled to install consumer meter. Whereas, duty is cast upon the licensee under Section 55(1) of Electricity Act, 2003, only to supply electricity after installation of correct meter in accordance with the regulation made, which is Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006. This appellant may once again repeat that, it has purchased the meter and six numbers of CTs and got it tested from the test facility of KSEB as directed by the respondent Licensee and handed over the same to the licensee. This respondent sealed the meter and the metering chamber. Under statutes this appellant is only required to protect the meter from physical damage or loss. Hence, the averment of the licensee that this appellant installed the meter is not correct hence rejected. Also, the respondent has no case that, this appellant has tampered the meter or broke open the CT chamber.

The metering arrangement shown in the insulation drawing approved by the Electrical Inspector is only an indicative one. The selection and installation of meter (including equipments) is to be done to the convenience of the licensee adhering to the standards fixed under Central Electricity Authority (Installation and Operation

of Meters) Regulations, 2006. Electrical Inspector is not at all authorised under any of the statutes under Electricity Act, 2003 on any matter regarding meter. The Licensee is in violation of Regulation (6) (2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and this direction might have been given by the licensee out of ignorance of law and such thing cannot be averred against the appeal at any rate. However, this appellant purchased six numbers of CTs and a ToD meter and surrendered to the licensee. Since the consumer is not entitled under statutes to install and seal the meter, it has never done it. The ToD meter purchased and handed over to the licensee was not a two-phase energy meter but it was a three-phase energy meter. In the theory of meters two phase energy meters are discussed but such meters are not in use now days. Hence the averment of the respondent that two sets of line CTs and two summation CTs were used for metering is not at all technically correct.

In the judgement under CA 1672 of 2020 the Hon: Supreme Court adjudicated the applicability of Section 56 (2) of Electricity Act 2003, and not applicability of Regulation 152 of Kerala Electricity Supply Code, 2014 and ordered that the licensee is entitled to issue bills for the earlier periods on a later date and the limitation starts only after issuing bills and amount will become first due then only and the limitation starts from that instant only. It is very clear from the judgement that this judgement is issued also in reliance with Limitation Act 1963. The Hon: Supreme Court in the same judgement has also ordered that no disconnection of electricity shall not be done for non-payment such bills issued due to the defect on the part of the Licensee. This judgement has no bearing on Regulation 152 of Supply Code 2014. Section 56 (2) of Electricity Act 2003 and Regulation 152 of Kerala Electricity Supply Code, 2014 are applicable at different fields. Regulation 152 of Kerala Electricity Supply Code, 2014 entitles the Licensee to issue bills for the energy consumed by the consumer which escaped billing due to anomalies attributed to the Licensee, which have occurred at any point of time after detecting it. This regulation never contradicts the judgement under CA 1672 of 2020 and this judgement never expunge Regulation 152 of Supply Code, 2014 and never confer any extra arm above what is stated under this regulation. Thereby, the judgement under CA 1672 of 2020 never substantiate the demand under dispute. Moreover, at any point of time and now even the respondent has not claimed that, the demand under dispute was issued under Section 56(2) of

Electricity Act 2003, to plead that the judgement under CA 1672 of 2020 is at rescue of the demand.

Based on facts on ground and statutes, demand cum disconnection notice for Rs.6, 80,01,701.00 is arbitrary, irrational, and illegal. On the above grounds, and which are to be urged during the hearing, this Authority may award such reliefs and remedies requested.

Nature of relief sought

1. To call for the documents hold and declare that short assessment demand amounting to Rs.6, 80,01,701.00 is illegal and to quash it.
2. To issue orders to refund the 50% of the electricity charges collected from 07/2016 to 13-11-2017.
3. To issue orders to pay such amounts may find appropriate towards the expenses for this appeal.
4. Such other reliefs the appellant prays for, during the course of appeal.

Arguments of the respondent:

The respondent Licensee had provided a High Tension (11kV) electricity supply connection to the common facilities in the IT Industrial building called "M/s Aushim Soft Private Limited" (which has subsequently changed its name to "Carnival Technopark") in the Technopark Phase-1 Campus in Kazhakuttam on October 2009 having consumer No.10009E. The Agreement for connection was signed on 26 August 2009. The initial contract demand was 400 kW. The supply was affected through two 11 kV feeders which is connected to two step-down transformers of Capacity 1600 kVA. The meter for measuring the parameters of energy supplied and its related panels were supplied and installed by the appellant.

All the High-Tension facilities in the building including the metering facilities are installed by the petitioner as per an approved drawing by Electrical Inspectorate. As per the approved drawing, two sets three CTs of 100/5 A for each phase connected to a three summation CTs of the ratio (5+5)/5 A and then connected to a single common Time-of-Day meter for measuring the energy supplied through both the feeders. Such a system of common metering through summation CTs is used to get the total energy supplied to the common facility and also to correctly measure combined coincident Maximum Demand.

In the year 2016, the Licensee engaged a consultant, Kerala State Productivity Council (KSPC) to conduct a comprehensive energy audit of the entire distribution system primarily with the intention to detect energy losses, both technical and commercial, for reducing the losses. The auditors noted substantial difference in energy recorded in their instruments and that determined from the readings taken from the meter in the premises. This was communicated to the petitioner and two officers of the licensee inspected the site in presence of the officers of the appellant and found the error in the multiplication factor. A site Mahasar was prepared in the presence of the appellant and available facts were recorded. The signature of two witnesses available at the time of inspection at the site was also obtained. A copy of the Mahasar was given to the petitioner and signature was obtained.

Subsequently, a demand notice was served to the consumer on 07th November 2017 stating the matter and quantum of short assessment during the past period, after obtaining the complete Energy Audit Report from the consultant, for confirmation and bringing the matter before the Board of Governors of the respondent. The respondent had also arranged an inspection of the site by the Electrical inspectorate as requested by the appellant's company. A detailed calculation of short assessment was also provided to the appellant as requested on 27 November 2018.

The appellant had challenged this bill before the CGRF, Technopark. CGRF considering the averments had arguments of the appellant and the respondent had pronounced the order in upholding the invoice issued by the respondent licensee. The appellant has now challenged this order before this Authority.

A short assessment notice was served to the appellant because of an apparent error in applying multiplication factor which was detected during the energy audit. The assessment was based on documentary evidences that includes the As-fitted, drawing approved by the Electrical Inspector, the meter reading registers, evidence collected during the time of site inspection among other things and also after an inspection conducted by the Electrical Inspectorate at the site (which was requested by the appellant and arranged by the respondent). The meters and CTs were installed at the time of installation of the HT Panel itself as per the approved diagram of the Electrical Inspectorate. The respondent has not ever

claimed that the meter system was defective. The real issue is related to the multiplication factor taken for the calculation of bills alone. The respondent licensee is empowered to collect the undercharged or short assessed amount as per the regulation 134 and 152 of the Kerala Electricity Supply Code 2014. The undercharged bill, issued to the appellant is perfectly legal and valid.

An inspection was conducted at the premises on first verbal indication of anomaly from the Energy Auditor. The site inspection was carried out as per the provisions of the supply code regulation 173. Two officials of the respondent Licensee and an officer of the appellant were present during the inspection. The site Mahasar contains signature of two witnesses who were supervisors of contractor with technical knowledge. The Supply Code Regulation 173(9) does not make the presence of an independent witness mandatory. The Clause itself begins with the words "As far as possible". Further, the same clause says that the witness shall be made 'fully aware of the facts recorded in the Mahasar'. The witness must have technical knowledge in Power Engineering for this objective. Persons with such technical knowledge readily available at that time had witnessed the inspection and have signed the Mahasar. The Mahasar, therefore, is a valid, reliable and legally sustainable document.

There are four 1600 kVA Transformers at the site, two of which are used to provide supply to the individual consumers in the premises and the other two for supplying power to common facilities such as for Air conditioning, operation of lifts etc. All the High-Tension facilities in the building including the measuring and metering facilities are installed by the appellant as per approved drawing by Electrical Inspectorate. Technopark has not provided or own any meters or metering equipment and do not charge any meter rent etc. from appellant. The meters are procured, tested, installed in their premises and its security is ensured by the appellant. The licensee has only been visiting the premises "for inspection, testing, meter reading and other works" as allowed in regulation 173 of the supply code.

The HT panel supplying power to the two transformers including the metering arrangement were carried out as per the approved drawing of the Kerala State Electrical Inspectorate. The inspectorate had approved drawing mandates installation of two sets of 100/5 CTs for each feeder and a set of (5+5)/5 summation

CTs for measuring the power supplied to the consumer. This metering arrangement of measuring the total energy and demand is to get the correct coincident maximum demand. The coincident maximum demand cannot be obtained by using two separate meters. The maximum demands recorded by two meters would be corresponding to different point of time. They cannot be summed up to determine the maximum demand of the appellant for billing purposes. This is a well-recognized fact. Therefore, the inspectorate has approved the single meter measuring arrangement with summation CTs. Neither the supplier licensee nor the consumer is entitled to make changes in the approved drawing nor install a metering arrangement different from the approved drawing. Therefore, the above metering arrangement was installed at the date of commencement the supply and continued up to the date of inspection and thereafter. The same arrangement is being used to measure electricity supplied to the consumer and serve bill to the consumer even now. Now, the respondent licensee has requested the appellant to submit Scheme approval, completion certificate, Energization Certificate from Inspectorate, among other documents, connection charges and security deposit to be submitted before power connection wide a letter No ETPK/E/AUSHIM SOFT/2009-10 dated 18 September 2009. There is no document showing submission of the details by the appellant in our records. But an approved "As fitted" drawing has been submitted by the appellant in which, as already mentioned, the metering arrangement includes (100/5 CTs) and (5+5/5 A) Summation CTs and TOD meter for electricity measurement. At the time of providing connections to the appellant, the Kerala Supply Code 2014 was not notified and hence, the provisions of later regulations cannot be applied retrospectively. The responsibility to collecting evidences, and producing witnesses etc falls squarely on the appellant.

The anomaly of Multiplication Factor was detected during the energy audit exercise, the demand notice / invoices were issued based on (1) inspectorate approved as-fitted drawing, (2) the Meter registers (3) site inspection Mahasar, and (4) Electrical Inspectorate site inspection and certification on CT Ratio. The appellant himself had requested to confirm the effective CT ratio before implementation through a competent authority. This is recorded in the Site Mahasar dated 30-07-2016 in which the CEO of the petitioner has affixed his

signature. Accordingly, respondent had arranged testing and inspection of the metering arrangement at site by the officials from Inspectorate. The Inspectors had come to the site and had tested (on 06-08-2016) the Meter and CTs including the summation CTs at site and had issued the certificates in which it is clearly written "the current multiplication factor for this setup used in the site is 40" which firmly confirms the multiplication Factor found out during the inspection by the respondent's officers and shown in the Site Mahasar. The audit report is not the only document that has been relied on by the respondent in preparing the correct demand notice. Audit report is a property of the licensee and not required to be disclosed to anyone other than competent authorities. All the required documents has been shared with the appellant.

The serial numbers of the summation CTs are not given in the Site Mahasar. However, the multiplication factor has been shown correctly as 40. This Mahasar has been prepared in presence of Mr. V. J. Jayakumar, CEO of the appellant firm who is also a technical person. Further, the premises were inspected by the inspectors from the Electrical Inspectorate and on 6-8-2016 and tested at site the entire metering system Including the CTs and the summation CTs. This inspection was done as required by the appellant and recorded in the Site Mahasar. The test reports issued by the inspectorate have clearly shown that the multiplication factor for the setup at site is 40. This corroborates the multiplication factor shown in the Mahasar. However, if observed that many of the CTs referred in the Test Certificates also actually connected and still inside the HT panel board. They are used for the panel meters. These CTs are not directly visible on opening the Bus bar chamber since they are hidden behind front CTs. Similarly, the Summations CTs are also directly viable by opening the CT Chamber. It is installed in another chamber.

The inspection and tests by the Electrical Inspectorate has been arranged by the respondent and as requested by the appellant. The tests were conducted on 06-08-2016 and were released on 13-11-2017 and shown in the test reports. The inspection at site was conducted by a statutory authority, the electrical inspectorate, the report furnished by the authority confirms the three summation CTs. There is no reason to disbelieve the inspectorate test reports. The appellant is desperately trying to falsify the reports of tests conducted by the Inspectorate officials at site and claims that the certificates are "manufactured" and alleges that

licensee have made some changes in the matter of summation CTs". The Test reports were released to the CEO of Technopark, who applied for the inspection and tests. There is no discrepancy in the inspection, site testing or in the test reports issued by the Inspectorate. The CTs cannot be changed by the respondent, since the HT panels are under the appellant's custody. If the CT is changed as alleged by the appellant, it can only be by the appellant himself without the approval from the respondent. The appellant has been paying all bills prepared based on actual MF of 40, from the date of inspection without any dispute at all i.e., from July 2016 till date.

The Hon'ble Supreme Court has carefully considered a similar case of undercharged bills due to wrong application of Tariff in the case of Assistant Engineer (DI), Ajmer Vidyut Vitran Nigam Limited. Vs. Rahamatullah Khan (CIVIL APPEAL NO.1672 OF 2020) and has upheld the right of the Licensee to raise supplementary bills on detection of error in billing and ruling on the limitation clause under Section 56(2) of the Electricity Act as follows:

"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. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand."

Therefore, the respondent requested that, based on the submission made above, demand notice issued may be declared as legal and the respondent may be allowed to recover the amount along with surcharge as per the provision of Kerala Electricity Supply Code 2014.

Analysis and findings:

The hearing of the case was conducted on 08-07-2022 at 3-00 PM in the office of the Kerala State Electricity Regulatory Commission, Court Hall, Thiruvananthapuram. Sri. Anandukuttan Nair attended the hearing on behalf of the appellant with authorization and Sri. Anfal. A., Deputy Manager on behalf of the CEO, Techno Park Distribution Licensee, Techno Park Campus, Thiruvananthapuram from the respondent's side attended the hearing. The appeal petition, the arguments filed by the appellant, the statement of facts of the

respondent were examined and the documents attached were also perused. A site inspection was conducted by the Electricity Ombudsman on 15-07-2022 in presence of the representatives of appellant and respondent. Considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The HT (11 kV) feeder from the Distribution Licensee is terminated to a 5 Panel Board (HT power) situated in the Substation of the appellant Carnival Technopark. 4 feeders are connected to 4 transformers numbered 1, 2, 3 & 4. Transformer 1 & 2 are for the LT electricity supply by the Licensee and Transformer 3 & 4 are for running the appellant's utilities in the building by the appellant with consumer number 10009E, under HT metering tariff. The LT output of Transformers 3 & 4 is fed to LT panel having three bus sections. Bus section 1 is connected to standby DG set supply, Bus section 2 is connected to transformer 3 and that three is fed by transformer 4. There are bus couplers between Section 1 & 2 and between 2 & 3. The transformers are of 1600 kVA capacity each.

Two sets of metering CT of ratio 100/5 is connected in HT side of transformer 3 & 4 and to have single consumer meter (ToD) meter, a summation CT is interfaced between CTs of two feeders. The summation CT is of ratio (5+5)/5, which sum up the current of both the CTs to have a single reading.

Here the contention of the appellant is that most of the time only one transformer is working and entire load is connected through the bus coupler and rarely two transformers are working by opening the bus coupler. The question arises what happened when only one feeder is activated. The CT ratio is (5+5)/5 where the primary of CT is having two windings and secondary is having single winding. The 5A in the secondary current is induced only when both the coils having 5A each. When one winding is only activated with full load current of 5A, the current induced in the secondary is only 2.5 A. That means, the current ratio of summation CT is always 2, irrespective of the primary CTs activated. Technically the summation CTs ratio is '2' itself.

The Section 173 (9) of Kerala Electricity Supply Code 2014, "General provisions relating to inspection" states that "As far as possible, the officer authorised to inspect the premises of the consumer shall take two independent

witnesses for the inspection of the premises and shall make such independent witnesses fully aware of the facts recorded in the mahazar and shall obtain their signature in the mahazar”.

Here, the case is that as far as possible to have independent witness the inspection, which is not a mandatory requirement.

The legality is to be examined. As per the Section 134 and 152 of Kerala Electricity Supply Code 2014, the Licensee can raise the bills against undercharged bills.

As per Section 134 - 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.”

As per Section 152 - Anomalies attributable to the licensee which are detected at the premises of the consumer:-

- (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.
- (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.
- (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized 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 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.

- (4) The consumer may be given installment facility by the licensee for a maximum period of twelve months without interest for the remittance of such amount of short collection.

Section 152 (1) is clear about that the Licensee can charge the arrears as short assessment for which the maximum period is limited as 24 months. The verdict of Hon'ble Supreme in the case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited. Vs. Rahamatullah Khan (CIVIL APPEAL NO.1672 OF 2020) cleared about the right of the Licensee to raise supplementary bills on detection of error in billing and ruling on the limitation clause under Section 56(2) of the Electricity Act as follows:

"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. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand."

The order of the Hon'ble Supreme Court of India in the judgment dated 05-10-2021 in Civil Appeal No. 7235 of 2009 (M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others) clearly described the terms of "first due" and limitation period, the 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 Rahamatullah Khan case that that the period of limitation of two years would come from the date on which the electricity charges became first due under Section 56(2). This Hon'ble Court also held that Section 56(2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of period of limitation in the case of a mistake or bona fide error."

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 suitable numbers of monthly instalments without interest to pay the short assessment bill by the appellant to the Licensee.

- (3) The order of CGRF, Technopark, Thiruvananthapuram in OP No.1/2019 dated 18-03-2022 is modified to this extent.
- (4) The Licensee has to device a proper and rugged system to ensure that the meters and CTs are connected properly and the correct CT ratio has been considered for billing and also ensure that the periodical inspection and testing of meters as specified in the Kerala Electricity Supply Code 2014 is meticulously followed.
- (5) The Licensee has to device a system to follow the Regulations of KSERC and Regulations of the Kerala Electricity Supply Code 2014 and all applicable regulations.

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

ELECTRICITY OMBUDSMAN

P/035/2022/ _____ dated _____.

Delivered to:

1. Sri. S. Ramnath, Chief Executive Officer, Carnival Techno Park Pvt. Ltd., Techno Park Campus, Thiruvananthapuram Dist. 695581
2. The Chief Executive Officer, Techno Park Distribution Licensee, Park Centre, Techno Park Campus, Thiruvananthapuram 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, Consumer Grievance Redressal Forum, Technopark, Technopark Campus, Thiruvananthapuram-695581