



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present: Thiru. A. Dharmaraj. Electricity Ombudsman

Appeal Petition No. 17 of 2016

M/s Orchid Chemicals & Pharmaceuticals Ltd.,
313, Orchids Towers,
Valluvarkottam High Road,
Nungambakkam,
Chennai – 34.

(Rep by its Executive Vice President
Mr. L. Chandrasekaran)

..... Appellant
(Rep by Thiru. Parthasarathy , Advocate)

Vs

1) The Assistant Engineer/O&M,
Mahalingapuram,
Chennai Electricity Distribution Circle/West,
TANGEDCO,
33/11 KV Loyala SS Complex, Mahalingapuram,
Chennai-34.

2) The Executive Engineer/O&M,
Anna Nagar,
Chennai Electricity Distribution Circle/West,
TANGEDCO,
11th Main Road, Anna Nagar, Chennai.

3) The Chairman,
(Superintending Engineer),
Chennai Electricity Distribution Circle/West,
TANGEDCO,
110/33/11 KV Tirumangalam SS Complex,
Anna Nagar, Chennai – 40.

..... Respondents
(Thiru. Mahendran, EE/Anna Nagar &
Thiru. J. Gokulnath, AE/Mahalingapuram)

Date of Hearing : 17.6.2016 & 2.8.2016

Date of Order : 30.9.2016.

The petition dated 24.2.2016 filed by M/s. Orchid Chemicals & Pharmaceuticals Limited, Chennai-34 was registered as appeal petition No. 17 of 2016. The above appeal petition came up for hearing before the Electricity Ombudsman on 17.6.2016 & 2.8.16. Upon perusing the appeal petition, counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

Order

1. Prayer of the Appellant:

- 1.1 It is prayed that the Hon'ble Ombudsman may be pleased to condone the delay of 129 days in filing this appeal pass such further or other orders as the Hon'ble Ombudsman may deem fit and proper in the facts and circumstances of the case and thus render justice.
- 1.2 It is prayed that this Hon'ble Ombudsman may be pleased to grant an interim stay of all further proceedings consequent upon the impugned Letter No. EE/O&M/ATO/ANR/F. LTCT/D.No. 569/2015 dt. 30.9.2015 passed by the 2nd Respondent herein and all proceedings pursuant there to pending disposal of the present writ petition and thus render justice.
- 1.3 It is prayed that this Hon'ble Ombudsman may be pleased to set aside the impugned order dt. 16.9.2015 issued by the 3rd Respondent and pass such further or other order as this Hon'ble Ombudsman may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. Brief History of the case:

- 2.1 The Appellant is involved in Manufacturing Chemicals Pharmacy products. Their service connection number is LTCT 171-058-575. The sanctioned load of the said service connection is 110 kw and the service was effected on 16.4.2003.
- 2.2 The Respondent-2 has issued a demand notice for claiming a sum of Rs.22,16,084/- as arrears for the period from 5/2004 to November 2014 stating that the multiplication factor was wrongly adopted as 30 instead of 40 and the sanctioned load was also wrongly adopted as 60 kw instead of 110 kw.
- 2.3 The Appellant filed a petition before the EDC officers of the licensee and filed a petition before the CGRF of Chennai EDC/West. The CGRF of Chennai EDC/West in its order dt. 16.9.2015 has confirmed the short fall amount but directed to rework the shortfall amount taking into account of the power factor incentive. Accordingly, the Respondent 2 has revised the shortfall amount as Rs.20,37,880/- and intimated the same to the Appellant vide letter dt. 30.9.2015.
- 2.4 The Appellant has paid a sum of Rs.5,09,470/- towards 25% of the amount ordered by the CGRF and filed this appeal petition before the Electricity Ombudsman.

3. Condonation of delay:

- 3.1 The CGRF of CEDC/West has issued its order on 16.9.2015. Hence, the Appellant has to file the petition before 15.10.2015. But the appeal petition was filed before the Electricity Ombudsman on 25.2.2016 with a delay of 136 days.

3.2 The Appellant has stated the following as reasons for delay in submitting the Appeal petition :-

Eventhough the Appellants' service connection LTCT SC No. 171-058-575 is in the corporate office, the Appellant's Industry is situated at Allanthur, Irringattukotai. The Appellant's Industry was worst affected in the recent floods and the entire operation of Appellants stood still for more than 4 months. It has taken more than 4months for the Appellant to revive from the floods since the Appellant is involved in the Manufacture of Chemicals & Pharma Products. The Appellant also informed that the impugned order and the relevant files were also misplaced in their factory premises during the flood and was subsequently found along with other files. In view of the above reason, the Appellant prayed for condonation of the delay.

3.3 As per regulation 8 of the Regulation of CGRF and Electricity Ombudsman any consumer aggrieved by an order made by the Forum may prefer an appeal against such order to the Electricity Ombudsman within a period of 30 days from the date of the order. However, the Electricity Ombudsman may entertain an appeal after the expiry of the said period of 30 days if the Electricity Ombudsman is satisfied that there was sufficient cause for not filing it within the said period.

3.4 In view of the reasons furnished in the para 3.2 above, the delay in filing the appeal petition is condoned and the petition is registered as appeal petition No. 17 of 2016.

4. Arguments of the Appellant furnished in the Appeal Petition:

- 4.1 It is respectfully submitted that the Appellant vide their representation dated 30.09.2014 to 1st Respondent has informed that there was a defect in the appellant's meter since the display in it was not working.
- 4.2 The 1st Respondent issued a demand notice dated 29.12.2014 demanding a sum of Rs.22, 16,084/- on the ground that the appellant meter was inspected by the MRT wing on 03.12.2014 and while analyzing the appellants ledger it was found that the sanctioned load was entered as 60KW instead of 110 KW and multiple factor was entered as 30 instead of 40 from the date of effecting the service connection to the Appellant.
- 4.3 In perusal of the working sheets attached to the demand notice, it could be observed that the 1st Respondent has revised the CC bills of the appellant from May 2004 to November 2014 i.e., for the past 10 years, by changing the sanctioned load as 110KW and multiple factor as 40 with retrospective effect and arrived at the alleged short levy of Rs.22,16,084/-. Such action of the 1st Respondent is illegal, arbitrary and against the Principal of Natural Justice.
- 4.4 The Appellant has approached the 1st Respondent and made several representation that the demand is without any basis and without affording an opportunity to the Appellant. The Appellant also approached the 1st Respondent in person requesting them to provide a copy of the inspection report by MRT dated 03.12.2014 and the ledger details. But the 1st Respondent has refused to reconsider their decision.

- 4.5 Being aggrieved by the said demand the Appellant on 23.07.2015 approached the Consumer Redressal Forum (CGRF) constituted under the Electricity Act, 2003 to redress the grievances of the consumers relating to the provisions under Regulations 3 to 17 of the Tamilnadu Electricity Supply Code, 2004. It is submitted that the Appellant's complaint was taken up for hearing on 18.08.2015 before the Consumer Redressal Forum and final orders was passed by the CGRF on 16.09.2015 dismissing the Appellant's Petition.
- 4.6 The Appellant submits that it is the mistake of the Respondent having entered wrong multiplying factor/sanctioned load in the Appellant's ledger book. The Respondent has not shown any amount as recoverable in the bills from May, 2004 and up till November, 2014.
- 4.7 The Forum has failed to consider that it is the 1st Respondent who makes entry in the appellants metering card/ledger and it is the responsibility of the 1st Respondent to ensure that the details in the respective meter cards are entered correctly without error or omission as per Regulation 8 of the Tamil Nadu Electricity Supply Code, 2004. The Respondent has now issued a differential bill of Rs.22,16,084/- vide its demand notice dated 29.12.2014, pertaining to the period from May,2004 to November, 2014 i.e., after a period of 10 years. The Appellant submits that such demand is untenable in law as it has been issued belatedly and it is a fault of the Respondent who has to ensure that the details in the respective meter cards are entered correctly without error or omission as per Regulation 8 of the Tamil Nadu Electricity Supply Code, 2004.

- 4.8 The Forum has failed to consider that the Appellant made several representation to the 1st Respondent, more specifically on 20.02.2015, to provide a copy the meter inspection report by MRT on 03.12.2014. The 1st Respondent till date has not given the copy of inspection report dated 03.12.2014 for the reasons best known to the Respondents.
- 4.9 The Forum has failed to consider that the 1st Respondent in his demand notice dated 29.12.2014 has alleged that only on inspection done by MRT on 03.12.2014 it was found that the C.T. Ratio available in the Appellant's meter was 200/5A and hence the corresponding Multiple Factor should have been MF40. But so far, from the date of effecting the Appellant's service connection the Multiple Factor has been wrongly adopted as MF30 on the assumption that the C.T Ratio in the Appellant's meter was 150/5A. Hence, the Appellant's CC bill for the past 11 years has been revised and a revised billing of Rs.22,16,084/- is payable by the Appellant. Such action of the 1st Respondent without even providing a copy of the meter inspection report by MRT on 03.12.2014 to prove that at the time of inspection the CT Ratio in the Appellant's meter was 200/5A is arbitrary, illegal and liable to be set aside.
- 4.10 The Electrical Inspector of CEIG/Guindy is the competent authority to certify the CT Ratio and MF in the Appellant Meter. So far the 1st Respondent has neither given a copy of the meter inspection report by MRT on 03.12.2014 nor provided any other proof that at the time of inspection the CT Ratio in the Appellant's meter was 200/5A. Hence the demand made by the 1st Respondent is without any basis and without affording any opportunity to the Appellant.

4.11 It is submitted that based on the impugned order dated 16.09.2015 the 2nd Respondent has issued the impugned demand notice dated 30.09.2015 demanding a sum of Rs.20,37,880/- on the ground that the sanctioned load was entered as 60KW instead of 110 KW and multiple factor was entered as 30 instead of 40 from the date of effecting the service connection to the Appellant.

5.0 Arguments of Respondent furnished in counter:

5.1 The LTCT Service connection Alc No. 171-058-575 Tariff V (Commercial) was effected on 16.04.2003 for a load of 110KW with 200/5A CT Ratio having multiple Factor as 40 for energy and maximum demand calculations. By oversight and during computerization of L T billing, the maximum demand and multiple factor were entered as 60kw and 30 respectively.

5.2 Based on the consumer representation dated 30.09.2014, as no display in the meter, MRT wing conducted an inspection on 03.12.2014. The above L TCT service meter was found defective and replaced the same by MRT wing. The MRT wing reported that, it was observed that the MF entered as 30 instead of 40 as per their records. The physical condition also ensures 200/5A CT is only available. Hence the wrong maximum demand of 60kw and wrong MF 30 should have to be revised to actual sanction load of 110kw with actual MF 40. while effecting the service the MRT wing conducted power check and recorded the sanction load as 110 KW and CT Ratio at 200/5A with multiple factor 40. The consumer also signed in the MRT inspection register at the time of power check.

- 5.3 The above facts were intimated to the applicant by the 1st respondent in his letter dated 29.12.2014 for remitting the revised bill amount of Rs.22,16,084/-.
- 5.4 Even though a numerical error was made by oversight while updating the data's pertaining to the L TCT A/c No. 171-058-575, the applicant actually utilized the energy and demand from the beginning of the service with a sanction load of 110kw and multiple Factor of 40.
- 5.5 While updating old consumer meter card to new one, an error was made by oversight, however the applicant utilizing the energy with 200/5A CT Ratio and multiple factor 40 from the beginning of the service. Hence the action of the applicant, escaping to pay the actual energy and demand Charges consumed by him, is illegal, arbitrary and against the principle of Natural justice.
- 5.6 The first respondent ready to handover the MRT inspection report to the applicant, but the applicant refused to get the copy. However the first respondent always ready to provide a copy of the MRT report.
- 5.7 The applicant service connection was effected on 04/2003 and power check conducted by MRT and from then, the metering box is kept under sealed condition. The applicant made a complaint about the display failure in the meter. In turn, MRT conducted an inspection on 03.12.2014 and replace the defective meter. At the time of inspection only MRT found out the erroneous CT ratio and multiple factor. The copy of the inspection report is ready for reference at any time.

5.8 While attending the enquiry with the third respondent, the applicant accepted the fact of paying the revised bill amount. However he agree to pay the revised bill amount for two years only, as per sub section 2 of section 56 Electricity act 2003. Then the Third respondent clarified to remit entire revised bill amount based on the letter issued by CFC/TANGEDCO, in which it is requested to collect revised bill amount even beyond 2 years by referring the Judgment as discussed below.

- (i) Judgment dated 31.03.1987 in H.D.Shourie Vs. Municipal corporation of Delhi and LPA Judgment dated 17.12.1993 in Municipal Corporation of Delhi vs H.D.Shourie both rendered by the High Court of Delhi (iii) Judgment dated 16.07.2009 in LPA 211/2009 in the case of NDMC Vs. A. baskar Construction (p) ltd. rendered by the High Court of Delhi (iv) Judgment dated 20.08.2009 in W. P. No. 7015 of 2008 in the case of *m/s. Rototex polyster and another vs. Administrator, Administration of Dadra & Nagar Havli (U.T) Electricity Department, Slivassa and others* rendered by the High Court of Bombay and (v) Judgment dated 19.04.2011 in W.P. (c) 8647 of 2007 in the case of *Jingle Bell Amusement Park (P) Ltd., vs. North Delhi Power Ltd.*, rendered by the High Court of Delhi are considered by the Legal cell.
- (ii) In the Judgment dated 31.03.1987 (HD.Shourie vs. Municipal Corporation of Delhi), among other things, the word 'due' appearing in section 24 of the I.E. Act 1910 had been considered by the Court and it was held that the word 'due' in context of the section 24 of the I.E.Act,

1910) must mean due and payable after a valid bill has been sent to the consumer and that even though the liability to pay may arise when the Electricity is consumed by the petitioner, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised.

(iii) The aforesaid interpretation was upheld in the appeal and followed by in other cases referred to above. In the decision rendered in MIs. Jingle Bell Amusement Park (p) Ltd., vs. North Delhi Power Ltd., and MIs. Rototex Polyester and another vs. Administration of Dadra & Nagar Haveli (UT) Electricity Department, the scope of section (2) of sub section 56 of Electricity Act, 2003 has been considered and held that the bar of limitation cannot be raised by the consumer and further held that the revised bill amount would become due when the revised bill is raised and section 56(2) of the said Act would not come in the way of recovery of the amount under the revised bills.

(iv) From the above, it is evident that any demand involving short levy, incorrect billing, wrong application of the multiplying factor, Audit objection etc. made after two years is a supplementary bill towards the energy unbilled. There is no bar in the said Act to raise a supplementary bill. In that case, the bar/limitation under sub section (2) of section 56 of the said Act will be attracted on expiry of the time mentioned in such demand notice, since on such date the amount first became due unless the amount so demanded in such supplementary bill is shown continuously as recoverable as arrears of charges for electricity supplied

by the Licensee. Further such demand seeking payment for a back period shall be properly / appropriately worded so as to indicate that it is a supplementary bill raised for the first time. Based on the Judgment delivered and subsequent clarification by Chief Financial Controller as discussed above, the claim of the applicant, under sub sec. (2) of section 56 of Electricity Act 2003 is not feasible of compliance. Hence, the 3rd respondent issued an order to collect revised bill amount from the applicant for the period from 5/2004 to 11/2014 in respect of LTCT service Connection No.171-058-575.

5.9 As per the third respondent order, revised short fall amount of Rs.20,37,880/- is arrived and intimated to the applicant to remit the amount within 15 days on 30.09.2015. But after a long gap the applicant approached this Honorable Ombudsman and paid 25% of the revised bill amount of RS.5,09,470/- on 02.01.2016.

6. Hearing held by the Electricity Ombudsman:

6.1 To enable the Appellant and the Respondent to put forth their arguments in person a hearing was proposed on 26.5.2016. As prayed by the Appellant's advocate the above hearing was postponed to 17.6.2016. Another hearing was conducted on 2.8.2016.

6.2 Thiru Parthasarathy, Advocate has attended the hearing on behalf of the Appellant and put forth his side argument on both the days.

6.3 Thiru Mahendran, EE/Anna Nagar, the Respondent 2 herein and Thiru J. Gokulnath, AE, Mahalingapuram, the Respondent 1 herein have attended the hearing and put forth their side arguments.

7.0 Arguments putforth by the Appellant's Advocate on the hearing dates :

7.1 Thiru Parthasarathy, Advocate reiterated the contents of the Appeal petition.

7.2 The learned Advocate argued that the Respondents have not provided the copy of MRT report dt. 3.12.2014.

7.3 The learned Advocate argued that as per regulation 8 of the Supply Code, it is the responsibility of the licensee to enter all the details without omission in the meter card. But, the CT ratio was not recorded in the meter card even though there is a provision in the card to enter those details.

7.4 The learned Advocate has also argued that the meter of the service has to be periodically tested (i.e) once in 5 years. But no such periodical testing was done. Had it been done, the wrong adoption of multiplication factor would have come to notice at the periodical testing time.

7.5 The learned Advocate argued that the wrong adoption of multiplication factor is not clerical error or mistake in the amount levied but it is omission of entering of certain details in the meter card.

7.6 The learned Advocate argued that for the mistake done by the licensee's employees, the consumer shall not be penalized by claiming shortfall for more than 10 years.

7.7 The learned Advocate argued that the licensee cannot claim arrears for more than 2 years citing an order of the Ombudsman of Maharashtra.

8.0 Arguments put forth by the Respondent on the hearing dates:

8.1 The Executive Engineer, Anna Nagar reiterated the contents of the counter affidavit.

8.2 The Executive Engineer argued that in the disputed service connection, the consumption was arrived considering the multiplication factor as 30 where as the actual multiplication factor is 40. Hence, the energy charges collected from the date of effecting of service connection is less than the actual consumption. The EE/Anna Nagar argued that the CT ratio of the CTS erected in the said service is 200/5A only. Therefore, the multiplication factor is 40. The MRT wing while changing the display failed meter on 3.12.2014 noticed that multiplication factor was wrongly adopted as 30 in the above service. The MRT in their letter dt. 15.12.2014 has informed the AEE/O&M, Chetpet to ascertain the wrong MF adopted period and revise the bill.

8.3 The EE/Anna Nagar also furnished a copy of MRT report furnished in the MRT register and AEE/MRTs letter dt. 15.12.2014 in support of the above argument.

8.4 The EE/Anna Nagar argued that adoption of wrong multiplication factor is a billing error and hence the licensee is having right to claim the short fall amount as per regulation 12 of the Supply Code.

8.5 The EE also argued that it is a supplementary bill raised for collection of the shortfall amount, therefore, limiting the shortfall for a back period of 2 years is not applicable for this case.

9. Written submission of the Appellant:

The Respondent have furnished the following arguments in the written submission dt. 29.8.2016.

9.1 The 1st Respondent issued a demand notice dated 29.12.2014 demanding a sum of Rs.22,16,084/- on the ground that the appellant meter was inspected by the MRT wing on 03.12.2014 and while analyzing the appellants ledger it was found that the sanctioned load was entered as 60KW instead of 110KW and multiple factor was entered as 30 instead of 40 from the date of effecting the service connection to the Appellant. The 1st Respondent has revised the CC bills of the appellant from May,2004 to November,2014 i.e., for the past 10 years, by changing the sanctioned load as 110KW and multiple factor as 40 with retrospective effect and arrived at the alleged short levy of Rs.22,16,084/-

9.2 Regulations 8(1) of the Tamil Nadu Electricity Supply Code, 2004 is reproduced below:-

Regulations 8. Meter reading, billing and intervals:-
[(1) In the case of Low Tension service connections, the Licensee with the approval of the Commission shall decide the periodicity of meter readings, collection dates, modes etc. However, in the case of temporary supply, the meter reading shall be taken at the end of the period in case sanction is for less than a month and once in a month in case sanction is for a period more than a month. The Licensee shall have access to the consumer's premises at all reasonable hours for the purpose of such reading as per the provisions contained in section 163 of the Act. The format of the meter cards containing all basic information to be made available to the consumer shall be got approved by the Commission. It is the responsibility of the Licensee to ensure that the details in the respective meter cards are 'entered without omission.)

9.3 From the above regulation it is clear that it is the responsibility of 1st Respondent to ensure that the details in the respective meter cards are entered without omission. In the present case, the Appellants have submitted their meter cards in the typed set and in perusal of the meter cards from 16.04.2003 (typed set page no.30) it could be seen that the officer's of the 1st Respondent has been making entries in it each month. From the date of issuing the meter card the sanctioned load has been entered as 60KW and M.F is entered as 30. It could be further seen that the meter cards (typed set page no.34) specifically provides for entry of C.T. Ratio and the officer's of the 1st Respondent has omitted the same from the date of effecting the service connection. From the above it is clear that from the date of issuing the meter card the officer's of 1st Respondent has made entries and in case of any omission it squarely falls under Regulations 8(1) of the TN Supply Code, 2004.

9.4 The present case does not fall under Regulations 12(1) of the Tamil Nadu Electricity Supply Code, 2004 which provides for the right to demand additional amount in the event of any clerical errors or mistakes in the amount levied demanded or charged by the Licensee. Admittedly the officers of the 1st Respondent has made entries in meter card from the date of its issuance which has been followed till December/2014. It is not a case where there has been wrong entry between or during a particular period and further the meter cards specifically provides for entry of C.T. Ratio which has also been omitted from the date of effecting the service connection. Hence it is a case of omission of proper details in the meter card by the 1st Respondent under Regulations 8(1) of the TN Supply Code, 2004) (typed set page no.3D to 47)

9.5 Regulation 18 of the Central Electricity Authority (Installation and operation of Meters) Regulations, 2006 provides as follows:-

Regulations 18. Calibration and Periodical testing of meter:

(1) Interface meter

(a) At the time of commissioning, each interface meter shall be tested by the owner at site for accuracy using standard reference meter of better accuracy class than the meter under test.

(b) All interface meters shall be tested at least once in five years. These meters shall also be tested whenever the energy and other quantities recorded by the meter are abnormal or inconsistent with electrically adjacent meters. Whenever

there is unreasonable difference between the quantity recorded by interface meter and the corresponding value monitored at the billing center via communication network, the communication system and terminal equipment shall be tested and rectified. The meters may be tested using NABL accredited mobile laboratory or at any accredited laboratory and recalibrated if required at manufacturer's works.

9.6 The above regulation provides that all interface meters shall be tested at least *once* in five years by the Respondents. In the present case the officer's of the 1st Respondent has failed to conduct any such test from 2004. Only after the Appellant complaint about the defect in meter the 1st Respondent has conducted testing of the Appellant's meter. If the 1st Respondent had conducted periodic testing of the Appellant's meter as per the above Regulations, the 1st Respondent would have realised that there has been an omission in the Appellant's meter card from the date of its issuance. The 1st Respondent has clearly failed to do their duty and having failed to do so the 1st Respondent has issued the demand notice by revising the Appellant's meter card from *May/2004* to *November/2014* which is illegal, arbitrary and liable to be set aside.

9.7 The present case arises out of the differential bill issued by the 1st Respondent demand charges pertaining to the past 10 years as a result of correcting the Multiplying Factor as 40 with retrospective effect i.e., from the date of issuance of the Appellant's meter card. This case is exactly similar to the case dealt in Rep.No.22 of 2009 dated 21.09.2009 before the MERC Electrical Ombudsman. The Hon'ble MERC ombudsman held that the judgments on Municipal Corporation of Delhi Vs H.D.Shourie Case or the BSES Rajdhani Power Ltd Vs P.C.Kapoor case were dealt under the earlier Indian Electricity Act, 1910 when the Electricity Act, 2003 was not on the statue book. Therefore, it would not be proper to solely refer to these judgments which related to interpretation of Section 24 of the Indian Electricity Act, 1910, especially when Section 56 (2) of the Electricity Act, 2003, has made a specific provision on time limit for recovery of arrears. The Hon'ble MERC ombudsman considered the order passed by the Hon'ble Division Bench of the Bombay High Court in W.P. (L) 2221 of 2006 (Mr.Awadesh S Pandey Vs Tata

Power Company Ud) and the order passed by the Hon'ble High Court of Calcutta in W.P.No.516 of 2005 (Mahesh Oil Mills vs Calcutta Electricity Supply Co.,) wherein it has been held that, after repealing of Indian Electricity Act, 1910, as per the provisions of section 56(2) of Electricity Act, 2003 the licensee is barred by limitation to recover the dues beyond the time limit of 2 years.

10. Issues to be considered:

On a careful consideration of the arguments put forth by the Appellant and the Respondents, I find the following as issues to be considered.

- (i) What is the multiplication factor to be adopted for arriving the consumption during the disputed period?
- (ii) Whether the contention of the Respondent that the short fall claimed is due to billing error is acceptable?
- (iii) Whether the short fall claimed beyond 2 years is barred by limitation?

11. Findings on the first issue:

11.1 In order to find the multiplication factor of the said service connection, we have to examine the test report of the MRT at the time of effecting the service connection. A copy of the MRT report dt. 17.4.03 was furnished. The relevant portion of the MRT report is extracted below:-

"Ref : AEE/O&M/CPT/F.MRT/T.17/03, dt.17.4.03.

The service was inspect to effect New LTCT service.

*AE/O&M/Chetpet
A/c No. New
SI : 100 kw
Ct Raio 200/5*

Fixed CT meter details :

*Make : Duke Ariels, 3 x 5A. 3 x 240v
Sl.No. : 99399 4000 Imp/KVArh*

Fixed CT details :

Make : Kappa 200/5 class 0.5 accu. 5 VA
SI.No. : R 22- 33883 Y 22-33867 B 22-33756
DLT : 16.4.03 MF : 40

Meter Reading Display :

LCD Check : Ok I_{CB} : 0 Kwhr
t : 16:17 I_{CB} : 0 KRH
Dt : 17.4.03 I_{CB} : 0 VAH

Volt seq : Normal I : 15.6 T.Kwhr
PTM Status : Nil I : 17.8 Kvah
CTM status : RYB I_g : 3.8
LPF status : Nil I_d : 3.1
CTU Status : Nil I_{cum} : 8.9 Kw
PTU Status : Nil I_{cum} : 10.7 KVA
Pf : 0 O₁I : 0 Kw
Past pf : 0 O₁I : 0 KVA
Prev pf : 0 R₃t : 9
Mtr : 36.H 69min
Bpmts : 02 min"

11.2 On a careful examination of the details noted above, it is noted that Kappa make CT with 200/5 ratio was fixed in the said service connection. The serial number of the CT is R_{PH}: 22-33883, Y_{PH}: 22-33867, B_{PH}: 22-33756.

11.3 The sanctioned load is also mentioned as 110 kw. Thiru Saravanakumar has signed on behalf of the consumer in the MRT Register.

11.4 In order to ascertain whether the same CT was still in service. I would like to refer the MRT report dt. 28.6.2016 the relevant para of the MRT report is extracted below:-

" 28.6.2016 M/s Orchids Chemicals :

Visit to conduct power check and to check the CT serial number.

Meter Details LTCT A/c No.171-58-575
Make L&G S. load 110 kw
SI.No. TN119121 CTR 200/5A
Po No. 187/13 dt.18.9.13 MF 40

Check Reading :

LKWH 3159.69

KW 0.330

LKVAH 3200.04 LAG 41.35 Lead 349.48

PF 0.985 rst 20

Fixed CT Details :

Make Kappa

Rate 200/5A

Value 5/0.5

D&I 16.4.03.

Sl.No. R-22-33883; Y-22-33867; B-22—33756.”

11.4 On a careful examination the CT details, it is noted that same Kappa make CT with Sl. No. R.22-33883, y-22-33867 & B-22-33756 with ratio 200/5A is available on the meter circuit as on 28.6.2016. Thiru R. Govindaraj has put his signature in the MRT register on behalf of the consumer.

11.5 On comparing the details of CT furnished in para 11.1 & 11.3 above, it is noted that same Kappa make 200/5 A CT is in service in the disputed service from 17.4.2003 to 28.6.2016. Therefore, it is held that the multiplication factor to be adopted during the disputed period is 40 only.

12. Findings on the second issue:

12.1 The Respondent argued that they have wrongly adopted the multiplication as 30 instead of 40 to calculate the energy consumption from the date of effecting service. Hence, the appellant has to pay for the units which have not been accounted due to adoption of wrong MF. The Respondent argued that the wrong adoption of multiplication factor has resulted in collection of lesser cc charges than the actual. Hence, it amounts to billing error and hence, they are having right to claim the shortfall as per regulation 12 of the Supply Code.

12.2 The Appellant argued that as per regulation 8 of the Supply Code, it is the responsibility of the licensee to enter all the details in the meter card without omission. But on an examination of the entries in the meter card, it was noted that the sanctioned load has been entered as 60 kw and MF as 30 from the date of issuing meter card. There is a provision to enter the CT ratio also in the meter card. But the licensee has not entered the CT ratio in the meter card. He has also enclosed a copy of the meter card in support of the above argument.

12.3 The Appellant also argued that the present case does not fall under 12(1) of the Tamil Nadu Electricity Supply Code which provides for the right to demand additional amount in the event of any clerical errors or mistake in the amount levied demanded or charged by the licensee. Admittedly the officers of the 1st Respondent has made entries in meter card from the date of issuance which has been followed till December 2014. It is not a case where there has been wrong entry between or during a particular period and further the meter cards specifically provides for entry of CT Ratio which has also been omitted from the date of effecting of service connections. Hence it is a case of omission of proper details in the meter card by the 1st Respondent under Regulation 8(1) of the TN Supply Code 2007.

12.4 The Appellant citing Regulation 18 of the Central Electricity Authority (Installation and Operation of Meter) Regulation 2006, argued that as per the above regulation, all the interface meters shall be tested atleast once in five years. In the present case, the officer's of the 1st Respondent have failed to conduct any test from 2004. Only after the Appellant complain about the defect in the meter,

testing was done on the meter. Had the Respondent conducted periodical testing of meters as per the above regulation, the first Respondent would have realized that there has been an omission of CT Ratio in the Appellant's meter card from the date of its issuance. The 1st Respondent has clearly failed to do their duty and having failed to do so the 1st Respondent has issued the demand notice by revising the Appellant's meter card from May 2004 to November 2004 which is illegal, arbitrary and liable to be set aside.

12.5 As the Respondent have quoted the Regulation 12 of the Supply Code, the said regulation is extracted below:-

“ 12. Errors in billing

(1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.

(2) Where it is found that the consumer has been over-charged, the excess amount paid by such consumer shall be refunded along with interest at the rate applicable for security deposit. The interest shall be computed from the date on which the excess amount was paid. Such excess amount with interest may be paid by cheque in the month subsequent to the detection of excess recovery or may be adjusted in the future current consumption bills upto two assessments at the option of the consumer. The sum which remains to be recovered after two assessments may be paid by cheque. Interest shall be upto the date of last payment.

(3) Wherever the Licensees receive complaints from consumers that there is error in billing, etc. the Licensee shall resolve such disputes regarding quantum of commercial transaction involved within the due date for payment, provided the complaint is lodged three days prior to the due date for payment. Such of those complaints received during the last three days period shall be resolved before the next billing along with refunds / adjustments if any. However, the consumer shall not, on the plea of incorrectness of the charges, withhold any portion of the charges.

xxxx xxxx xxxx ”

12.6 On a careful reading of the regulation 12(1), it is noted that in the event of any clerical error or mistakes in the amount levied, demand or charged by the licensee, the licensee will have the right to additional amount in case of under charging.

12.7 In the case on hand, the consumption was worked out considering the multiplication factor as 30 instead of 40. Because of adoption of incorrect multiplication factor, the amount charged by the licensee is less than the amount that ought to have been charged. Therefore, it is a case of under charging. The entry of multiplication factor as 30 in the meter card was made by the licensee's employee only. It is a mistake done by the employee of the licensee. As per regulation 8(1) of the Supply Code, as argued by the Appellant, the licensee is responsible for the entry in the meter card. But due to a mistake committed by the employee of the licensee, the MF was wrongly entered as 30 instead of 40. As incorrect MF was entered in the meter card, it could not be treated as omission but could be treated as wrong entry. But, not entering the ratio of CT in the meter card is a omission. Had the CT ratio been entered in the meter card, there would have been a chance to correct the MF as both have to tally. But in the absence of entering the CT Ratio, the MF entered was taken for arriving the consumption. This has resulted in under charging of the consumer and the consumer has not paid the CC charges for the units which have escaped due to adoption of a multiplication factor less than the actual one. The licensee has lost revenue of the missing units. The MRT has correctly recorded the MF as 40 while testing the meter and CTS on 17.4.2003. Therefore, in the basic record, the MF is 40 which has been erroneously noted as 30 in the meter card. Therefore, in the considered opinion, it is a billing error and the licensee has right to claim the shortfall amount.

13.0 Findings on the Third issue:

13.1 The Respondent citing the following argued that the shortfall claimed is not barred by limitation of 2 years stipulated in section 56(2) of the Electricity Act.

- (i) Judgment dated 31.03.1987 in H.D.Shourie Vs. Municipal corporation of Delhi and LPA Judgment dated 17.12.1993 in Municipal Corporation of Delhi vs H.D.Shourie both rendered by the High Court of Delhi (iii) Judgment dated 16.07.2009 in LPA 211/2009 in the case of NDMC Vs. A.baskar Construction (p) ltd. rendered by the High Court of Delhi (iv) Judgment dated 20.08.2009 in W.P. No.7015 of 2008 in the case of M/s. Rototex polyester and another vs. Administrator, Administration of Dadra & Nagar Havli (U.T) Electricity Department, Slivassa and others rendered by the High Court of Bombay and (v) Judgment dated 19.04.2011 in W.P. (c) 8647 of 2007 in the case of Jingle Bell Amusement Park (P) Ltd., vs. North Delhi Power Ltd., rendered by the High Court of Delhi.
- (ii) In the Judgment dated 31.03.1987 (HD.Shourie vs. Municipal Corporation of Delhi), among other things, the word 'due' appearing in section 24 of the I.E. Act 1910 had been considered by the Court and it was held that the word 'due' in context of the section 24 of the I.E.Act, 1910) must mean due and payable after a valid bill has been sent to the consumer and that even though the liability to pay may arise when the Electricity is consumed by the petitioner, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised.

(iii) The aforesaid interpretation was upheld in the appeal and followed by in other cases referred to above. In the decision rendered in M/s. Jingle Bell Amusement Park (p) Ltd., vs. North Delhi Power Ltd., and M/s. Rototex Polyester and another vs. Administration of Dadra & Nagar Havli (UT) Electricity Department, the scope of section (2) of sub section 56 of Electricity Act, 2003 has been considered and held that the bar of limitation cannot be raised by the consumer and further held that the revised bill amount would become due when the revised bill is raised and section 56(2) of the said Act would not come in the way of recovery of the amount under the revised bills.

13.2 The Appellant argued that the present case arises out of the differential bill issued by the 1st Respondent demand charges pertaining to the past 10 years as a result of correcting the Multiplying Factor as 40 with retrospective effect i.e., from the date of issuance of the Appellant's meter card. This case is exactly similar to the case dealt in Rep.No.22 of 2009 dated 21.09.2009 before the MERC Electrical Ombudsman. The Hon'ble MERC ombudsman held that the judgments on Municipal Corporation of Delhi Vs H.D.Shourie Case or the BSES Rajdhani Power Ltd Vs P.C.Kapoor case were dealt under the earlier Indian Electricity Act, 1910 when the Electricity Act, 2003 was not on the statue book. Therefore, it would not be proper to solely refer to these judgments which related to interpretation of Section 24 of the Indian Electricity Act, 1910, especially when Section 56 (2) of the Electricity Act, 2003, has made a specific provision on time limit for recovery of arrears. The Hon'ble MERC ombudsman considered the order passed by the Hon'ble Division Bench of the Bombay High

Court in W.P. (L) 2221 of 2006 (Mr.Awadesh S Pandey Vs Tata Power Company Ud) and the order passed by the Hon'ble High Court of Calcutta in W.P.No.516 of 2005 (Mahesh Oil Mills vs Calcutta Electricity Supply Co.,) wherein it has been held that, after repealing of Indian Electricity Act, 1910, as per the provisions of section 56(2) of Electricity Act, 2003 the licensee is barred by limitation to recover the dues beyond the time limit of 2 years.

- 13.3 As the Appellant has cited section 56(2) and argued that the licensee is barred from collecting arrears for more than a period of 2 years, the relevant section 56(2) of Electricity Act 2003 is extracted below :

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:”

- 13.4 As per the above clause , no sum due from any consumer under the said section 56(2) shall be recoverable after the period of 2 years from the date when such sum become first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.

- 13.5 With reference to the applicability of section 56(2) of the Electricity Act 2003, for limitation, the judgment dt.14.11.2006 of Appellate Tribunal for Electricity in appeal Nos 202 and 203 of 2006 is relevant and is reproduced below :

“Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore,

shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4,28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired”.

- 13.6 It is clear from above judgment that, even though the liability to pay energy charges is created on the day the electricity is consumed, the charge would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice.
- 13.7 In the case on hand, the short fall amount was intimated on 30.9.2015. Hence, the 2 years period starts only from 30.9.2015. Therefore, this issue is decided against the Appellant.
- 13.8 In view of the judgment of Appellate Tribunal for Electricity rendered in appeal nos. 202 & 203 of 2006 on 14.11.2006, I am unable to accept the argument put forth by the Appellant that as per the provision of section 56(2) of the Electricity Act 2003, the licensee is barred by limitation to recover the dues beyond the limit of 2 years citing the orders of Electricity Ombudsman of Maharashtra ERC.

14. Conclusion :

- 14.1 In view of my findings in first, second & third issues furnished in para 11,12 & 13 above, I am unable to interfere with the orders of the CGRF of Chennai EDC/West.
- 14.2 With the above findings, the A.P. No. 17 of 2016 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

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7) The Assistant Director(Computer) – **Hosting in the TNEO website please,**

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