



A consumer is the important visitor on our premises.  
He is not dependent on us. We are dependent on him.  
-Mahatma Gandhi

## **TAMIL NADU ELECTRICITY OMBUDSMAN**

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**Before The Tamil Nadu Electricity Ombudsman, Chennai**

**Present :Thiru. N. Kannan, Electricity Ombudsman**

**A.P.No. 50 of 2023**

Thiru P.Rajan,  
M/s.Hotel Mount Paradise,  
No.37, new Bye Pass Road,  
(Next to Collector's office),  
Vellore – 632 009.

. . . . Appellant  
(Thiru P.Rajan &  
Tmy. R.T. Sundari, Advocate)

Vs.

1. The Executive Engineer/Vellore,  
Vellore Electricity Distribution Circle/Central,  
TANGEDCO,  
10<sup>th</sup> East Main Road, TNEB, Gandhi Nagar,  
Vellore – 632006.

2. AE/O&M/Kagithapattarai,  
Vellore Electricity Distribution Circle/Central,  
TANGEDCO,  
No. 248, Near Sollapuri amman koil,  
Balaji Nagar, Thottapalayam, Vellore – 632006.

. . . . Respondents  
(Thiru S.Arokiya Arputharaj, EE/Vellore  
Tmy. P.Yuvarani, AE/Kagithapattarai  
Thiru D. Jaisingh, Advocate)

**Petition Received on: 11-07-2023**

**Date of hearing: 13-09-2023**

**Date of order: 19-09-2023**

The Appeal Petition received on 11.07.2023 filed by Thiru P.Rajan,  
M/s.Hotel Mount Paradise, No.37, new Bye Pass Road, (Next to Collector's office),

Vellore – 632 009 was registered as Appeal Petition No. 50 of 2023. The above appeal petition came up for hearing before the Electricity Ombudsman on 13.09.2023. Upon perusing the Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

### **ORDER**

#### **1. Prayer of the Appellant :**

The Appellant has prayed to quash the order No.1 dt. 10.05.2023 passed by Chairman/CGRF of Vellore EDC.

#### **2.0 Brief History of the case:**

2.1 The Appellant has prayed to cancel the short fall amount levied in his service connection based on the revised MF.

2.2 The Respondent has stated that change of Multiplication Factor with effect from June/2011 from 30 to 40, the shortfall was calculated and issued notice to the consumer to pay the CC shortfall.

2.3 Not satisfied with the reply of the Respondent, the Appellant filed a petition before CGRF of Vellore Electricity Distribution Circle on 25.03.2023. The CGRF of Vellore Electricity Distribution Circle issued an order vide No. 01 dated 10.05.2023. Aggrieved over the CGRF order, the Appellant has preferred this appeal petition before the Electricity Ombudsman.

#### **3.0 Orders of the CGRF :**

3.1 The CGRF of Vellore Electricity Distribution Circle issued its order on 10.05.2023. The relevant portion of the order is extracted below:-

**“Order:**

*In view of both side arguments, it is very clear that the petitioner had consumed the Electricity for MF 40, from 08.06.2011. On the other side there was a mistake happened regarding collection of bill by the Respondent side.*

*It is forum finds section 56(2) will not applicable for present issue. Since, there is no issue of disconnection of Electricity but, only issue of collection of consumed charges. So here is no question of limitation raising in this issue. The petitioner cannot take undue advantage of mistake committed by the official.*

*Hence, this forum directs the Executive Engineer /O&M/Vellore to recover the arrears amount for the period of 9 years for a sum of Rs.18,46,197/- from the petitioner by including in the SC. No. 223-004-445."*

#### **4.0 Hearing held by the Electricity Ombudsman:**

4.1 To enable the Appellant and the Respondents to put forth their arguments, a hearing was conducted on 13.09.2023 through video conferencing.

4.2 The Appellant Thiru P.Rajan and his authorized Counsel Tmy. R.T. Sundari, Advocate have attended the hearing and put forth their arguments.

4.3 The Respondents Thiru S.Arokiya Arputharaj, EE/Vellore, Tmy. P.Yuvarani, AE/Kagithapattarai of Vellore EDC and Thiru D. Jaisingh, Advocate attended the hearing and put forth their arguments.

4.4 As the Electricity Ombudsman is the Appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further, the prayers which require relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone are discussed hereunder.

#### **5.0 Arguments of the Appellant:**

5.1 The Appellant has stated that the writ petition in WP.No.19688/2020 challenging the recovery of arrears for a tune of RS.18,46,197/- in the letter No.LR.No.JE/O&M/Kagithapattai/RS/F.Arrear/D.146/2020-2021 dated 04/12/2020. The Hon'ble High court was pleased to grant liberty to file petition before this Forum.

5.2 The Appellant has stated that the impugned order dated 04/12/2020 issued by the Respondents, and the petitioner's objection to the demand for energy charges for the period 2011-2020 contending that the same is hit by sec 56(2) of Indian Electricity Act 2003.

5.3 The Appellant has stated that the petitioner obtained license in the year 2011 for running the Hotel Mount paradise and got the connection in LTSC No.223-004-445 and has been paying the EB Bills issued by the AE/O&M/Kagithapattarai regularly without any arrears.

5.4 The Appellant has stated that the petitioner has paid the regular bills issued by the AE/O&M/Kagithapattarai for a sum of Rs.60,87,278/- till the year 06.11.2020.

5.5 The Appellant has stated that the Respondent inspected the suit property and sent a demand notice in LR. No.AE/O&M/Kagithapattai/RS/F.Arrear/D.51/2020-21 dated 17.07.2020 that there is an "error in past billing found short fall amount to be paid revision of billing proposed.

5.6 The Appellant has stated that he was served several demand notice, final notice dated 04/12/2020 was served directing the petitioner to pay Rs.18,46,197/- within a period of 7 days failing which the same will be included in the CC bills of SC.No. 223-004-445.

5.7 The Appellant has stated that a notice to rectify and pay under MF 40 was not issued within 2 years it was after the lapse of 9 years. Hence it is barred by limitation period. As per Sec 56(2)Electricity Board Act 2003 envisaged that "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 2 yrs 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 license shall not cut off the supply of electricity."

5.8 The Appellant has stated that the the Respondents have failed to give a fair and sufficient opportunity to the petitioner. The action of Respondents, by their own conduct in hurriedly giving several notices culminating in the final demand notice in a span of about a week clearly exhibits a pre-conceived and the impugned order is arbitrary, unfair and improper. Hence failure to issue show cause notice within a

reasonable time and demanding a payment obligation is against the principles of natural justice.

5.9 The Appellant has stated that the Respondent without any notice and information after a lapse of 9 years has claimed the short fall amount for Rs.18,46,197/- by changing the multiplication factor from 30 to 40 which is arbitrary and against the principles of natural justice.

5.10 The Appellant has prayed to quash the order dt. 10.05.2023 passed by Chairman/CGRF of Vellore EDC and grant such other relief under the circumstances of the case.

5.11 The Appellant further during the hearing mentioned WP No.10764 of 2011 in the High Court of Judicature at Bombay, Civil Appellate Jurisdiction

*79. As a result of the above discussion, the issues referred for our opinion are answered as under:-*

*(A)The issue No.(i) is answered in the negative. The distribution licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges. (B) As regards issue No.(ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the distribution licensee will Suresh FB-901-903-10764.2011.doc have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in sub-section (2) of section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of than provision. (C) The issue No. (iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.*

*80. Though the Advocate General canvassed a submission that sub-section (2) of Section 56 carves out a special period of limitation and that would also govern a suit which may be filed to recover the amounts mentioned in sub-section (1) of section 56, but that issue having not been referred for our opinion in terms of the referring order, we do not think any answer should be given to the same. Hence, that issue is kept open for being urged in an appropriate case.*

*81. In view of the above, the Registry to list the respective writ petitions and which are pending for disposal before the appropriate Court and to be decided in the light of our answers as above."*

## **6.0 Counter submitted by the Respondent:**

6.1 The Respondent has submitted that Thiru. P.Rajan, Proprietor, Hotel Mount Paradise, Vellore-9 owner of LTCT Sc.No.08-223-004-445 / Tariff V, submitted a

grievance petition before Hon'ble Chairperson, CGRF / Vellore EDC, Vellore-6 against the notice dated 17.07.2020 issued by Junior Engineer / O&M / Kagithapattari / Vellore EDC.

6.2 The Respondent has submitted that this issue arose out of change of Multiplication Factor with effect from 08.06.2011 from 30 to 40. The CT coil was replaced by MRT wing of Vellore EDC / Vellore-6 in the presence of the consumer of the said service connection and his acknowledgement also obtained in the records maintained by MRT wing.

6.3 The Respondent has submitted that the change of MF from 30 to 40 was not taken into account while billing of the service connection and the consumption was assessed only taking 30 as Multiplication Factor continuously.

6.4 The Respondent has submitted that this issue of MF was unnoticed by the Section officers who were to take reading in LT CT service connection until 2020. After detection of the mistake, arrears to be collected from 06/2011 billing upto date was calculated by Junior Engineer/O&M/Kagithapattari Vellore EDC and notice issued to the consumer vide letter on 17.07.2020.

6.5 The Respondent has submitted that aggrieved with the notice dt. 17.07.2020 the consumer filed a Writ Petition in the Hon'ble High Court of Madras in WP 19688/2020 and the Hon'ble High Court of Madras directed the Petitioner to approach the appropriate Forum in TANGEDCO, for remedy. The petition filed by Thiru. P.Rajan, before CGRF was heard by Hon'ble Chairperson/CGRF / Vellore EDC/ Vellore and orders passed by CGRF vide order No.1, dated 10.05.2023.

6.6 The Respondent has submitted that the Appellant Thiru. P. Rajan, Owner of LT CT SC.No.08-223-004-445/ TF-V countered that the arrears of CC charges from 06/2011 cannot be claimed by the TANGEDCO after a lapse of 9 years which is barred by Section 56(2) of Electricity Act 2003.

6.7 The Respondent has submitted that the Appellant argued before the Forum that claiming a huge amount as arrears of CC charges after a period of 9 years is

unfair on the part of TANGEDCO and it could not be collected as per section 56(2) of Electricity Act 2003.

6.8 The Respondent has submitted that now the consumer of SC.No.08-223-004-445/V has preferred an appeal with Hon'ble Tamil Nadu Electricity Ombudsman against the orders of CGRF / Vellore EDC/ Vellore under the following grounds:-

- I. Civil appeal No.1672/2020 orders passed by Hon'ble Supreme Court of India on 18.02.2020

Paras 8 and 9 of the above Apex Court judgment reads as follows:

*"Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes or recovery which may be initiated by the licensee company for recovery of a supplementary demand.*

*Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.*

*The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired*

*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 bonafide 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."*

6.9 The Respondent has submitted that the observations of the Apex Court clearly indicate that the licensee company (TANGEDCO) can raise an additional demand even after the limitation period stipulated under section 56(2) of Electricity Act 2003 in case of a mistake or bonafide error.

6.10 The Respondent has submitted that the error found by the TANGEDCO officials in respect of SC.No.06-223-004- 445/TFV is a bonafide one and the claim is made for the power actually consumed by the service connection owner and hence the claim made by the TANGEDCO is correct one and the consumer is

liable to pay the same. Further, it is submitted that the TANGEDCO has not followed any coercive means to collect the amount and no disconnection notice had been served on the Service Connection owner for not paying the said arrear of CC Charges.

II. Civil appeal No.7235 of 2009. Orders passed by Hon'ble Supreme Court of India on 05.10.2021.

The Hon'ble Apex Court had given a deep analysis to section 56(2) of Electricity Act in this Judgment pronounced on 05.10.2021 in this civil appeal.

*"13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein the case of a mistake or bonafide error (para 9.1 of the SCC report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).*

*14. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Sub-section (2) of Section 56 is dissected into two parts it will read as follows:-*

*(i) 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; and*

*(ii) the licensee shall not cut off the supply of electricity.*

*15) Therefore, the bar Actually operates on two distinct rights of the licensee, namely, (1) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.*

*16) Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from*



taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act”.

17) It appears from the narration of facts in paragraph 2 of **Rahamatullah khan** (supra) that this Court was persuaded to take the view that it did on account of certain peculiar facts. The consumer in that case was billed under a particular tariff code for the period from July-2009 to September 2011. But after audit, it was discovered that a different tariff code should have been applied. Therefore, a show cause notice was issued on 18.03.2014 raising an additional demand for the period from July-2009 to September-2011. Then a bill was raised on 25.05.2015 for the aforesaid period. Therefore, the consumer successfully challenged the demand before the District Consumer Forum, but the Order of the District Forum was reversed by the State Commission on an appeal by the licensee. The National Commission on a revision filed by the consumer, set aside the order of the State Commission and restored the order of the District Forum. It was this Order of the National Commission that was under challenge before this Court in **Rahamatullah khan** (supra).

18) Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in **Rahamatullah khan** (supra) is distinguishable on facts.

19) Even otherwise there are two things in this case, which we cannot overlook. The first is that the question whether the raising of an additional demand, by itself would tantamount to any deficiency in service, clothing the consumer fora with a power to deal with the dispute, was not raised or considered in **Rahamatullah khan** (supra). The second is the impact of Sub-section (1) of Section 56 on Sub-section (2) thereto.

20) The fora constituted under the Consumer Protection Act, 1986 is entitled to deal with the complaint of a consumer, either in relation to defective goods or in relation to deficiency in services. The word "deficiency" is defined in Section 2(1)(g) of the Consumer Protection Act, 1986 as follows:-

“2(1)(g) “deficiency” means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

21) The raising of an additional demand in the form of "Short assessment notice" on the ground that the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. 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. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

22) In fact, even before going to the question of Section 56(2), the Consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only and then that the recourse taken by the licensee for recovery of the amount, can be put to best in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the Respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23) Coming to the second aspect named the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Sub-section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "**where any person neglects to Pay** any charge for electricity or any some other than a charge for electricity due from him".

24) Sub-section (2) uses the words "no sum due from any consumer **under this Section**". Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the Part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25) 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).

26) The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licenses. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in **Rahamatullah Khan** and Section 56(2) will not go to the rescue of the Appellant.

27) Therefore, we are of the view that the National Commission was justified rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. However, since the Appellant has already paid 50% of the demand amount pursuant to an interim order passed by this Court on 19.08.2014, we give eight weeks time to the Appellant to make payment of the balance amount. There shall be no order as to costs."

6.11 The Respondent has submitted that this Apex Court ruling has to be followed in deciding this case as per article 141 Constitution of India. TANGEDCO can collect any left out bonafide CC charges detected at a later date. Hence, the order passed by Hon'ble Chairperson / CGRF / Vellore EDC/ Vellore is in accordance with the ruling of the Apex Court and Electricity Act, 2003.

6.12 The Respondent has prayed to kindly uphold the orders passed by CGRF / Vellore EDC/ Vellore and render justice.

### **7.0 Findings of the Electricity Ombudsman:**

7.1 I have heard the arguments of both the Appellant and the Respondent. Based on the arguments and the documents submitted by them, the following conclusion is arrived.

7.2 The Appellant has stated that the Respondent inspected the suit property and sent a demand notice in Lr.No.AE/O&M/Kagithapattai/RS/F.Arrear/D.51/ 2020-21 dated 17.07.2020 that there is an error in past billing found, short fall amount to be paid, revision of billing proposed and mentioned that he was served several demand notice, final notice dated 04/12/2020 was served directing the petitioner to pay Rs.18,46,197/- within a period of 7 days failing which the same will be included in the CC bill of S.C. No. 223-004-445. The Appellant has stated that a notice to rectify and pay under MF 40 was not issued within 2 years, it was after the lapse of 9 years and hence it is barred by limitation as per Sec 56(2) Electricity Act 2003.

7.3 The Appellant has further stated that the Respondent without any notice and information after a lapse of 9 years has claimed the short fall amount for Rs.18,46,197/- by changing the multiplication factor from 30 to 40 which is arbitrary and against the principles of natural justice. The Appellant has prayed to quash the order passed by Chairman/CGRF of Vellore EDC.

7.4 The Respondent argued that the issue arose out of change of Multiplication Factor from 30 to 40 with effect from 08.06.2011. The CT coil was replaced by MRT wing of Vellore EDC in the presence of the consumer of the said service

connection and his acknowledgement also obtained in the records maintained by MRT wing and also pointed out the change of MF from 30 to 40 was not taken into account while billing the service connection and the consumption was assessed only taking 30 as Multiplication Factor continuously until 2020. After detection of the mistake, arrears to be collected from 06/2011 billing upto date was calculated by Junior Engineer/O&M/Kagithapattari Vellore EDC and notice issued to the consumer vide letter on 17.07.2020.

7.5 Further, it is submitted that the TANGEDCO has not followed any coercive means to collect the amount and no disconnection notice had been served on the Service Connection owner for not paying the said arrear of CC Charges. In support of their arguments, the Respondent referred the Hon'ble Supreme Court orders given in Civil appeal No.1672/2020, dated 18.02.2020 and Civil appeal No.7235 of 2009, dated 05.10.2021 and argued that the observations of the Apex Court clearly indicate that the licensee company (TANGEDCO) can raise an additional demand even after the limitation period stipulated under section 56(2) of Electricity Act 2003 in case of a mistake or bonafide error.

7.6 In this context, I would like to discuss in details. The issue here raised by the Appellant that he should not be charged for short levy for the period 06/2011 to 06/2020, because there was no error on his part for making payment in time. It is seen from the prayer that the crux of the issue on claiming short levy was due to wrong adoption of Multiplication factor. To elaborate the pattern of behaviour of Multiplication factor of the Energy consumption of any consumer who is either provided with HT connection or LT CT connection, the following are discussed.

7.7 Normally energy meter is provided to the consumer to record the consumption of energy during the period of billing. This is based on computation of input voltage and input load current on a continuous period of time. Pertinently in the industrial/high commercial premises machines and equipments are used to operate with huge burden ie Volt Ampere (VA) if such high voltage /current is allowed directly to the energy meter, the meter instantaneously burn or may explode. Therefore it is not possible to measure the quantity of electricity energy so

supplied at very high voltage /current by making it pass entirely through an electric meter so supplied.

7.8 It is necessary for the electricity supplied to be converted through the transformation of current and voltage, achieved by providing current transformer and potential transformer units. In such cases, the electricity undergoes a substantial reduction in voltage and current before passing through the electric meter. The meter reading, in such instances, does not accurately reflect the actual amount of electric energy supplied to the consumer. Consequently, it becomes essential to adjust the meter reading using the appropriate multiplying factor to determine the correct amount of electric energy supplied to consumers with a load of 50 kW and above. Therefore, CT-operated meters are used with a current multiplication factor. In the case of LTCT SC No. 08-223-004-445/Tariff V, which was effected on 26.06.2006, a CT MF ratio of 30 was employed. Subsequently, on 08.06.2011, the existing CT with a ratio of 150/5 and MF 30 was replaced by a CT ratio of 200/5 A with an MF of 40. The above fact was evident from the test report mentioned in Endorsement No. A.E.E./MRT/VEDC/F.LTCT/D.216 dated 08.06.2011

7.9 During the hearing, the fact was also ascertained from the Appellant that the monthly billing were billed with the multiplication factor of 30 since effecting service to 08.06.2011. Further, it was also established that CT coil changed to 200/5 CT from 08.06.2011 onwards. So, inspite of changing the CT ration from 08.06.2011 to untill the period 06/2020, the MF remained 30 and from 07/2020 onwards the consumer was charged with the MF 40 with the same CT ratio of 200/5 A till date and the Appellant too agreed that the electricity current consumption bill is being paid with MF 40. The above finding clearly established that there was a total human error on the billing process to claim the energy utilised by the Appellant. This can be discussed with a value to understand the error behind. Let us say for a given month the KWH start meter reading 32648 and KWH end meter Reading 33052. The consumption of units with wrong MF 30 =  $(33052-32648) \times 30 = 12120$  units. The consumption of units with correct MF 40 =  $(33052-32648) \times 40 = 16160$

units. The difference in units to be billed is 4040 (16160-12120). In other words, there was a total error in billing process for wrong adoption of MF 30 instead of MF 40 between the period 06/2011 to 06/2020.

7.10 In this context, I would like to find whether there is any provision made in the TNERC regulation if at all there was any error in billing. Regulation 12 of TNE Supply which is relevant in this case is discussed 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 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.”*

7.11 It is clear from the foregoing paras that, in the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, they are entitled to demand an additional payment if they undercharge, and the consumer is entitled to a refund if they overcharge. Now the issue raised by the Appellant on the applicability of the law of limitations, on the claim made by the Respondent needs to be addressed.

7.12 The Appellant has stated that the claim made by the Respondent is barred by Sec 56 (2) of Electricity Act 2003. This clause provides that no sum due from any person under this section shall be recoverable after a period of two years from the date when such sum becomes first due. In the present case according to the

Respondent first due notice was issued on 17-07-2020 for the M.F error discrepancies for the claim period of 06/2011 to 06/2020, but the Appellant argued that the short levy was raised after a lapse of 9 years since 2011 when the CT was changed. Hence short levy cannot not be claimed for the period from 06/2011 to 06/2020, and in support of his arguments, the Appellant mentioned the orders issued in W.P.No.10764 of 2011 in the High Court of Judicature at Bombay, Civil Appellate Jurisdiction.

7.13 On the other hand, the Respondent referred a recent orders of the Hon'ble Supreme Court in Civil appeal No.1672/2020, dated 18.02.2020 and Civil appeal No.7235 of 2009 dated 05.10.2021. The relevant paras of the order is reproduced below

Civil appeal No.1672/2020 issued on 18.02.2020

*"Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes or recovery which may be initiated by the licensee company for recovery of a supplementary demand.*

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*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 bonafide 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."*

Civil appeal No.7235 of 2009 issued on 05.10.2021

*"21) The raising of an additional demand in the form of "Short assessment notice" on the ground that the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. 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. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".*

*22) In fact, even before going to the question of Section 56(2), the Consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only and then that the recourse taken by the licensee for*

recovery of the amount, can be put to best in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the Respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23) Coming to the second aspect named the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Sub-section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "**where any person neglects to pay** any charge for electricity or any some other than a charge for electricity due from him".

24) Sub-section (2) uses the words "no sum due from any consumer **under this Section**". Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the Part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25) 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).

26) The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensees. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in **Rahamatullah Khan** and Section 56 (2) will not go to the rescue of the Appellant."

7.14 It is seen from the above two court orders, the Respondent can invoke section 56 (2) on escaped assessment. Further, Section 56(2) does not prevent 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 bonafide error.



7.15 From the above, the liability to pay energy charges is created on the day the electricity is consumed but the charge would become first due only after a bill or the demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice. Further 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.

7.16 Now, I have to correlate the above Section 56 (2) of Electricity Act with the present appeal petition. Upon examination of the documents submitted, it is established that the Respondent issued the first short levy notice to the Appellant on 17-07-2020, demanding a shortfall amount of Rs.18,46,197/- for the period from 06/2011 to 06/2020. Therefore, the period of limitation prescribed under Sub-section 56(2) of Electricity Act, 2003 shall start only from 17.07.2020 i.e. from the date of issue of first supplementary bill towards the energy unbilled.

7.17 The Hon'ble Apex Court have rightly pointed out that Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. In the present case, the demand was raised only on 17.07.2020. The Respondent received a reply from the Appellant on 04-09-2020 requesting to reverse the amount. In turn, the Respondent again issued final demand notice to the Appellant on 14-09-2020 to pay the short levy amount of Rs 18,46,197/- within 15 days from the date of receipt of the letter or the same will be included in the CC bills of SC No.223-004-445. Again, the Respondent issued a demand notice to the Appellant on 04-12-2020 to pay the short levy amount of Rs 18,46,197/- within 7 days from the date of receipt of the letter or the same will be included in the CC bills of SC No.223-004-445.

7.18 The above para established that the Respondent continuously issued demand notice since 17-07-2020, and thereafter on 14-09-2020 & 04-12-2020 to pay the amount. Aggrieved by the demand notice, the Appellant filed a W.P. No. 19688 of 2020 and W.M.P 24322 of 2020 before the Hon ble High court to quash

demand notice dated 04.12.2020. The Hon'ble High court in its order dated 04-02-2022 directed the petitioner to file grievance before the CGRF. The Appellant filed a petition before the CGRF on 25-03-2022 and the CGRF passed order dt 10-05-2023. Therefore, it is established that the supplementary bill raised on 17.07.2020 is continuously treated as outstanding arrears and hence the period of limitation is not lapsed. Further, it is established that the service connection is in live condition as of today and hence the Respondent complied the Sec 56 (2) of Electricity Act 2003 by not taken any coercive action to cut off the supply of electricity. Therefore, I am of the view that the Respondent's claim is valid as per TNE Supply Code Provisions as well as in line with Section 56(2) of Electricity Act, 2003.

## **8.0 Conclusion:**

8.1 Based on the facts established above, it is evident that there was a continuous claim of short levy from 17.07.2020 which is recoverable as arrears and runs continuously even beyond the two years time limit and no disconnection was made. Therefore, the Appellant's argument that the Respondent's claim for demand charges barred by limitation found to have no merit and is rejected. Hence, the orders passed by the CGRF of Vellore EDC to recover the arrears amount of Rs.18,46,197/- from the petitioner by including the same in the SC No. 223-004-445 is upheld. Further, the Respondent is directed to give adjustment for the amount already paid by the Appellant.

8.2 With the above findings A.P.No.50 of 2023 is finally disposed of by the Electricity Ombudsman. No Costs.

**(N.Kannan)**  
Electricity Ombudsman

“நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை”  
“No Consumer, No Utility”

To

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- By RPAD

2. The Executive Engineer/Vellore,  
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3. AE/O&M/Kagithapattarai,  
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4. The Superintending Engineer, - By Email  
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5. The Chairman & Managing Director, – By Email  
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