

BEFORE THE ELECTRICITY OMBUDSMAN  
For State of Goa and Union Territories(Except Delhi)

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APPEAL No. 92/2017.

Date of Hearing: 10.11.2017 at Goa

M/s A&A Hotels Pvt. Ltd.,  
(Through its Director, Ms Veena Advani),  
Plot No.12&13, La Oceana Colony, Dona Paula  
Ilhs, Goa.

..... Appellant

Versus

1. State of Goa(Through Secretary Power)  
With office at Secretariat  
Porvorim, Bardez, Goa.
2. The Chief Electrical Engineer  
Electricity Department  
Govt. of Goa, Vidyut Bhawan  
Panaji, Goa-403001.
3. The Executive Engineer  
Electricity Department,  
Division I (O&M), Panaji  
Goa.

...Respondents

Parties present:

Appellant Ms Veena Advani, Director, A&A Hotels

Respondents Mr Paul Fernandes, Executive Engineer, Div- I(O&M), Panaji  
Mr. Edwin Miranda, Assistant Engineer, Div -I(O&M), Panaji



Date of Order: 14.11.2017

The Appellant has preferred an Appeal against order of the Consumer Grievances Redressal Forum, Goa dated 25.4.2017 in case No.06/2017/17 .The Appeal admitted on 5.7.2017 as appeal No. 92 of 2017. The respondent no. 2 has submitted that Respondent no. 3 will represent him in this appeal.

**(A) Submissions by the Appellant:**

1. The appellant is having a hotel at Dona Paula under the name of "L'Hotel Eden" since the year 2006-2007. A High Tension Electrical Installation No. HTC-261 was taken by an agreement dated 31.7.2009, a 3 phase connection at normal voltage of 11 KV.
2. Clause-9(a) of the agreement dated 31.7.2009, the appellant is required to pay to the Respondent every month the required charges for electrical energy including any tax duty or other direct or indirect charges, supplied to the appellant during the preceding month at rate specified and applicable to class of service in force from time to time.
3. Respondent No.3 vide letter dated 19.1.2016 bearing No. EE/Div-1/HTC-2061/5600 calling upon the appellant to effect payment of an amount of Rs.9,23,963/- towards the purported revised tariff billing for the month of June 2012 to March 2015 on a claim that said amount was due from the appellant on account of difference in the application of tariff as per the audit observation vide PO Memo No.51 dated 10.8.2015.



4. The appellant has alleged that he was neither provided with an opportunity of being heard nor a copy of audit observation bearing Memo No.51 dated 10.8.2015 were furnished.
5. The appellant filed a writ petition No.493/2016 in Hon'ble High Court of Bombay at Goa and inter alia sought for a declaration that Respondent are not entitled to recover the impugned demand of Rs.9,23,963/-. By order dated 4.5.2016, the Hon'ble High Court was pleased to dispose off the petition by keeping all the contentions of the parties on merits open and directed the Respondent No.3 to examine the demand afresh and take a fresh decision after hearing the appellant in accordance with law.
6. The appellant states that monthly bill submitted every month on the columns of "sundry charges" "Penalties", and or "other charges" would indicate a Nil payment as he had been paying the monthly bills within the stipulated time.
7. In terms of Section 56(2) of the Electricity Act 2003, any sum due from any consumer shall not be recoverable after the period of two years from the date when such sum first became due, unless such sum has been continuously shown as recoverable as arrear of charges by electricity supplied and consequently in the case at hand the Respondents are not entitled to recover from the Applicant/Petitioner the said amount of Rs.9,23,963/-(Rupees Nine Lakhs Twenty Three Thousand Nine Hundred and Sixty Three Only) towards the so called difference on account of the revised Application of Tariff in respect of the Application/Petitioner's Electricity Connection bearing





installation No. HTC-261 for the period of June 2012 to March 2015, sought to be recovered through the letter of the Respondent No.3, dated 19.1.2016.

8. The appellant has alleged that the impugned demand is arbitrary and is a mere misconstruction/audit observation by the Audit Team, of the Provisions of Electricity Act and Electricity Supply Regulations. Further, it is arbitrary and devoid of any application of mind and or legal sanction for the claim in as much as the JERC regulations do not contemplate and/or have not empowered the basis of a revised tariff after the bills have been duly paid by the Appellant consequent upon the issuance of the bills to the Appellant.
9. The Impugned Demand Notice of Rs. 923963/- may be declared null and void and any other and further reliefs as this Hon'ble Court deems fit and proper.

**B. Submissions by the Respondent No. 3:**

1. The Appellant were wrongly placed in different tariff category earlier which caused the revenue loss to the department.
2. The Appellant representative has accepted the calculations done by the department.
3. The 1<sup>st</sup> installment was consequently billed in the bill for the month of April, 2017 and a total amount of Rs. 158390/- is recovered till date against the total amount of Rs. 923963/-. The balance amount to be recovered is Rs. 765573/- (Rupees Seven Lakhs Sixty Five Thousand Five Hundred and Seventy Three only).
4. The Appellant has been paying regularly against the bills raised. However the amount raised for the period from June 2012 to March 2015 was short billed to



the consumer, which is claimed now. The communication of the respondent dated 19/01/2016 to M/s A&A Hotels Pvt. Ltd. stands justified.

5. It is evident from the fact that the applicant has already taken relief by filing writ petition in the High Court of Bombay, Goa and the Hon'ble High Court was pleased to direct the respondent to give personal hearing to the applicant, to which the respondent has duly obeyed and acted on the order.

Based on the Orders of the High Court of Bombay at Goa, the applicant was given opportunity for personal hearing vide letter no. EE/Div-II/HTC-261/3662 dt. 18/10/2016 to be held on 27/10/2016. However the applicant delayed and after oral reminders the meeting was held on 04/11/2016, of which the minute of meeting is enclosed.

Further the consumer submitted a representation before the Consumer Grievances Redressal Forum (CGRF) for availing 60 months installment facility, to which the forum ordered a plan of 30 month installments facility to the consumer, without levy of DPC vide Order dated 25/04/2017 which was made effective for 30 months from the month of April, 2017 based on the order of the Consumer Grievances Redressal Forum (CGRF).

As such, ample time and privilege has been quantified to the applicant, consequent to whom the applicant should effect the payment without any further protests.

6. The prayer placed before CGRF was only for grant of relief in installments and now where have they disputed the claim, as they have clearly agreed in principle



to clear the outstanding amount. The claim of the applicant is therefore totally misleading and to subvert the process of law.

The judgment regarding Section 56 (2) is clearly pronounced in the Hon'ble High Court of Jharkhand at Ranchi (LPA No. 329 of 2007) in M/s Tata Steel Limited V/s Jharkhand State Electricity Board & others.

The judgment clearly states that 'when the consumer consumes electrical energy, he becomes liable to pay the charges for such consumption but thereafter, when the board raises bills as per the tariff, making specific demand from the consumer for payment of the amount for consumption of electrical energy then only the amount becomes "first due" for payment of such consumption of electrical energy.'

7. The respondent may be allowed to continue the recovery of the balance amount of Rs. 765573/- out of Rs. 923983/- raised against the difference in billing for which the energy is already consumed by the appellant.

**C. CGRF order preferred for Appeal:**

**Consumer Grievances Redressal Forum, Goa has decided:**

4. *This is a case of escaped billing caused by application of wrong tariff to the complainant's installation during the period from June 2012 to March 2015. The error came to light at time of audit, where upon revised bill of Rs.9,23,963/- was issued. The complainant does not dispute the amount, but seeks facility of payment in 60 installments. In our opinion, the consumer is entitled to be granted installment facility since it paid the bills*





*regularly on time and the error was clearly on part of the Department with no fault of the consumer.*

5. *The complainants average monthly bill is about Rs.1,76,000/- while the arrears are Rs.9,63,963/- shall be recovered in equal installments over 30(thirty) billing cycles without DPC. This would meet the ends of justice.*


**D. Discussions during hearing:**

The matter regarding the words “*first due*” appearing in section 56(2) of Electricity Act, 2003 was deliberated by the Appellant & respondents at length.

*Section 56(2) of Electricity Act, 2003 provides:*

*‘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’.*

The respondent no.3 argued that in accordance to Section 56(2) of Electricity Act, 2003 the term ‘*first due*’ means whenever the sum/bill is raised. In terms of the Hon’ble High Court of Jharkhand at Ranchi (LPA No. 329 of 2007) in M/s Tata Steel Limited V/s Jharkhand State Electricity Board & others the period of two years as mentioned in section 56(2), Electricity Act, 2003 would run from



date when such demand is made by Board, raising the bills against consumption of Electrical Energy. The appellants were charged under HT –mixed tariff category instead of HTI/Hotel Industry from June 2012 to March 2015.

The appellant argued that if the contention of respondents that bill becomes first due whenever it is raised is accepted than the Licensee Discom (under obligation to raise correct bill timely) can raise the bill at any point of time even though the consumption pertains to more than two years back. This shall make section 56(2) of Electricity Act, 2003 as if it didn't exist. So the contention of the Respondents may be rejected. Further the amount shall become 'first due' after one month of the consumption as the respondent is under obligation to raise bill as per monthly billing cycle in accordance to Chapter 8 of Joint Electricity Regulatory Commission (Electricity Supply Code), Regulations 2010.

**E. Analysis & Decision:**

1. It is observed that the appellant has been asked to pay the bills for consumption of Electricity pertaining to June 2012 to March, 2015 in January 2016 for no fault of theirs. The Electricity department, Goa was under obligation to charge the appellant for Electricity consumed in correct tariff category timely.
2. The appellant had filed an writ petition before Hon'ble High Court of Bombay at Goa in WP no. 493/2016 wherein it has been decided:





7. Upon examining the rival contentions it is undisputed that the impugned demand by the respondent no. 3 was without giving a hearing to the petitioner. In such circumstances, we find that the impugned demand stand vitiated for breach of the principles of natural justice. The question of examining this aspect by the Consumer Grievances Redressal Forum would not arise as there is no grievance or representation which has been made by the petitioner with regard to any dispute in connection with any bills issued by the respondents.

....

10. In view of the above, we disposed off the above petition by keeping all the contentions of the parties on merits open and direct the respondent no. 3 to examine the subject demand a fresh and take a fresh decision on such demand after hearing the petitioner in accordance with law. Until such further decision the respondents shall not act on the disputed demand at annexure 'A' which shall be subject to further decision which may be taken by the respondent no. 3 in the light of above observations.

3. In **H.D. Shourie vs Municipal Corporation of Delhi(AIR 1987 Delhi 219)** wherein a bill had been raised for a defective period of meter. In this regard the Hon'ble High court held as under:-

*(11) As I read Section 24 of the Electricity Act 1910 and Section 283 of the Corporation Act, it appears to me that the amount of charges would become due and payable only with the submission of the bill and not earlier. As has been mentioned herein above, it is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word "due" in Section 24 is to mean consumption of electricity, and if the*

B. Singh

argument of the learned counsel for the petitioner is correct, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under Section 24. This certainly could not have been the intention of the Legislature.

4. In **Ajmer Vidyut Vitran Nigam Limited, Chittorgarh, Rajasthan v/s M/s Sisodia Marble & Granites Pvt. Ltd. & Ors** (Appeal Nos. 202 & 203 of 2006) wherein bill for defective period of meter was raised, the Hon'ble Appellate Tribunal of Tribunal held as under:-

14. We have heard the learned counsel for the parties. The basic question for determination is what is the meaning of the words 'first due' occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No.49 of the Terms and Conditions for supply of Electricity, 2004. In case the words 'first due' is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.

5. In **M/s Rototex Polyester & Anr. V/s Administrator, Administration of Dadra & Nagar Havli(UT) Electricity Department, Silvassa & Ors( Writ Petition No.7015/2008)** regarding bill raised for period where less Multiplier Factor was applied, the Hon'ble High Court of Judicature at Bombay held as under:-





10. Sub Section (2) of Section 56 provides for limitation of two years. It introduces the concept of "the date when such sum becomes first due". In short, a sum which is due can be recovered within a period of two years from the date it became first due and not thereafter. The only sum which is left out of this is the sum which is shown continuously as recoverable as arrears of charges of electricity.....

12. in *Bharat Barrel & Drum Manufacturing Company Private Limited V/s The Municipal Corporation for Greater Bombay*, AIR 1978 Bom.369, a Division Bench of this court was concerned with a situation wherein additional amounts for eleven years period were claimed from the consumer on the basis of failure to multiply the reading by 2 (two) and not on the basis of faulty meter. The question was whether the licensee had to restrict its claim to six months. The Division Bench observed that under section 26 of the Indian Electricity Act, 1910 restriction as to six months does not seem to apply to a claim made by the licensee on the ground that there was a failure to multiply the reading by the changed multiplication factor.

13. In *U.A. Thadani's case (supra)*, learned Single judge of this court was concerned with similar fact situation. Two bills were raised on the consumer demanding additional amounts because multiplying factor was wrongly charged. It was argued by the consumer on the basis of sub-section (6) of Section 26 that the Electrical Inspector could determine the quantum of electricity consumed during the statutory period of six months and for the period anterior to it the reading registered in the disputed meter will have to be presumed to be correct. Relying on the judgment of this court in **Bharat Barrel**, learned Single judge held that the restriction as to six month's period provided in Section 26 has no application to a demand made by the licensee or the Electricity Board for the unpaid amount for the electricity consumed if the consumer was under-billed due to clerical mistakes or human error or such like mistakes.

14. The principle which can be deduced from the above judgments is that in case the consumer is under-billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 500 to 1000, but due to oversight, the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. Though Section 26(6) of the Indian Electricity Act, 1910 is not in pari material with section 56(2) of the Electricity Act, 2003, in our opinion, the present case would be governed by the above principle and, hence, the challenge raised by the petitioners must fail.

6. **In Bank of India V/s The Punjab State Power Corporation Limited and others (The Punjab & Haryana High Court CWP No. 8228 of 2015)** regarding bill raised for period slow meter remained installed and less





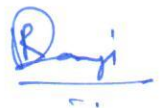
Multiplier Factor applied. The court in its decision dated 21.8.2017 has relied on the ATE judgment in M/s Sisodia Marble & Granites Pvt. Ltd's case and held:

*"In M/s Sisodia Marble & Granites Pvt. Limited's case(supra), 6 of 7 CWP No. 8228 of 2015(7)\*\*\*\*\*it is approved by the Supreme Court, as stated by the respondents and not denied by the petitioner during the course of hearing, that "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 words used in Section 56(2) of the Act "from the date when such sum became first due" would, thus, mean that on the date on which the demand is raised by the licensee to the consumer and the bar created of the period within which the amount is to be recovered is of two years from the date when such sum became first due, meaning thereby, if hypothetically demand is raised and no action is taken for its recovery for the period of two years, then according to this provision, the said recovery would be barred by limitation.*

*Thus, in my considered opinion, keeping in view the aforesaid facts and circumstances, there is hardly any ground to interfere in this petition and hence, the same is hereby dismissed, though without any order as to costs.*

7. The above decisions of Hon'ble High Courts and Appellate Tribunal of Electricity were discussed with the parties. The Appellant understood the fact that the impugned bill is for Energy consumed by the appellants which they would have paid long back had the bill been raised in correct tariff category.
8. Efforts were made for conciliation between the parties. The delay in billing of appellant in correct tariff category lead to loss to the respondents & gain to the Appellants as Money has a time value.
9. The appellant requested for increasing the no. of installment from present 30 (as per CGRF order) to 60.
10. The appellant has been paying the bills raised regularly as also agreed by the Respondent No.3, so the appellant consumer has come with clean hands. He has further already paid Rs. 158390/- out of Rs. 923983/- of the impugned bill. The consumer has an average bill of about Rs2,50,000.



11. In view of above deliberations, both the parties agreed to amicably resolve the Outstanding dues by making the balance payment of Rs 7,65,573 (Rupees Seven Lakhs Sixty Five Hundred and Seventy Three only ) in 40 equal Installations.
12. The Appellant is, therefore, allowed to pay the unpaid part of Impugned bill i.e. Rs7, 65,573 in 40 equal Installments w.e.f. November, 2017 along with their regular bills. The verdict of CGRF Goa is, accordingly, amended to that extent.
13. It is further felt that appellant is held liable for inability of the respondents to charge the appellant correct tariff timely. The failure of Electricity Department, Goa to charge correct tariff & other dues timely from the consumer has led to harassment to the consumer for which appellant has faced a lot of hardships. The Respondents are directed to be very careful in raising correct bills timely. Lack of timely action and due diligence on part of respondents leads to avoidable hardship to innocent consumers.
14. The Appeal stands disposed off accordingly.



(Rajesh Dangi)  
Electricity Ombudsman  
14.11.2017

1. Ms Veena Advani, Director, M/s A&A Hotels Pvt. Ltd.,  
Plot No.12&13, La Oceana Colony, Dona Paula  
Ilhs, Goa.
2. The Chief Electrical Engineer  
Electricity Department  
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Copies to:

1. The secretary, JERC
2. The Chairman, CGRF, Electricity department, Vidyut Bhawan, Goa
3. Sh Arvind, JERC for uploading of Order on JERC website

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