



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

4th Floor, SIDCO Corporate Office Building, Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.

Phone : ++91-044-2953 5806,044-2953 5816 Fax : ++91-044-2953 5893

Email : tneochennai@gmail.com Web site : www.tnerc.gov.in

Before The Tamil Nadu Electricity Ombudsman, Chennai

Present : Thiru. N.Kannan, Electricity Ombudsman

A.P.No. 45 of 2024

BY RPAD

Thiru P. Senthil,
M/s. Sree Ramm Pipe Company,
No.6/7, Banu Nagar, Chettimedu,
Vadaperumbakkam, Chennai – 600 060.

..... Appellant
(Thiru P. Prabu, Advocate)

Vs.

1. The Executive Engineer / O&M/ Vyasarpadi,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
110/33 KV SS Vyasarpadi,
Opp. to Ramalingam Temple,
Vyasarpadi, Chennai – 600 039.

2. The Assistant Executive Engineer / O&M/ Madhavaram,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
33/11 KV SS, CMBTT, Vadaperumbakkam,
Chennai – 600 060.

3. The Assistant Engineer / O&M/ Vadaperumbakkam,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
33/11 KV SS, CMBTT, Vadaperumbakkam,
Chennai – 600 060.

..... Respondents
(Thiru T. Rengaraj, EE/O&M/Vyasarpadi,
Thiru K.Arunachalam, AEE/O&M/ Madhavaram
Thiru K.Lakshmanan, AE/O&M/ Vadaperumbakkam)

Petition Received on: 18-06-2024

Date of hearing: 13-08-2024

Date of order: 22-08-2024

The Appeal Petition received on 18.06.2024, filed by Thiru P.Senthil, M/s. Sree Ramm Pipe Company, No.6/7, Banu Nagar, Chettimedu, Vadaperumbakkam, Chennai – 600 060 was registered as Appeal Petition No. 45 of 2024. The above appeal petition came up for hearing before the Electricity Ombudsman on 13.08.2024. 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 direct the appropriate authority to reassess the electricity consumption during the disputed period by applying Regulation 11 (5) of the TNERC Supply Code.

2.0 Brief History of the case:

2.1 The Appellant has prayed to direct the appropriate authority to reassess the electricity consumption during the disputed period by applying Regulation 11 (5) of the TNERC Supply Code in SC No.020-005-2041.

2.2 The Respondent has stated that the shortfall amount raised towards non adoption of average consumption for the meter defective period as per TNERC Regulation 11(2) is in order.

2.3 Hence the Appellant has filed a petition with the CGRF of Chennai Electricity Distribution Circle/North on 27.03.2023.

2.4 The CGRF of Chennai Electricity Distribution Circle/North has issued an order dated 25.11.2023. Aggrieved over the order, the Appellant has preferred this appeal petition before the Electricity Ombudsman.

3.0 Orders of the CGRF :

3.1 The CGRF of Chennai Electricity Distribution Circle/North issued its order on 25.11.2023. The relevant portion of the order is extracted below: -

“Order:

From the above findings, the Forum finds that the energy meter in Sc.no.020-005-2041 was defective based on MRT report, since the CMRI downloaded report is considered as scientific evidence. Further, the average short fall units of 17073 arrived for the period from 10/2019 to 02/2020 is based on regulation 11(2) of Tamilnadu Electricity Supply Regulations, 2004. Therefore, the request of the petitioner to withdraw the audit claim of 1,55,702/- is not acceptable. The Respondent is directed to collect the said arrears as per supply code provisions.”

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondent to put forth their arguments, a hearing was conducted in person on 13.08.2024.

4.2 On behalf of the Appellant, his representative Thiru P. Prabu, Advocate attended the hearing and put forth his arguments.

4.3 The Respondents Thiru T. Rengaraj, EE/O&M/Vyasarjadi, Thiru K.Arunachalam, AEE/O&M/ Madhavaram and Thiru K.Lakshmanan, AE/O&M/ Vadaperumbakkam of Chennai Electricity Distribution Circle/North attended the hearing and put forth his 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 prayer which requires relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone is discussed hereunder.

5.0 Arguments of the Appellant:

5.1 The Appellant has stated that he is running a manufacturing unit specializing in the production of PVC pipes, specifically for borewell applications during the year 2019-2020. The nature of the business is cyclical, with higher demand during the summer season and lower demand during the monsoon season. During the disputed period of November 2019 to January 2020, his electricity unit measuring meter was defective, a fact confirmed by a Meter Relay test which proved the defect and indicated that no data regarding consumption could be recovered.

5.2 The Appellant has stated that given the cyclical nature of the business and the defective meter, the electricity consumption during the disputed period was naturally lower. The GST returns was filed during the said period, which substantiate the lower orders and consumption during the monsoon season compared to the preceding months (June 2019 to October 2019).

5.3 The Appellant has stated that Calculation working sheet showing how the charges were calculated and for how many of the months the average units were taken for arriving at the amount of Rs.5,95,366/ as the actual charges during the defective period and less of Rs.4,39,664/- (amount already paid by him), resulting in Rs.1,55,702/- as pending recoverable. Cumulatively, the entire charges for the period between June 2019 to October 2019 is only Rs.4,38,659/- which averages to Rs.1,09,664/- per month in terms on charges itself, when that is the case how is Rs.5,95,366/- justifiable without giving a detailed breakup of the calculation with the slabs.

5.4 The Appellant has stated that as per TNERC Supply Code Regulation 11, the assessment of billing in cases where there is no meter or the meter is defective should follow specific guidelines. Specifically, Regulation 11(2) provides for the determination of electricity supplied during the period in question by taking the average of the electricity supplied during the preceding four months. However, Regulation 11(5) states that if the conditions in regard to the use of electricity during the said four months were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of working were similar to those in the period covered by the billing.

5.5 The Appellant has stated that in his case, the CGRF should have applied Regulation 11(5) considering the cyclical nature of the business and the defective meter during the monsoon season. The application of Regulation 11(2) is inappropriate as it fails to consider the unique operational conditions of his business. The assessment should have been made on the basis of a four-month period within the preceding twelve months that reflected similar operational conditions.

Date of Reading	Electricity Units Consumed	Total Bill Amount in Rs.	Average Cost in Rs. Per unit
28 January 2019	6936.4	50100	7.22
26 February 2019	9478.8	67062	7.07
28 March 2019	14446.4	100198	6.94
29 April 2019	15076.8	104371	6.92
29 May 2019	15076.4	104387	6.92
28 June 2019	14962.4	103628	6.93
31 July 2019	20703.2	141922	6.86
30 August 2019	13938.4	96825	6.95
28 September 2019	18686.8	128563	6.88
30 October 2019	10107.6	71349	7.06
Nov-19	Defective		
Dec-19	Defective		
Jan-20	Defective		
29 February 2020	16462.2	113678	6.91
30 March 2020	Taken Same as April 2020 (Corona)		
30 April 2020	11873.2	85977	7.24
29 May 2020	3107.2	24557	7.90
29 June 2020	7502	53857	7.18
30 July 2020	4681.2	35050	7.49
29 August 2020	13458.8	112619	8.37
29 September 2020	13767.6	95757	6.96

5.6 The Appellant has stated that furthermore, he wishes to invoke Section 56(2) of the Electricity Act, 2003, which stipulates that no sum due from any person shall be recoverable after a period of two years from the date when such sum first became due. In his case, it is admitted that the 11.09.2020 is date of demand notice

as per the letter dated 11.07.2024 in reference no: 332/24 sent by the Executive Engineer Mr.Rengarajan.

5.7 The Appellant has stated that the judgment of the Appellate Tribunal for Electricity dated 14.11.2006 in Appeal Nos. 202 and 203 of 2005 clarifies that the liability to pay electricity charges is created on the date the meter is found defective or the date the consumption reading is recorded, but the charges become first due for payment only after a bill or demand notice is sent to the consumer.

5.8 The Appellant has stated that in his case, although the meter was found defective during the period of 2019-2020, the CGRF did not adhere to the statutory limitation period of two years for recovering the dues. The dues arising from the period of 2019 could have been calculated and recovered easily. However, the engineer in charge of distribution failed to recover the same promptly. The said amount pertains to consumption charges and not any supplementary charge, shortfall, additional charge, or human error.

5.9 The Appellant has stated that the CGRF failed to consider the cyclical nature of his business and incorrectly applied Regulation 11(2) instead of Regulation 11(5) of the TNERC Supply Code. By doing so, the CGRF did not accurately assess the electricity consumption during the defective meter period. Additionally, the CGRF overlooked the statutory limitation period under Section 56(2) of the Electricity Act, 2003, thereby falling to recover the dues within the permissible timeframe.

5.10 The Appellant has prayer to

- (a) set aside the order of the Consumer Grievance Redressal Forum, CEDC/NORTH CIRCLE in Petition No. 410323 dated 27.03.2023.
- (b) direct the appropriate authority to reassess the electricity consumption during the disputed period by applying Regulation 11(5) of the TNERC Supply Code, considering the cyclical nature of his business.

(c) acknowledge the limitation period under Section 56(2) of the Electricity Act, 2003, and provide appropriate relief to the Appellant by ensuring that any dues beyond the two-year period are not recovered.

6.0 Arguments of the Respondent:

6.1 The Respondent has submitted that the petitioner stated that his industrial business is of cyclic nature i.e, during summer season consumption is more and during winter season consumption will be less. But while going through the consumer ledger of petitioner's SC No.020-005-2041 is very clearly shows that the consumption for the entire year is almost equal, before and after Meter defective period. Hence it is clearly understand that the petitioner is hiding the fact and giving wrong information and there by misleading the forum.

6.2 The Respondents has stated that they have tried at their level best to recover the recorded data of the defective meter in the Meter Relay Testing Lab, Since the display in the meter failed, the data could not be recovered. Meter defective MRT report is right by evidence act.

6.3 Calculation for the defective period has been worked out by the BOAB Audit wing as per TNERC regulation 11(2) as follows.

Working data taken for the period from 10/2019 to 01/2020.

Average Based

06/2019	=	14962.4
07/2019	=	20703.2
08/2019	=	13938.4
09/2019	=	<u>18686.8</u>
	=	68290.8 /4 = 17073 Average Units

1. 10/2019 to 02/2020 (4 Months)
17073x635 = 108413.5

108413.5x4	=	4,33,654.2
Tax (101x35+CCX5%)	=	21,859.4
FC:108x35x4	=	<u>15,120.0</u>
Total	=	<u>4,70,634.0</u>

2. 02/2020 Pro- Aug (14 Days)
(30.01.2020 to 13.02.2020)

$\frac{17079}{30} \times 14$	=	7967
Actual Consumption	=	$\frac{10153}{18120}$ Average Units
18120x6.35	=	115062.0
Tax (76x5+CCx5%)	=	5889.6
FC : (108x35)	=	<u>3780.0</u>
	=	124732.0

To be billed for 10/2020 to 02/2020	=	5,95,366.00
(470634 + 124732)		
(-) Already Collected	=	<u>4,39,664.00</u>
Short fall to be collected	=	1,55,702.00

6.4 The Respondent has submitted that since the petitioner's industry running in LT CT SC No.020-005-2041 is a continuous process in nature (Non Seasonal Industry). The average Billing calculation have been adopted as per TNERC Regulation 11(2) by having average of 4 consecutive months preceding the defective period. Therefore the working sheet and the method adopted by the BOAB Audit in correct and in order.

6.5 The Respondent has submitted that the TNERC regulation 11(5) could not be adopted here because the petitioner's loads/ Industry not a seasonal Industry, it is a continuous process industry, therefore the order given by CGRF is correct and in order.

6.6 The Respondent has submitted the electricity act section 56(2) sought by the petitioner is not acceptable and applicable for the reason stated below:

- On receipt of the Audit shortfall notice slip No.45 dt.03.08.2020, a notice was served by then Executive Engineer/O&M/Vyasarpadi vide கஎண்செ.பொ/இ(ம)பரா/வி.பாடி/உ.க.அ/வ.பி/க.மே.4/

கோ.அறிவிப்பு/கடிதம்/எண்.350/2020, நாள்.11-09-2020 the same was received by the representative of Thiru.P.Senthil on 16.10.2020. But the petitioner has submitted his objection letter on 22.10.2020

requesting to drop the shortfall amount. The same has been forwarded to the BOAB Audit vide Lr.No.EE/O&M/VPD/AAO/ CNI/RB/RS.1/F Audit/ D.No. 187, dt. 29.04.2021. Hence TANGEDCO is not able to collect the shortfall amount.

- ii. Further due to covid period the government has announced lockdown and instructed not to disconnect the service for defaulters Therefore no action initiated for recovery of shortfall amount from the petitioner.
- iii. After covid the Assistant Engineer/O&M/Vadaperumbakkam vide his Lr.No.க.எ.196/உ பொ/இ&ப/வடபெரும்பாக்கம் பிரிவு/மின் கட்டண பாக்கி தொகை/ நாள் 27.3.2023 addressed to the petitioner requesting to pay the pending shortfall amount of Rs.1,55,702/- within 3-days from the date of the above letter.
- iv. Subsequently he raised the Audit slip in the LT billing system on 11.04.2023. In the meantime, the consumer submitted a letter dt. 20.03.2023 to the Superintending Engineer/ CEDC/N requesting to reconsider the shortfall amount calculated by the audit. Subsequently the Superintending Engineer/ CEDC/North instructed vide his MemoNo.SE/CEDC/N/EE/GL/F.Audit/D.208/2023, dt.05.04.2023 and instructed to send the MRT downloaded report and hence the MRT report reference Lr.No.AEE/ MRT/ HT/ Mtrg/ CEDC/ North/ F.LTCT/ D.84/2020, dt.15.02.2020 has been submitted to the Superintending Engineer/CEDC/North.
- v. On receipt of the letter, the petitioner filed the petition in CGRF hence the collection process was stopped.
- vi. After receiving the order from CGRF in favour of TANGEDCO, the Executive Engineer/O&M/Vyasarpadi has sent a notice to petitioner vide க. எண்.செ.பொ./இ(ம)ப/வி.பாடி/உ.க.அ/வ.பி/க.மே.2/எண்.133/24, நாள் 25.03.2024 requesting to remit the shortfall amount. But the petitioner again did not pay the amount and filed an appeal in TNERC Ombudsman.

vii. As the claim is made continuously the Appellant prayer to disallow on section 56(2) is not to be claimed.

6.7 The Respondent has stated that it is clearly proved that the Respondent is repeatedly following up the petitioner for the payment of shortfall amount. Hence the implementation section 56(2) of electricity act 2003 does not arise and petitioner's statement is false. Further the Respondent is entitled to collect as per supply code 12 (error in billing.)

6.8 The Respondent has stated that in view of the above the shortfall amount raised towards the non adoption of average consumption for the meter defective period from 10/2019 to 01/2020 by Audit is in order and correct.

7.0 Written arguments submitted by the Appellant:

7.1 The Appellant has stated that he had filed the against the order passed by the Consumer Grievance Redressal Forum (CGRF), CEDC/North, in Petition No. 410323 dated 2703.2023.

7.2 The Appellant has submitted that his Business is cyclical and demand is higher only during pre-monsoon and summer as his main line of product is borewell pipes and hence Regulation 11(5) of TNERC Supply Code should have been applied instead of Regulation 11(2).

7.3 The Appellant has submitted thatthe PVC pipes business in India, particularly for the Appellant, exhibits cyclical characteristics influenced by seasonal demand patterns and external factors such as the monsoon season.

7.4 The Appellant has submitted that the PVC pipes market is inherently cyclical, primarily driven by agricultural cycles, construction activities, and seasonal weather patterns. During the monsoon season, demand for PVC pipes tends to fluctuate due to several reasons.

7.5 The Appellant has submitted that the (a) Agricultural Dependency, a significant

portion of PVC pipe sales is linked to agricultural applications, such as irrigation, Demand typically peaks before the monsoon as farmers prepare for planting and irrigation needs. However, during the monsoon, the immediate need for borewell pipes decreases as the reliance on rainwater increases. (b) Construction Activity: Construction activities often slow down during the monsoon due to adverse weather conditions, impacting the A for plumbing and other construction-related PVC products. (c) Financial Performance Indicators: The investor transcript of a conference call of one of India's largest PVC Pipe Manufacturers, Finolex Pipes, specifically mentions that the demand for agricultural pipes tends to be lower during the active monsoon period compared to pre-monsoon and summer months, when farmers are more actively investing in irrigation infrastructure.

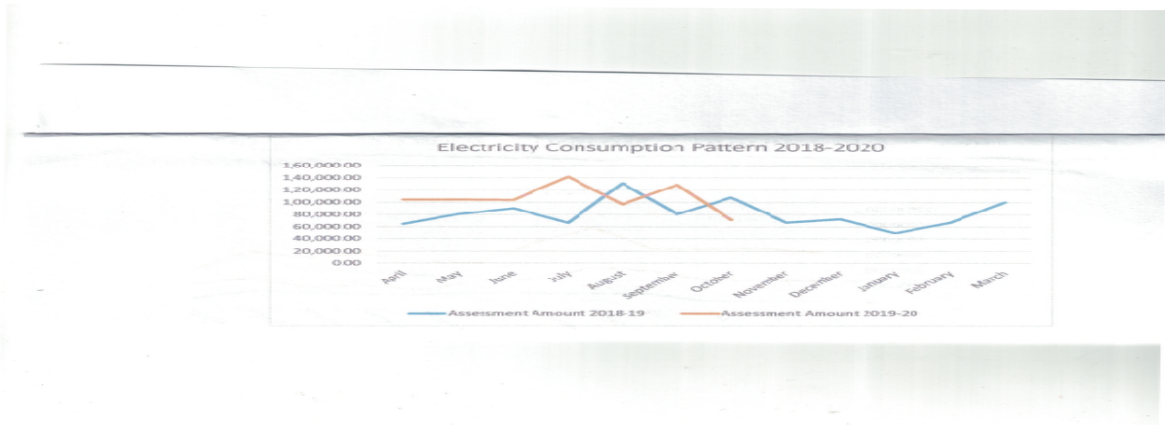
7.6 The Appellant has annexed 2017-2021 period GST Total Taxable Invoice value month-wise during the relevant period of defective electricity reading meter and also 2 years before the said period to show that the business is cyclical.

Month	Total Taxable Value			
	2017-18	2018-19	2019-20	2020-21
April		26,02,227.89	38,04,264.52	0.00
May		27,20,620.54	34,00,051.88	7,43,107.00
June		27,67,636.46	23,26,398.74	17,44,345.37
July	10,01,557.40	29,22,378.28	23,15,845.25	5,98,819.62
August	9,68,893.79	33,74,612.48	26,41,690.04	26,75,794.64
September	10,17,259.05	17,47,612.48	30,25,586.58	18,13,521.68
October	10,71,517.00	15,14,069.93	6,94,674.64	16,17,213.65
November	8,42,172.08	5,68,782.09	19,05,719.75	17,59,460.31
December	8,42,264.83	11,52,293.87	17,15,089.86	23,73,043.94
January	10,62,107.70	7,78,143.94	20,67,565.63	16,10,933.60
February	12,48,772.73	16,40,650.22	29,65,164.741	6,01,423.65
March	3,31,747.74	18,53,229.24	14,55,589.59	3,03,214.18



7.7 The Appellant has also attached the electricity consumption pattern during the two-year period prior to the defective meter, corroborating the cyclical nature of the business.

Month	Assessment Amount	
	2018-19	2019-20
April	65,177.31	1,04,396.77
May	80,971.30	1,04,389.40
June	90,416.98	1,03,627.55
July	66,637.18	1,41,921.84
August	1,31,165.74	96,824.53
September	80,744.61	1,28,563.24
October	1,07,749.65	71,349.17
November	66,995.31	Defective
December	72,564.92	Defective
January	50,100.20	Defective
February	67,062.15	
March	1,00,197.62	



7.8 The Appellant has submitted that the claim by the Respondents is barred by limitation as the Respondent had not continuously shown the amount as arrears Rs.1,55702/- in the subsequent bills so as to be recoverable as arrears of charges, under Section 56(2) the Electricity Act as amended.

7.9 The Appellant has submitted that in the case of the Appellant, the defective meter was removed and sent for testing, and then an audit slip was first issued No.45 dated 03.08.2020 along with a demand notice served on 11.09.2020, which the Appellant received on 16.10.2020.

7.10 Post that, in the subsequent bills raised to the Appellant's electricity usage, the Respondent had not continuously shown the amount Rs. 155702/- as arrears in the subsequent bills so as to be recoverable as arrears of charges.

7.11 The Appellant has submitted that the Respondent's excuse of the Covid-19 period is long gone, and they are trying to cover up their inability and failure. The Respondent sent a subsequent letter in 2023 for recovery and had not acted to

recover the same until the expiry of the two-year statutory limitation period.

7.12 The Appellant has submitted that the Respondent may have avoided disconnection but nothing prevented them from approaching the civil forum to recover the same. Thus, the recovery of the amount is clearly barred as the Respondent had not continuously shown the amount as arrears in the subsequent bills so as to be recoverable as arrears of charges.

7.13 The Appellant has submitted that in the recent judgment of the Hon'ble Supreme Court of India in the case of MIs. Prem Cottex vs. Uttar Haryana Bijli Vitran Nigam Ltd., and Others [2021 SCC Online SC 870], the Apex Court considered Section 56(2) of the Electricity Act and held that electricity charges would become 'First Due' only after the Bill is issued, even though the liability would have arisen on consumption. The Hon'ble Supreme Court, in the case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited vs. Rahamatullah Khan alias Rahamjulla [(2020) 4 SCC 650], held that "the period of limitation of two years would Commence from the date on which the electricity charges became first due under Section 56(2)".

"15. Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) 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.

7.14 The Appellant has submitted that the Hon'ble Supreme Court, in its recent judgment by its first bench in the case of K.C.Ninan vs Kerala State Electricity Board & Ors. on 19 May, 2023, has in detail discussed the Section 56(2) of the Electricity Act. In Para 124, *"The second issue pertains to the implication of the period of two years provided in Section 56(2) on the civil remedies of Utilities to recover electricity dues. Section 56(2), which begins with a non obstante clause, provides a limitation of two years for recovery of dues by the licensee through the means of disconnecting electrical supply. It puts a restriction on*

the right of the licensee to recover any sum due from a consumer under Section 56 after a period of two years from the date when such sum became first due. If this provision is invoked against a consumer after two years, the action will be permissible when the sum, which was first due, has been shown continuously as recoverable as arrears of charges for electricity supplied. Under Section 56, the liability to pay arises on the consumption of electricity and the obligation to pay arises when a bill is issued by the licensee for the first time. Accordingly, the period of limitation of two years starts only after issuance of the bill.”

Also, the intention of the Legislatures, is clear based on the following observation in Para 126 of the said Judgment,

*“In its report dated 19 December 2002, the Standing Committee of Energy opined that the restriction for recovery of arrears under Section 56 was considered necessary to protect the consumer from arbitrary billings. In other words, the enactment of **Section 56(2)** was to idrcs th micbif of **arbitrary** hilling Hence, Section 56(2) was incorporated to ensure that a licensee does not abuse its special power of disconnection of electrical supply. Section 56(2) ensures that a licensee does not have the liberty to arbitrarily impose a bill after a long period and then recover such a huge amount **through the** drastic step o disconnection of electrical supply.”*

7.15 The Appellant has submitted that from the above Judgments of the Hon'ble Supreme Court Benches, it is clear that the though, right of recovery does not extinguish, the said right cannot be exercised through coercive action and more specifically, 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.

7.16 The Appellant has submitted that the following documents are filed along with the written Arguments; re-joinder could not be filed as counter from Respondent received on 10.08.2024 only, 2 days before hearing date 13.08.2024.

- (i) Appellant GST Data for the period 2017-2021 highlighting the business volume is cyclical.
- ii) Appellant Electricity Consumption data for the period 2018-2020 highlighting the consumption pattern is also cyclical.
- iii) Business Standard New Paper Article from the Mumbai Edition issue dated 05.03.2019

- iv) Finolex Investor Concall transcript dated 02.08.202 1
- V) Appellant Electricity Service Detas Highlighting that had not continuously shown the recoverable amount Rs.155702/- as arrears in the subsequent bills.

7.17 The Appellant has prayed to

- (a) Set aside the order of the Consumer Grievance Redressal Forum, CEDC/NORTH CIRCLE in Petition No. 410323 dated 27.03.2023.
- (b) Direct the appropriate authority to reassess the electricity consumption during the disputed period by applying Regulation 11 (5) of the TNERC Supply Code, considering the cyclical nature of the Appellant's business.
- (c) Acknowledge the limitation period under Section 56(2) of the Electricity Act, 200, and provide appropriate relief to the Appellant by ensuring that any dues beyond the two-year period are not to be recovered if not shown continuously as arrears in subsequent bills and disconnection of the service should not be a recourse to recovery and thus, render justice.

8.0 Findings of the Electricity Ombudsman:

8.1 I have heard the arguments of both the Appellant and the Respondent. Based on the arguments and documents submitted by them, the following are the issues to be decided;

- 1) Whether the meter was defective during the disputed period?
- 2) Whether there was wrong adoption of TNERC regulation to calculate the average during the defective period as per the Appellant's claim?
- 3) Whether the Appellant's claim that the short levy to be disallowed as per section 56(2) is tenable?

9.0 Findings on the first issue:

9.1 The Appellant operates a manufacturing unit specializing in the production of PVC pipes for borewell applications, which has a cyclical demand pattern, i.e.,

higher during the summer and lower during the monsoon season. During the disputed period (October 2019 to January 2020), the Appellant's electricity meter was defective, as confirmed by a Meter Relay test, making it impossible to retrieve accurate consumption data. Due to the cyclical nature of the business and the defective meter, the Appellant argues that his electricity consumption during the disputed period was naturally lower, which was further substantiated by lower orders and GST returns filed during this period.

9.2 The Respondent also mentions their efforts to retrieve the defective meter data from the Meter Relay Testing Lab but states that this was unsuccessful due to a display failure. Despite this, I am of the view that the Meter Relay Testing (MRT) report is valid evidence according to the Section 35 of the Evidence Act 1872 which is discussed below:

“35. Relevancy of entry in public record or an electronic record made in performance of duty. An entry in any public or other official book, register or record or an electronic record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by law of the country in which such book, register or record or an electronic record is kept is a relevant fact.”

9.3 Based on the aforementioned details, it is apparent that an entry in any public or other official book, register, or record is admissible as evidence under the law of the country. Additionally, the MRT wing of the Licensee is authorized to determine the status of the meter after conducting a scientific test. It was noted in the consumer ledger that the meter was replaced on 12.02.2020 due to a defect, and the data could not be downloaded via CMRI because the meter's display had failed, according to the MRT report. During the hearing, the Appellant also accepted that the meter was defective. Therefore, it is concluded that the meter was indeed defective during the disputed period (Oct 2019 to Jan 2020).

10.0 Findings on the second issue:

10.1 The Appellant contends that the Consumer Grievance Redressal Forum (CGRF) incorrectly applied Regulation 11(2) of the Tamil Nadu Electricity Regulatory

Commission (TNERC) Supply Code in assessing electricity consumption during the disputed period when the electricity meter was defective. The Appellant asserts that due to the cyclical nature of his business, which primarily involves the production of PVC borewell pipes, the demand is seasonally higher during the pre-monsoon and summer months but decreases significantly during the monsoon. This cyclical nature should have been taken into account, and Regulation 11(5), which allows for the assessment based on a more relevant period, should have been applied instead of Regulation 11(2).

10.2 The Appellant further supports his argument by highlighting the dependency of PVC pipe sales on agricultural cycles, construction activities, and weather patterns, which all contribute to a seasonal fluctuation in demand. He provided data showing that the demand for borewell pipes decreases during the monsoon, as irrigation needs are lower and construction activities slow down due to adverse weather. Additionally, the Appellant provided GST data and electricity consumption data from 2017 to 2021 to demonstrate the cyclical nature of both his business and electricity usage, further substantiating his claim that the CGRF should have applied Regulation 11(5) in assessing the charges during the defective meter period.

10.3 The Respondent argues that the petitioner's claim of seasonal variation in electricity consumption is misleading. According to the Respondent, the consumption pattern remained consistent throughout the year, even during the period of the defective meter. They assert that the petitioner is providing incorrect information to mislead the forum. The Respondent justifies the calculation of the shortfall amount during the meter-defective period, which was determined based on the average consumption from four consecutive months preceding the defect. They maintain that the calculation was done in accordance with TNERC Regulation 11(2) and that the industry is of a continuous nature, not a seasonal one, making Regulation 11(5) inapplicable.

10.4 In this context, I would like to refer Regulation 11 of TNERC Supply Code Regulation which was in force during the defective period clearly states that, in the event of a defective meter, any one of the following methods may be taken into

account when determining the average consumption. The relevant section is referred to below.

“11. Assessment of billing in cases where there is no meter or meter is defective :

(1) Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.

(2) The quantity of electricity, supplied during the period in question shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both High Tension service connections and Low Tension service connections provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

(3) In respect of High Tension service connections, where the meter fixed for measuring the maximum Demand becomes defective, the Maximum Demand shall be assessed by computation on the basis of the average of the recorded demand during the previous four months.

(4) Where the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding four months periods after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different. The consumer shall be charged monthly minimum provisionally for defective period and after assessment the actual charges will be recovered after adjusting the amount collected provisionally.

(5) If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of working were similar to those in the period covered by the billing.

(6) Where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed in the case of Low Tension service connections by the Engineer in charge of the distribution and in the case of High Tension service connections by the next higher level officer on the basis of the connected load and the hours of usage of electricity by the consumer.”

10.5 The regulation clearly outlines the expectations and requirements for billing revisions during defective meter periods. Upon thorough examination of the aforementioned regulation, it is evident that Regulations 11(2), 11(4), 11(5), and 11(6) prescribe the procedures for computing the average consumption during the period of meter defect. In the present case, it is observed that the Respondent has adopted the provision of TNE Supply Code Regulation 11(2) for computing the energy charges for the defective period based on the consumption pattern as per consumer ledger.

10.6 The Appellant argues to account for the cyclical nature of his business by submitting the GST documents and hence adopt TNE Supply Code Regulation 11(5) for computing average charges. However, GST payments are raised at the outward destination based on delivery, whether the production of the pipes has been completed and held as stock is unknown. Hence energy consumption can be a factor based on production based utilization of machinery which depends electricity. However, on verifying the consumer ledger there is no major variation in the pattern of the consumption throughout the period. Furthermore, the Ombudsman is to decide on the appeal petition against the order of the CGRF. The CGRF must make a decision in accordance with TNERC Regulations for Consumer Grievance Redressal Forum 2004, Regulation 7(8), which is reproduced below:

“7. Grievance handling procedure for the forum:

xxx

xxx

xxx

(8) All decisions shall be taken by a majority of votes by the members present and in the event of the equality of the votes, the facts may be recorded and referred to the Electricity Ombudsman for final orders. All the members present shall sign every order passed by the forum. The decisions of the forum shall be strictly in accordance with the provisions of the Act, the rules and regulations made thereunder and in particular the Tamil Nadu Electricity Supply Code and the Tamil Nadu Electricity Distribution Code and the directions of the Commission and it is not open to the Members and the Chairperson of the Forum to deviate either expressly or impliedly from the provisions of the Act or the rules or regulations made thereunder or the Tamil Nadu Electricity Supply Code or the Tamil Nadu Electricity Distribution Code or the directions of the Commission while taking the decisions by the forum.”

10.7 As the Ombudsman is only an appellate authority for verifying the correctness of the CGRF's decision as per the above direction. Upon reviewing the arguments, it is evident that while the Appellant accepted the meter was defective, but he insisted on applying Regulation 11(5) instead of 11(2). However, based on the consumption pattern from the consumer ledger, the computation made by the Respondent as per Regulation 11(2) is found to be in order.

11.0 Findings on the third issue:

11.1 The Appellant also contends that the claim made by the Respondent is barred by limitation under Section 56(2) of the Electricity Act, 2003. He asserts that

the Respondent failed to continuously show the amount of Rs.1,55,702/- as arrears in the subsequent bills, and thus, the amount is not recoverable. The Appellant argues that the demand notice issued in September 2020 was received well after the statutory two-year limitation period had expired, and the Respondent failed to act on the arrears during that time. The Appellant emphasizes that the Respondent's claim is invalid due to the expiry of the statutory limitation period and that no continuous arrears were shown in the bills following the defective meter period.

11.2 Regarding Section 56(2) of the Electricity Act, the Respondent asserts that this provision does not apply because the shortfall amount was consistently pursued through notices and communication. The delay in recovery, they argue, was due to the Covid-19 pandemic, during which disconnections were prohibited. Despite this, they state that efforts to collect the outstanding amount resumed as soon as possible after the lockdowns ended. The Respondent further contends that their claim for the shortfall is valid because they followed up continuously with the petitioner and have the legal right to collect under the supply code governing billing errors. Therefore, the shortfall amount calculated by the audit for the meter-defective period is accurate and justified, according to the Respondent.

11.3 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 Code 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, with hold any portion of the charges.”

11.4 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.

11.5 As per the above, the Licensee is entitled to claim any undercharges. Therefore, I would like to determine whether the Licensee's claim is in accordance with TNERC Supply Code Regulation 12. Based on the findings in 1 & 2, the meter was indeed defective, and the calculation for the defective period is correct. Furthermore, the Appellant accepted that the meter was defective and only challenged the method of calculation. However, based on my findings, the calculation of the average during the defective period is correct. Now, the Appellant claims that, under Section 56(2), the bill should not be claimed. Therefore, I would like to refer to Section 56(2) of the Electricity Act 2003.

“Sec. 56(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 arrears of charges for electricity supplied and the Licensee shall not cut off the supply of the electricity.”

11.6 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 this context, I would like to refer the 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.

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."*

11.7 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.

11.8 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.

11.9 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 11.09.2020 on receipt of audit shortfall notice dated 03.08.2020, demanding a shortfall amount of Rs. 1,55,702/- for the period from 10/2019 to 01/2020. Therefore, the period of limitation prescribed under Sub-section 56(2) of Electricity Act, 2003

shall start only from 11.09.2020 i.e. from the date of issue of first supplementary bill towards the energy unbilled.

11.10 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 11.09.2020. The Respondent received a reply from the Appellant on 22.10.2020 requesting to drop the shortfall amount. Due to restrictions by the Government during the Covid period, no action was initiated for disconnection of supply due to non-payment of the shortfall amount. The Respondent forwarded the Appellant's request for dropping the audit shortfall to the BOAB audit vide letter dt.29.04.2021 and the process is continuous. Again the Respondent issued notice to the Appellant on 27.03.2023 to pay the short levy amount of Rs.1,55,702/- within 3 days from the date of receipt of the letter or the same will be included in the CC bills of SC No.020-005-2041. Subsequently, the audit slip was raised in the LT billing system on 11.04.2023. The Appellant filed the petition in CGRF on 27.03.2023. Again, the Respondent issued a demand notice to the Appellant on 25.03.2024 to pay the short levy amount of Rs.1,55,702/-.

11.11 Therefore, it is established that the supplementary bill raised on 11.09.2020 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.

12.0 Conclusion :

12.1 From the findings of the foregoing paragraphs, the Appellant's request to reassess the electricity consumption during the disputed period is not considered and hence I concur with the decision made by the CGRF of Chennai EDC/North. Accordingly, the Respondent is instructed to collect the short levy amount along with statutory dues if any after adjusting for the amount already collected from the Appellant.

12.2 With the above findings the A.P. No.45 of 2024 is finally disposed of by the Electricity Ombudsman. No Costs.

(N. Kannan)
Electricity Ombudsman

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

To

1. Thiru P. Senthil,
M/s. Sree Ramm Pipe Company,
No.6/7, Banu Nagar, Chettimedu,
Vadaperumbakkam, Chennai – 600 060.

- By RPAD

2. The Executive Engineer / O&M/ Vyasarpadi,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
110/33 KV SS Vyasarpadi,
Opp. to Ramalingam Temple,
Vyasarpadi, Chennai – 600 039.

3. The Assistant Executive Engineer / O&M/ Madhavaram,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
33/11 KV SS, CMBTT, Vadaperumbakkam,
Chennai – 600 060.

4. The Assistant Engineer / O&M/ Vadaperumbakkam,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
33/11 KV SS, CMBTT, Vadaperumbakkam,
Chennai – 600 060.

5. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
Ground Floor, 5B Block, 144, Anna salai, Chennai-600 002.

- By Email

4. The Chairman & Managing Director,
TANGEDCO,
NPKRR Maaligai, 144, Anna Salai, Chennai -600 002.

– By Email

5. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.

– By Email

6. The Assistant Director (Computer)
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.

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